

Central Administrative Tribunal, Principal Bench

Original Application No.1973 of 1994

New Delhi, this the 30th day of July, 1999

Hon'ble Mr. Justice D.N. Baruah, Vice Chairman  
Hon'ble Mr. N. Sahu, Member (Admnv)

Shri R.C. Rastogi,  
Asstt. Station Master,  
Rampur, Northern Railway,  
Rampur (U.P.)

.....Applicant

(By Advocate - Shri B.S. Mainee)

Versus

Union of India: through

1. The General Manager,  
Northern Railway,  
Baroda House, New Delhi.

2. The Chief Operating Manager,  
Northern Railway,  
Baroda House, New Delhi.

3. The Divisional Railway Manager,  
Northern Railway  
Moradabad

.....Respondents

(By Advocate - Shri R.P. Aggarwal)

O R D E R (Oral)

By Baruah, J.-

The applicant in this O.A. has challenged Annexure A-1 order dated 8.1.93 passed by the disciplinary authority imposing the penalty of withholding increment for two years with postponing future increment, Annexure A-3 order dated 9.7.93 passed by the appellate authority upholding the punishment and further reducing the C.O. to initial stage of scale of pay for a period of two years with cumulative effect and Annexure A-4 order dated 21.7.94 passed by the Revisional Authority.

2. The applicant at the material time was Asstt. Station Master working in the grade of

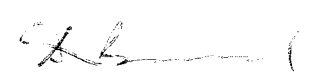
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1400-2300. On 20.9.91 a memo of chargesheet for major penalty was served on the applicant alleging that he had issued a certificate of working in favour of one Shri Jagdish Singh on 17.5.88 for the period from 1977-78 and 1979-80, which was false. Applicant filed a reply to the notice. However, the disciplinary authority not being satisfied with the reply, decided to hold an inquiry. Accordingly, an inquiry officer was appointed and on conclusion of the inquiry, he submitted the report holding the applicant guilty of the charge. The Disciplinary Authority thereafter imposed penalty as per Annexure A-1. Being aggrieved, the applicant preferred an appeal and the appellate authority also disposed of the appeal by annexure A-3 order dated 9.7.93 reducing the Charged Officer to initial stage of pay scale for a period of two years. Still aggrieved, the applicant submitted a revision petition. Revisional authority by order dated 21.7.94 passed the order upholding the penalty imposed by the disciplinary authority. Hence this O.A.

3. In due course, the respondents have appeared and filed written statement. We have heard both sides.

4. Shri Mainee states that inquiry held was not in accordance with law and in the line of various judicial pronouncements. Besides, this was also not in accordance with Railway Board instructions. While making his submissions, Shri Mainee has taken us to Annexure A-8, the inquiry report. Referring to the



inquiry report, Shri Mainee submits that the inquiry officer proceeded on a wrong and erroneous view and also he did not follow the prescribed procedure. The inquiry was held. After recording the statement of witnesses. The applicant was asked to produce defence statement. On 2.5.92, he prayed for 15 days time to file his defence statement and, in fact, seven days thereafter, he filed the same. According to Shri Mainee, since the request for 15 days time was not specifically rejected, this amounted to the grant of time. On 2.5.92, the enquiry officer prepared the report holding the applicant guilty. He found fault with the charged officer for his failure to submit a defence statement in spite of giving several times. Shri Mainee further submits that the time was granted for 15 days on and from 25.4.92 and thereafter the applicant submitted a defence statement on 5.5.99. However the enquiry officer held that the applicant did not co-operate in the disciplinary proceedings. He proceeded in the matter ex-parte. Thereafter he held that the applicant was guilty of the charges and on the basis of the report, the disciplinary authority imposed the penalty of with-holding of increment for two years with postponing future increment. According to Shri Mainee, the action taken by the enquiry officer was absolutely wrong and contrary to the instructions of the Govt. of India and to the various judicial pronouncements. He submits that even if the defence statement was not submitted within the time prescribed, the enquiry officer should not have come to a conclusion without following the prescribed procedure. He ought to have considered the entire

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matter on the basis of material available to him. He did not do so. Sri Mainee has drawn our attention to the following portion of the inquiry report:-

"He was asked to submit his defence statement on 02/5/92, as he gave in writing on 25/4/92 on SNo 39. that 15 days may kindly be allowed. He attended on 02/5/92 w/o his defence statement and demanded cannon writness of Sh.HC Jain, which was to be given by him on 25/4/92. Since then he did not submit any defence statement upto 31/5/92. To avoid unnecessary delay exparte action is being taken."

5. From the above portion of the report it is clear that the applicant requested for 15 days time. It does not appear to us that this period was cut-short to some other date. We feel that the applicant's asking only for 15 days time which was not a very long period, the enquiry officer ought to have acceded to his request but this was denied. We do not find any justification of denying the time. Be that as it may, if the enquiry officer felt that 15 days time was too long a period for giving defence statement, definitely he had the power to approach in the matter ex-parte. Besides this, the applicant wanted one witness to be examined as defence witness for and on behalf of the charged officer. This was also not granted on the ground that the request was not made in time.

6. We find this is too technical. The enquiry officer ought to have given the full opportunity to the applicant to give an affective defence. However, the Inquiry Officer has every right to cut short if it appears to him that he (applicant) was really delaying

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the matter. Merely because he failed to give his defence statement and made a request for 15 days time, in our opinion this request should not have been rejected. In this connection Shri Mainee has drawn our attention to Railway Board instruction no.E(D&A)90-RG 6-34, dated 18.4.90 (N.R.,Sl.No.10329). In the said instructions, Railway Board has clarified that provision of Rule 14 (ii) of the Railway Servant (Discipline & Appeal) Rules 1968 should not be resorted to where it becomes necessary to proceed ex-parte against charged Railway Servants who are absconding or are on unauthorised absence and the chargesheets are returned undelivered. In such cases, while conducting the ex-parte proceedings, the entire gamut of the enquiry has to be gone through. The notices of all hearings must be served on the Charged Officer or communicated to him. The notices to witnesses should be sent, the documentary evidences should be produced and marked, the Presenting Officer if one is appointed should examine the prosecution witnesses and the inquiring authority may put such questions to the witnesses as it thinks to be fit. In case of ex-parte proceeding, the inquiring authority should record the reasons why he is proceeding ex-parte and what steps he had taken to ask the Charged Officer to take part in the enquiry and avail of all the opportunities available under the provisions of Rule 9 of the Railway Servants (Discipline & Appeal) Rules. From these instructions, it is clear that the disciplinary authority ought to have considered the material available before him and thereafter come to a conclusion as to the guilt of the

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charged officer. Besides, Shri Mainee has also drawn our attention to a decision of the Principal Bench of this Tribunal in the case of Smt. Kiran Bala Sahni vs. UOI through G.M. Northern Railway and another, ATJ 1995(1) 323. In the said decision, the Tribunal examined the fact that the charged officer did not participate in the inquiry. The enquiry officer was required under the rules to examine witnesses and the documents cited by the department and then come to the conclusion. Instead of resorting to this procedure, the enquiry officer held that the charges were proved, which was without any evidence. This was the contention of the charged officer before the Tribunal in the said case. Tribunal, after considering the entire matter, observed as under:-

"We, therefore, allow this O.A. in part and quash the Annexure R-15, report of the enquiry officer as bad in law and consequently, all the subsequent proceedings, namely, the order of the disciplinary authority, Annexure A-1 as well as the order of the appellate authority, annexure R-17 are also quashed. Respondents are directed to re-instate the applicant within one month from the date of receipt of this order, who shall be given benefits of salary etc. in accordance with law. We make it clear that this order will not stand in the way of the respondents from continuing the proceedings in accordance with law by appointing an enquiry officer who should conduct the enquiry de not, provided the decision to continue with the proceedings in the matter is sent to the applicant, within three months from the date of receipt of this order."

7. In the present case also, the Enquiry Officer felt that the applicant did not co-operate and, therefore, he observed as follows:-


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"As the accused failed to submit his defence reply even on giving full opportunities and sufficient time, an exparte action is initiated. Hence the charges of SF 5, No. 1, 2 & 3 have been substantiated."

8. Looking to the aforesaid portion of the inquiry report, we find the enquiry officer did not proceed in accordance with law and did not consider and examine the material made available to him in order to come to a conclusion that the charges are proved. In view of this, we have no other alternative than to set aside Annexure A-1 and subsequent orders at Annexure A-3 and Annexure A-4. The applicant shall be deemed to be in service. This direction should be complied with as early as possible at any rate within a period of one month from the date of receipt of this order. However, it is open for the respondents to continue the proceedings in accordance with law by appointing an enquiry officer who should conduct the enquiry de novo and the decision to continue with the proceedings shall be sent to the applicant within three months from the date of receipt of this order.

No costs.

  
(N. Sahu)  
Member (Admnv)

  
(D.N. Baruah)  
Vice Chairman

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