

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1283/89
T.A. No.

198

DATE OF DECISION

20.12.90

Shri N.N. Dutta,

Petitioner

Shri K.N.R. Pillay,

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri M.L. Verma,

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.C. Jain, Member (Administrative)

The Hon'ble Mr. J.P. Sharma, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? *js*
2. To be referred to the Reporter or not? *js*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal? *no*

MGIPRRND-12 CAT/86-3-12-86-15,000

J.P. Sharma
(J.P. Sharma)
Member (Judl.)

P.C. Jain
(P.C. Jain)
Member (Admn.)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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O.A. No.1283/89

DATE OF DECISION: 20.12.90

N.N. DUTTA

...APPLICANT

VERSUS

UNION OF INDIA

...RESPONDENTS

SHRI K.N.R. PILLAY

..COUNSEL FOR THE APPLICANT

SHRI M.L. VERMA

..COUNSEL FOR THE RESPONDENTS

CORAM:

HON'BLE SHRI P.C. JAIN, ADMINISTRATIVE MEMBER.

HON'BLE SHRI J.P. SHARMA, JUDICIAL MEMBER.

J U D G E M E N T

(DELIVERED BY HON'BLE SHRI J.P. SHARMA)

The applicant, ^a/Maintainer Grade I, under Chief Traction Foreman, Central Railway, Faridabad, filed this application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the order dated 12-1-1989 (Annexure A IV) issued by DEN Jhansi, imposing on the applicant penalty of reduction to the lower grade of Rs.1200-1800 (RPS) for two years and for being kept at the stage of Rs.1320 denying his increments for the period of two years. The order of the Appellate Authority dated 10-5-1989 rejecting the applicant's appeal against the imposition of penalty has also been challenged.

2. The applicant claimed the relief for quashing the penalty order dated 12-1-1989 and the Appellate Order dated 10-5-1989 ^{and} ^{prayer for a} /with a / direction that the applicant be granted all consequential benefits.

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3. The facts of the case are that the applicant was posted in Jhansi Division as Maintainer Grade II. Departmental proceedings were drawn against the applicant for an incident of 19-7-1986 when the applicant and others in the gang did the work of cutting the branches of the tree in the vicinity of 25 KV AC Traction lines on Up and 3rd line at KM 1493/7 near Gate No. 571. The applicant climbed the tree and started cutting branches. One big branch fell on OHE. The applicant had told his colleague Shri Babu Lal Lineman, who was down below to remove the branch ^{is} from the OHE. Shri Babu Lal was making efforts to remove the tree branches using a wooden pole. By then Shri Jai Singh Jeph, Khalassi, who was standing near the structure, climbed up the structure to remove the tree branch. However, Shri Jai Singh Jeph came on the contact wire, the Discharge Rod slipped from the contact wire due to jerk. This exposed him to danger. Shri Jai Singh Jeph rushed towards the structure for getting down but he fell down from the OHE on the ballast below and sustained head injury. He was declared dead at 1410 hrs. in the ^{Civil} ^{Palwal.} Hospital. There was a fact finding enquiry but that did not fix any responsibility but made certain recommendations. According to the applicant, in order to save some of the officials involved in the negligence including the supervisor, a Memorandum of charges (Annexure A II) was served on him ~~xxxxxxxx~~ and he filed ^{was} reply (Annexure A III). Shri I.A. Khan, C.T.F. appointed as Enquiry Officer. The Enquiry Officer submitted his report through a letter dated 29-7-1988. The Disciplinary Authority thereupon imposed on the applicant a penalty as per the impugned order dated 12-1-1989 (Annexure A IV). The applicant filed an appeal which was dismissed by the Appellate Order dated 10-5-1989 (Annexure A VI). Against these orders, the applicant has come before this Tribunal.

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4. It is contended by the applicant that the Enquiry Officer conducted ^{the} enquiry in utter disregard of ^{the} principles of natural justice and also in violation of the ^{Statutory} Rules. The applicant was never informed about the place of the sitting of the Enquiry Officer and the statements of the witnesses were not taken ⁱⁿ his presence. Further it is also stated that the Appellate Authority has passed a non-speaking order which does not refer at all to the grounds made out in the appeal and in this connection, the Authority of Ram Chander Vs. U.O.I. ATR 1986(2) SC p.252 has been cited.

5. The respondents contested the application and filed a reply stating therein that the application is barred under Section 20 and 21 of the Administrative Tribunals Act, 1985. It is also stated that the jurisdiction of the Tribunal to interfere in the disciplinary matters or punishments cannot be equated with ~~the~~ appellate jurisdiction and, as such, ^{the Tribunal} cannot interfere with the disciplinary matters of punishment nor with the findings of the Enquiry Officer or Competent Authority where they are not arbitrary. The respondents have placed reliance on U.O.I. Vs. Parmanand reported in AIR 1989 SC p. 1185. It is stated that the findings of the Fact Finding Enquiry ~~*****~~ have not been accepted as correct and accordingly ^{the} delinquent employees, including the applicant, ~~were~~ charged for dereliction of duty. All the employees, including the applicant, were awarded punishment to the extent they deserved. The applicant was given option to take the assistance of ARE and it was for him to bring an ARE in the enquiry. No pressure from the Enquiry Officer or any other force was exerted on him to give statement ^{before} the Enquiry Officer and his allegation is not acceptable. He was afforded all opportunities in the process of enquiry. The statements of the witnesses were recorded in the presence of the

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charge-sheeted employees but unfortunately, the enquiry officer failed to obtain the signature of the applicant on the statement of the witnesses. The appeal^{of the applicant} was duly considered by the Appellate Authority, Senior DEN Jhansi, and rejected by him on 3-5-1989 and communicated to the applicant vide letter dated 10-5-1989. In view of the reply filed by the applicant, it has been prayed that the applicant has no case and the application be dismissed with costs.

6. We have heard the learned counsel of the parties at length and have also called the file of the departmental enquiry.

7. The articles of charge framed against the applicant are as follows:

Article I

That the said Shri N.N. Dutta while functioning as Maintainer Electrical Grade II/CHE/FDB during the period 19-7-1986 failed to comply with basic safety rules resulting into fatal accident.

Article II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri N.N. Dutta failed to guide and control the staff, being senior most, at the site which resulted in fatal accident.

8. Annexure II gave the imputation of misconduct in support of the Articles of Charge described above, Annexure III gave the list of documents and Annexure IV gave the list of witnesses to be^{examined} in the enquiry.

9. The learned counsel for the applicant has raised objection that the Enquiry Officer did not adopt the proper procedure prescribed under Rule 9 for imposing major penalties. Firstly, 35 copies of the statements of witnesses

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named in Annexure IV to the charge-sheet had not been supplied to the applicant and further the statements of the witnesses were not recorded in the presence of the applicant. The Enquiry Officer also did not ^{appoint} any assistant to ^{case} defend the applicant's during the proceedings of the enquiry. The respondents' counsel filed the proceedings of the enquiry against the applicant but in fact what have been filed pertain to the enquiry which was earlier conducted as a fact finding enquiry by one Shri Tara Chand Rajak. There are no proper proceedings of the enquiry produced before the Court in spite of the fact that the learned counsel for the respondents was specifically asked during arguments to submit the file ^{containing} the disciplinary proceedings conducted against the applicant. In the absence of such departmental file of the enquiry proceedings under Rule 9, the contention of the applicant that no assistance was provided to him and that the statements of witnesses were taken in his absence have got some force. Thus, there is a clear violation of sub-rule 17 of Rule 9 of D.A.R. 1968. In the Counter, it has been admitted by the respondents that the statements of the witnesses were not got signed by the applicant. But since the original record ^{to above} referred has not been produced, it cannot ^{be stated} whether the statements of witnesses were recorded in presence of the applicant.

10. Secondly, it has been pointed out that the Enquiry Officer has not given a proper report if at all the witnesses were examined in this case and there is violation of sub-rule 25 of Rule 19 of D.A.R. 1968. Sub-Rule 25 provides that after the conclusion of the enquiry, a report shall be prepared and it shall contain

(a) The articles of charge and the statement of imputations of misconduct or misbehaviour;

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- (b) The defence of railway servant in respect of each article of charge;
- (c) assessment of the evidence in respect of each Article of charge; and
- (d) the findings on each article of charge and the reasons therefor.

Looking to the substance of the enquiry report which was sent to the applicant alongwith the punishment order and filed as Annexure A 4, the Enquiry Officer has only addressed ^{the} letter to Assistant Electrical Engineer and ^{with} dealt ~~two~~ Articles of charge, Article I and Article II. The Enquiry Officer has not referred to charges which were framed against the applicant nor has he referred to the defence taken by the applicant nor ~~he has~~ assessed and evaluated the statements of the witnesses which led him to the conclusion that the charges against the applicant stand established. ^{The} whole report is very cryptic and does not make out by itself as to which of the witnesses were examined on which date and what they ~~have~~ stated against the applicant. Thus ~~there is~~ a clear violation of sub-Rule 25 of Rule 9 is made out.

11. The learned counsel for the applicant further pointed out that he had preferred an appeal against the impugned order but that has not been disposed of by a speaking order and the Appellate Authority did not give any reason in rejecting the appeal in its order dated 10-5-1989 (Annexure A 6). The Appellate Authority only stated in the order that he agrees with the report of the Enquiry Officer after going through the record of the case. This is no finding at all and this is a clear violation of the Law laid down by the Supreme Court in

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Ram Chander Vs. U.D.I. reported in ATR 1986 Vol.II SC page 252.

12. The learned counsel also pointed out that the Disciplinary Authority has totally ignored the enquiry earlier conducted by Shri Tara Chand Rajak as preliminary fact finding enquiry, where the applicant was not found guilty and in Annexure III of Charge-sheet, the report of the fact finding enquiry officer as well as the statement of witnesses has been cited as documentary evidence against the applicant. When once the witnesses have not been believed in ex-parte fact finding enquiry in holding the applicant guilty, it cannot be said that those witnesses who had been examined in the Fact Finding Enquiry could be examined again, but the applicant was to be given an opportunity to cross-examine those witnesses and there is nothing on record that any of these witnesses were examined and cross-examined in the departmental enquiry.

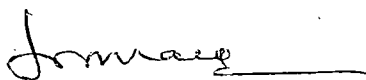
13. The learned counsel for the respondents, however, pointed out that the scope of the Tribunal is restricted and it cannot sit as an Appellate Court over the findings of the Enquiry Officer. In this connection, the learned counsel for the respondents has relied on 1989 SC p.1185 Union of India Vs. Parma Nanda. However, according to this authority also if the proceedings of the enquiry are totally against the procedure prescribed in the Rules and the punishment itself cannot be imposed on the applicant then the Court can definitely interfere. The learned counsel has referred to some other authorities* also. Those authorities do not apply to the present case for the obvious reason that there is a clear violation of Rule 9, Rule 9(17) and

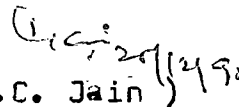
* C.S.Barodia Vs. U.D.I. 1989(2) ATLT p.282.
State of Orissa Vs. Murlidhar Jaina 1963 SC p.404.
A.Thangurai Vs. Security Officer 1986(1)ATR p.261.
Anil Kumar Dutta Vs. U.D.I. 1986(4)SLJ Cal.p.55

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Rule 9(25) of the D.A.R. Rules, 1968. There is a further violation inasmuch as the Appellate Authority did consider the appeal of the applicant by an open mind and only passed a non-speaking order that he agreed with the findings given by the Enquiry Officer.

15. In view of the above discussion, the impugned orders dated 12.1.1989 and 10.5.1989 are quashed. The applicant shall be restored to his original scale of pay, as if, no penalty of reduction in the scale had been passed, and shall be entitled forthwith to all monetary and consequential benefits. The respondents shall be free to initiate fresh departmental proceedings, if they so desire, on the same charges as per procedure prescribed under D.A.R. Rules, 1968 not later than three months from the date of receipt of this order. However, in the circumstances of the case, the parties are left to bear their own costs.


(J.P. Sharma)
Member(Judl.)


(P.C. Jain)
Member(Admn.)