

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No.1122/97

New Delhi this the 12th day of May, 2000.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN
HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)

Shri S.P. Ahuja,
S/o SRI Shiv Dayala Ahuja,
R/o H.No.17/104,
Subhash Nagar,
New Delhi.

...Applicant

(By Advocate Shri S.K. Sawhney)

-Versus-

1. Union of India through
the General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Deputy Controller of Stores,
Northern Railway,
Shakurbasti, Delhi.
3. Assistant Controller of Stores,
Northern Railway,
Electric Traction Depot (ETD),
Ghaziabad, U.P.

...Respondents

(By Advocate Shri R.L. Dhawan)

O R D E R (ORAL)

By Reddy, J.-

While the applicant was working as Storekeeper Grade III, he was served with the chargesheet dated 25.1.91, alleging that he was unauthorisedly absent from 11.8.90 and that he marked his attendance in the register on 15.11.90 and 28.11.90 after scoring the circled cross and that he has also been absconding from duty w.e.f. 24.12.90. As the applicant denied the charges, the disciplinary enquiry was held by the Assistant Controller of Stores. It is stated that without furnishing a copy of the enquiry officer's report, the disciplinary authority passed the impugned order dated 10.7.92, imposing the minor penalty of withholding of an increment in the scale of Rs.1400-2300, for a period of



(2)

two years with cumulative effect. Aggrieved by the order, the applicant filed an appeal which was also dismissed by order dated 2.2.94. The further revision also suffered the same fate, as it was rejected by order dated 29.1.97. Thereupon, the applicant filed the present OA.

2. The learned counsel for the applicant contends that the entire enquiry is vitiated, inasmuch as the enquiry was not properly held and that the enquiry report was also not furnished to the applicant. It was further contended that there is no evidence in this case in support of the charge.

3. The learned counsel for the respondents, however, submits that the penalty imposed being the minor penalty, under Rule 11 of the Railway Servants (Discipline and Appeal) Rules, it was not incumbent upon the respondents to hold any enquiry at all and therefore the question of furnishing the copy of the same, would not arise. The learned counsel submits that on the basis of the evidence on record the charge has been established and the impugned order was thus validly passed.

4. We have given careful consideration to the pleadings as well as the contentions raised by the learned counsel on either side. The misconduct alleged against the applicant relates to the minor penalty within the meaning of Rule 6 items (i) to (iv) of the Railway Servants (Discipline & Appeal) Rules, 1968. The procedure for holding an enquiry for imposing the minor penalty is contained in Rule 11. As per Sub Rule (1) it was no doubt true that a regular enquiry in accordance with sub rule (6) to (25) of Rule 9, need not be held, in every case where a minor penalty is sought to be



imposed. However, sub rule (1) (b) makes it manifest that in cases where the disciplinary authority is of the opinion that such an enquiry is necessary, it is open to him to hold a regular enquiry. In the present case, however, it is not in dispute that after the issue of the chargesheet the disciplinary authority has ordered an enquiry and the disciplinary authority has himself conducted the enquiry wherein certain witnesses were examined. A clear allegation is made in para 4.10 of the OA that the applicant was not furnished with the enquiry report. Controverting the said allegation in the reply, while admitting that the enquiry report was not furnished, it is stated that it was not necessary to furnish the same to the applicant, as the enquiry was conducted by the disciplinary authority itself and only minor punishment was imposed. Thus there is no controversy that the enquiry has been held in this case in accordance with Rule 11 (b). Then, as per Rule 12, the orders passed by the disciplinary authority shall have to be communicated to the Railway Servant and that he should also be supplied with the copy of the report of the enquiry, if any, held by the disciplinary authority. Even in the case of an enquiry that has been held by the enquiring authority the copy of the enquiry officer's report and his statement of the findings of the enquiry officer shall also have to be communicated to the charged officer. In the present case, as the enquiry report was not furnished, in view of the judgment of the Supreme Court in Union of India v. Mohd. Ramzan Khan, 1991 (1) SLJ 196, the enquiry has to be held as vitiated and the impugned order is liable to be quashed.



5. The learned counsel for the respondents however, contends that in view of the judgement in State Bank of Patila and Others v. S.K. Sharma, JT 1996 (3) SC 722, unless prejudice is shown by the applicant for not furnishing the copy of the enquiry officer's report, the orders of removal are not liable to be quashed straightway. But in the present case we find that the respondents had not even filed enquiry officer's report along with reply and hence it is not brought on record. Moreover, the charges pertain to the year 1991 and a decade had since expired. In the above circumstances, we do not consider this an appropriate case where the litigation should be still kept pending further. It appears that there is absolute no evidence in this case except one witness who was examined only to mark the attendance register as stated by the respondents in the counter and even the said attendance register that was marked by him related to only for the period from 11.11.90 to 10.12.90, i.e, for a period of hardly a month. However, without placing our decision on the merits of the case, as the enquiry officer's report is not before us, considering the entire conspectus of the facts of this case, we are of the view that the impugned order has to be quashed. The impugned orders of the disciplinary, appellate and revisional authorities dated 10.7.92, 2.2.94 and 29.1.97 respectively, are accordingly hereby quashed. The respondents are directed to grant all consequential benefits to the applicant. The OA is accordingly allowed. No costs.

V.K. Majotra

(V.K. MAJOTRA)
M-EMBER(ADMNV)

'San.'

V. Rajagopala Reddy

(V. RAJAGOPALA REDDY)
VICE-CHAIRMAN (J)