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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1069/97

HON'BLE SHRI JUSTICE V.RAJAGOPALA REDDY, VC(J)
HON'BLE SMT. SHANTA SHAstry, MEMBER(A)

New Delhi, this the 11th day of May, 2000

Chhote Lal
s/o Sh. Banshi Lal
r/o H.No.26, Vill. Kharia
Sulem Sarai P.O.
Subedarganj, Northern Railway
Allahabad. Applicant

(By Shri J.K.Bali, Advocate)

Vs.

1. Union of India through
Secretary to the Ministry of Railways
Rail Bhawan
New Delhi.
2. General Manager
Northern Railway
Baroda House
New Delhi.
3. Chief Engineer, TSP
Northern Railway Headquarters
Baroda House
New Delhi.
4. Dy. Chief Engineer, CSP
Northern Railway
Allahabad. Respondents

(By Shri R.L.Dhawan, Advocate)

O.R.D.E.R (Oral)

By Reddy. J.

The applicant, who was working as Helper Khalasi is aggrieved by the order of removal from service dated 10.6.1992 which has been confirmed by the appellate authority and the reviewing authority respectively. The facts are as follows :-

2. The allegations that were alleged against the applicant were that while he was working as Khalasi Helper, he prevented the workmen ^{to h} go to work for ^{shressing} repairing of tracing jacks which were out of order.

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In the enquiry he was found guilty by the enquiry officer and on the basis of the enquiry officer's report, the disciplinary authority agreeing ^{with} his findings, passed the order of removal from service as stated supra. He challenged the said order in OA No.431/93 before the Allahabad Bench of this Tribunal and by its order dated 16.1.1996 the Tribunal quashed the impugned order of removal and remitted the case to the appellate authority, directing it to reconsider the appeal in accordance with law. Accordingly, the appellate authority considered the appeal and by order dated 2.3.1996, holding the applicant guilty of charges, imposed the punishment of reduction to lowest grade of Khalasi i.e. Rs.750-940/RPS and fixed at the basic pay of Rs.750/- p.m. for a period of 10 years with cumulative effect. The applicant again questioned this order in a revision and the same was rejected confirming the order of the appellate authority by his order dated 31.5.1996. These orders are under challenge in this OA.

3. The learned counsel for the applicant contends that the orders under question are not passed in accordance with Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968 and in accordance with the directions given by the Tribunal in its Judgment. It is contended that the enquiry in this case was incomplete and that the applicant was not afforded proper opportunity to defend himself in the disciplinary enquiry and hence the enquiry is vitiated and the impugned orders are liable to be set-aside. The learned counsel for the respondents, however,

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submits that the order of the appellate authority was strictly in accordance with the Rule 22(2) and that the contentions raised have no substance.

4. We have given careful considerations to the pleadings and the contentions raised by the counsel on either side. The Tribunal in its order dated 16.1.1996 in OA No.431/93, has considered the grievance of the applicant against the validity of the enquiry and the order of removal passed by the disciplinary authority and held that there was no merit in them. However, considering the order passed by the appellate authority, as it was found not in inconfirmity with the Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968 and that the appellate authority has not applied its mind to the facts of the case, quashed the order of the appellate authority and remitted the case to its file for reconsideration, as stated supra.

5. We have carefully perused the order of the appellate authority. It has noticed the directions given by the Tribunal in the earlier OA. It has disposed of the appeal by dealing, point by point, with the pleas raised by the applicant in the appeal. The first plea was as regards the request for defence helper for inspection of the documents. The appellate authority has observed that duty pass was made available to the defence helper and since no relied upon document was listed, and the charges were to be proved based on the prosecution witnesses only, the question of inspection of the documents did not arise. The second plea was of the change of the enquiry

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officer. In the instant case, we find that enquiry was started on 4.10.1991 and the prosecution witnesses also have been examined. Initially there was no request by the applicant for change of the enquiry officer. After the completion of the prosecution evidence in which he has participated and cross-examined the witnesses on 15.1.1992 when he was asked to file the defence note, he made an application to the disciplinary authority for the change of the enquiry officer. Since no order has been passed by the disciplinary authority, he continued the enquiry. The appellate authority has then considered the request and stated that there was no plausible reason whatsoever for the change of the enquiry officer and that on a mere demand, enquiry officer could not be changed. Hence the plea was also not found favourable by the appellate authority. The third plea was as to the evidence of Shri S.C.Basu, Shri Baij Nath and Shri Kailash Nath. Since the enquiry officer himself had stated that these witnesses were not present at the time of incident and their evidence was not relied upon, the plea raised by the applicant was rejected. However, considering the severity of the punishment, the appellate authority reduced the punishment.

6. It should be noted that in the exercise of the judicial review jurisdiction, this, it is not permissible for us to go into the correctness or otherwise of the findings of either disciplinary authority or appellate authority. Hence, the validity of order of the appellate authority, cannot be questioned by the applicant.

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7. The learned counsel submits that the appellate authority should have considered whether the enquiry was ~~in~~^{of} infirmity with the Rules and as the enquiry was not concluded the appellate authority should have interfered with the order of the disciplinary authority. It should be noted that the question about incompleteness of the enquiry was not pleaded by the applicant before the appellate authority. The contention of the learned counsel for the applicant is that the applicant was not given full opportunity either to furnish his defence note or to examine defence witnesses or to examine himself before the enquiry officer. These contentions are wholly contrary to the record. From the enquiry officer's report it is evident that the applicant was given sufficient opportunity for filing the defence note but instead he was filing one application or the other, to delay the proceedings. Ultimately, it was he who failed to file the defence note. Further, the applicant had not sought time for producing the defence witnesses nor that he requested to examine himself as defence witness. Under the Rule 9 (21) it is the discretion of the enquiry officer to examine the charged officer. It is, therefore, not incumbent, that in every case, he should examine the charged officer. In all cases, the charged officer need not be examined by the enquiry officer.

8. Lastly, it is contended that the applicant was not given personal hearing by the appellate authority. The Tribunal in its earlier judgment has not directed

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the appellate authority to give personal hearing before disposing of the appeal. We do not find any rule requiring personal hearing by the appellate authority. It is true that in the case of Ramchandran vs. Union of India & Others, 1986(2) SLR P-608 the learned judges of the Supreme Court have emphasised that it was of utmost importance to hear the charged officer by the appellate authority as the right of hearing by the disciplinary authority before the disciplinary authority was taken away by the 42nd amendment. It must be noticed that in the instant case, an appeal was remitted by the Tribunal in its judgment and there was no mention of personal hearing in the said judgment. Hence it cannot be said that appeal disposed of without hearing the applicant would stand vitiated, on that ground.

9. For all the above reasons, the OA ^{is} therefore fails and is accordingly dismissed. No costs.

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✓ (SMT. SHANTA SHAstry)
MEMBER(A)

V.Rajagopala Reddy
(V.RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

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