

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1339/96

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

New Delhi, this the 10th day of July, 2000

Shri Manoj Kr. Chaturvedi
s/o late Shri R.K.Chaturvedi
Ex. Clerk
Under C.D.O.
Northern Railway
Moradabad.
r/o 177A Railway Quarter
Harthala Colony
Moradabad.

... Applicant

(By Shri B.S.Mainee, through Mrs. Meena Mainee,
Advocate)

Vs.

1. Union of India through
The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Chief Mechanical Engineer
Northern Railway
Baroda House
New Delhi.
3. The Divisional Railway Manager
Northern Railway
Moradabad.

... Respondents

(By Shri B.K.Aggarwal, through Shri Rajeev Bansal,
Advocate)

O R D E R (Oral)

By Reddy. J.

While the applicant was working as Clerk under Coaching Depot Officer, Moradabad, he was issued a charge sheet dated 20.11.1990 alleging that, on coming to know that he was marked absent on account of his late arrival, he assaulted Shri S.C.Saxena, Assistant Superintendent (Stores) and as such he has violated Rule 3 of the Railway Servants Conduct Rules. As the applicant denied the charges and the enquiry officer has been appointed to conduct the enquiry against him.



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The enquiry officer found that the charge was proved. Agreeing with the findings of the enquiry officer, the disciplinary authority imposed the penalty of dismissal from service by the impugned order dated 16.9.1993. In the appeal the appellate authority by order dated 10.1.1994 reduced the penalty by reverting the applicant to the initial stage in the existing scale of pay for a period of two years, permanently. It is stated that the applicant has filed a revision application on 22.2.1994 but the same has not been disposed of. Hence the applicant filed the OA challenging the penalty.

2. The learned counsel for the applicant submits that there is violation of the procedure of enquiry. It is stated that after one witness of the disciplinary authority has been examined and the evidence was closed, the applicant has been examined who filed the defence statement. Thereafter, another witness was examined for the disciplinary authority. He therefore contended that the enquiry is vitiated by the violation of the rules of procedure and the principles of natural justice. It is also stated that the complainant who was not shown as one of the prosecution witnesses he was examined.

3. The learned counsel for the respondents raises preliminary objections as to the jurisdiction as well as limitation in filing the OA. It is further contended that there is no violation of rules of procedure or principles of natural justice in the present case as the complainant has been examined with

the permission of the enquiry officer and the applicant was given adequate opportunity of cross-examining the complainant. The enquiry officer relying upon the witnesses of the prosecution found that the applicant was guilty of the charge and hence the findings arrived at by the disciplinary authority on the basis of the evidence on record cannot be interfered with by the Tribunal.

4. We have given careful consideration to the contentions raised in this case.

5. The preliminary objections have to be dealt with first.

6. It is contended that the Tribunal has no territorial jurisdiction to entertain the OA as the impugned order of disciplinary authority as well as that of the appellate authority were issued at the Moradabad Division. They were passed by DME(C&W), Moradabad and ADRM, Moradabad respectively. Hence, the OA should have been filed only before the Allahabad Bench of the Tribunal. The objection appears to be quite substantial. The impugned orders, it is clear, were passed by the officers at Moradabad Division. Therefore, this Tribunal has no jurisdiction to entertain the OA. The learned counsel for the applicant however submits that as the revision petition has been filed by him before the Chief Mechanical Engineer, Northern Railway, Baroda House, New Delhi, the Principal Bench will have jurisdiction. It is seen that no orders have been passed in the



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revision petition. It is stated in the reply that no revision petition as stated by the applicant has been received by the office from the applicant. In the circumstances, the OA is liable to be dismissed on the ground of jurisdiction.

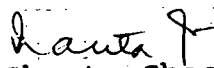
7. The objection as regards limitation also appears to be acceptable. In this case the final order was passed on 16.9.1993 and the appellate authority's order was passed on 10.1.1994 but the OA was filed on 7.6.1996, i.e., after the period of limitation has expired. Even assuming that the review application was filed on 22.2.1994 the application will be barred by limitation. The applicant however, filed an application for condonation of delay, wherein a vague reason was given that he was surrounded by various calamities including loss of job which made him to suffer in his health. We are not satisfied with the reasons given. The delay of two years has not been satisfactorily explained in this application. In the circumstances, the MA No.1317/96, is rejected. Accordingly, we hold that the OA is hit by Section 21 of the Administrative Tribunals Act, 1985.

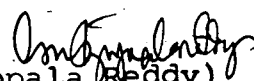
8. Even on merits we do not find any substance in this case. It is true that in the first instance one witness has been examined by the disciplinary authority and the evidence was closed. Thereafter, the complainant was examined and gave his defence statement. Thereafter it appears that complainant has been examined on 10.5.1993. It is true that this procedure admittedly is not in

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accordance with Rule 9(19) of the Railway Servants (Discipline & Appeal) Rules, 1968. But, it is seen that the complainant has been cross-examined by the applicant. No objection appears to have been made for his examination after the defence statement was filed. After considering the evidence of both the witnesses the enquiry officer gave his report on 31.5.1993 and the applicant was given adequate opportunity to make his representation against the enquiry officer's report. In these circumstances, though the procedure adopted ~~was~~ appears to be ^{ir-}regular it cannot be said that any prejudice was caused to the applicant in examining the complainant on 10.5.1993. We also do not accept the contention that the complainant could not have been examined as his name was not shown in the list of witnesses. It is always open to the disciplinary authority to examine the witnesses who was not shown as one of the witnesses in the list of witnesses. Merely because the complainant's name was not shown in the list of witnesses, his evidence cannot be shunned from the enquiry. It is however necessary to see that the charged officer was given full opportunity to cross examine the witness vide Manharlal Jageshwar Mehta Vs. Union of India & Others, 1989(1)) ATC 166. For the above reasons, we do not find any infirmity in the impugned orders passed in this case.

9. In view of the above discussion, the OA has to be dismissed, both on the preliminary objection as well as on merits. The OA is accordingly dismissed. No costs.


(Smt. Shanta Shastri)
Member(A)


(V. Rajagopala Reddy)
Vice-Chairman(J)