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Central Administrative Tribunal, Principal Bench

Original Application No.46 of 1996

New Delhi, this the 6th day of October, 1999

Hon'ble Mr.R.K.Ahooja, Member(Admnv)  
Hon'ble Mr.Rafiq Uddin, Member(Judl)

Parshadi Lal s/o Sh.Sarna Mal  
aged 46 years, working as Diesel Asstt.,  
under GFO(Dsl), Kalka, N.Rly.,  
r/o H.No.311, Boodh Bharat Nagar,  
Ghaziabad(U.P.) .....Applicant

(By Advocate - Shri Mahesh Srivastava)

Versus

1. Union of India, Service to be effected  
through: General Manager, Northern Railway,  
Baroda House, New Delhi.
2. General Manager, Northern Railway,  
Baroda House, New Delhi.
3. The D.M.E.(Op).,  
Divisional Office, Northern Railway,  
Ambala Cantt. ....Respondents

(By Advocate - None)

O R D E R(ORAL)

By Hon'ble Mr.R.K.Ahooja, Member(Admnv)

The applicant who was working as Fireman 'C' was imposed the penalty of reduction to the lower post of Cleaner for a period of two years vide order dated 25.2.85. He filed an appeal against that order and as the same was not disposed of, he approached this Tribunal in O.A.1211/87. The said O.A. was disposed of with the direction to the respondents to decide the appeal within a period of two months. The appeal was decided on 20.11.87. The penalty having been maintained, a review was also filed which also went against the applicant. The applicant thereafter filed another O.A.629/89 against the appellate order and the review order. The said O.A. was disposed of by the Tribunal on 29.7.94. Noting that the Enquiry Officer

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had submitted his report to the Disciplinary Authority on 11.7.84, but even after that the Enquiry Officer had summoned the witnesses on 17.12.84 and 16.1.85, the Tribunal had remanded the case to the appellate authority to examine this point and pass a speaking order after giving personal hearing to the applicant.

2. The allegation of the applicant in the present O.A. is that despite the aforesaid directions of the Tribunal, the appellate authority did not examine the aforesaid aspect. Even though on considerations of the various aspects, he reduced the penalty to W.I.T. for three years in the grade of Fireman 'C', with non-cumulative effect. The applicant submits that in view of the irregularity in continuing the enquiry even though the inquiry report was submitted to the disciplinary authority, the punishment awarded may be set aside.

3. The respondents in their reply have submitted that the inquiry against the applicant could not proceed expeditiously because of the delaying tactics on his part and for various other administrative reasons, due to transfer of the enquiry officer and also the promotion obtained by the applicant in the meantime to a Class-II post. As the applicant was not participating in the inquiry, the enquiry officer had proceeded ex-parte and submitted his report to the disciplinary authority. The disciplinary authority however felt that another chance may be given to the applicant and consequently

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directed the enquiry officer to give one more opportunity to the applicant by calling the witnesses again. However, according to the respondents, the applicant did not cooperate and hence the disciplinary authority passed the impugned order of punishment. In view of this, the respondents submit that the O.A. has no merit.

4. We have heard Shri Mahesh Srivastava, learned counsel for the applicant. None has appeared on behalf of the respondents even though the case was held over from yesterday.

5. It has rightly been pointed out by the learned counsel for the applicant and as recorded by the Tribunal in its order dated 29.7.94 in O.A.629/89, that the enquiry officer had called witnesses even after submission of the inquiry report and that the impugned appellate order was silent on this point. Thus when the matter was remanded to the appellate authority, it was incumbent upon the appellate authority to examine this aspect. We have carefully perused the order of the appellate authority (Annexure "A") but are unable to find any reference to the aforesaid point recorded by the Tribunal in its order dated 29.7.94. On the other hand, in regard to the contention of the respondents that the applicant did not cooperate in the inquiry, the appellate authority has observed that "while the Charged Officer had adopted ways and means to delay the inquiry but it did not warrant action/ex-parte decision on the part of disciplinary authority to award penalty without

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completion of enquiry even ex-parte and advising his findings". In other words, the appellate authority itself was of the view that the disciplinary authority could have waited for the inquiry to be completed before recording its findings and imposing the punishment. It is an admitted position that the report of the enquiry officer was submitted to the disciplinary authority before the inquiry was itself completed in as much as witnesses were continued to be examined even after the submission of the report. Learned counsel for the applicant has also shown us the copies of the orders of the disciplinary authority which shows that the applicant had duly participated in the inquiry when the witnesses were summoned after the filing of the report. It is a different matter that the witnesses did not turn up at all. As noted by the appellate authority itself, there was no warrant for the enquiry officer to proceed with the matter ex-parte. From this, it is clear that firstly the enquiry officer acted wrongly in proceeding with the inquiry ex-parte and secondly, the disciplinary authority was itself not satisfied with the findings in as much as he directed the enquiry officer to summon fresh witnesses.

6. Considering that the appellate authority in ~~the~~ impugned order at Annexure 'A' has not complied with the directions of the Tribunal dated 29.7.94 in O.A.629/89, the appellate order is liable to be set aside. In so far as order of the disciplinary authority is concerned, we find that the inquiry was conducted ex-parte and proper opportunity was not

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given to the applicant. Hence the findings of the disciplinary authority can also not<sup>be</sup> sustained. The orders of the disciplinary authority as also the appellate authority are therefore quashed.

7. Now the question arises as to what relief can be granted. We note that the matter is more than 15 years old. In view of this position, considering the appellate authority's own remarks that the applicant has suffered a lot mentally and financially, we consider that it will serve no purpose that the whole inquiry is conducted de novo at this stage. However, the applicant will not be entitled to any financial benefits and any arrears on account of restoration of his increments but his pay etc. will be fixed on the basis as<sup>y</sup> there was no penalty of reduction of withholding of three increments. No order as to costs.

*Rafiq Uddin*  
( Rafiq Uddin )  
Member(Judl)

*R.K. Ahooja*  
( R.K. Ahooja )  
Member(Admnv)

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