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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.2340/89

DATE OF DECISION:29.05.1992.

BISHAN SINGH

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

FOR THE APPLICANT

SHRI G.D. BHANDARI, COUNSEL

FOR THE RESPONDENTS

SHRI SHYAM MOORJANI, COUNSEL

1. Whether Reporters of Local Papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*

Dilbag Singh
(I.K. RASGOTRA)

MEMBER(A)

Devk
(P.K. KARTHA)

VICE-CHAIRMAN

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(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

In this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant Shri Bishan Singh has challenged the order No.Vig./179/85-Optg(10) dated 3.6.1988, issued by Respondent No.2, the appellate authority reducing the penalty of dismissal inflicted on him by the disciplinary authority to that of reversion from his substantive post of Assistant Station Master (ASM) Rs.1200-2040 to that of Leverman (Rs.950-1500). The applicant filed a review petition on 28.6.1988 but has not received any response.

2. The O.A. was expedited under the orders of the Hon'ble Chairman, as the short point raised in the Application was that the matter is covered by the Full Bench Judgement in **P.K. Sharma's** case inasmuch as a copy of the enquiry report was not supplied to the applicant before inflicting the penalty.

3. The necessary facts of the case are that the applicant was appointed in a Group 'D' post in Delhi Division of the Northern Railway on 9.11.1960. The respondents invited applications from the cadre of Cabinman or Leverman for filling up the posts of ASM from those who:

a) are desirers of being promoted to the post of ASM.

b) have passed matric/8th class
c) whose age does not exceed 48 years on 15.8.1979.

It was further stipulated that "before nominating such employees to undergo promotion course for the post of ASM to be held in Zonal Training School, Chandausi in order to adjudge their suitability a written test shall be held....." The applicant who was working as a Leverman at the relevant time submitted his application, appeared in the written test and after qualifying the same went through the promotional course. On his qualifying the same he was appointed as ASM (Rs.330-560) w.e.f. 18.6.1981. He continued to work in that capacity till 17.4.1988. During this period, however, the applicant was served a major penalty chargesheet on 29.4.1985 The statement of charge framed against the applicant reads as under:-

"That Shri Bishan Singh, ASM/Katar Singh Wala, Delhi Division while functioning as leverman during the year 1979 committed misconduct & misbehaviour in as much as he cheated the Railway Administration with malafide intention by submitting a forged certificate of middle class Pass on the basis of which he got promoted as ASM for which he was otherwise not eligible.

He thus by his above act of omission and commission failed to maintain absolute integrity and acted in a manner unbecoming of a Railway Servant & thereby contravened Ruled 3.1(i)&(iii) of the Railway Services (Conduct) Rule, 1966."

Initially the enquiry was commenced by the Commissioner of Departmental Inquiries (CDI) who was appointed as an enquiry officer but subsequently the case was remitted back to the department and Shri D.D. Mishra, E.I. Vigilance, D.R.M. office was appointed as Inquiry Officer vide order dated 10.2.1987. The applicant contends that he had studied upto class-IX in the H.R. Hindu School, Hissar in the year 1955 when he had to cut short his academic career due to compelling circumstances. At the time of his appointment in Group 'D' he had mentioned that

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he has passed class-V, as in absence of any prescribed qualification for appointment in Group 'D' he did not consider it of any consequence to give the precise information regarding his qualification. The applicant further contends that from the evidence adduced it is clear that record for year 1955 was not available in the school and in absence thereof, no adverse conclusion can be drawn to his prejudice. The applicant, therefore, contends that findings of the enquiry officer are based on 'no evidence', as there was no conclusive proof of the alleged forgery by the applicant. The confessional statement made by the applicant was made under duress. Notwithstanding the enquiry officer came to the conclusion that

"charge as levelled against the C.O. is not proved but probability of certificate belonging to private/ unauthorised school is not ruled out."

The disciplinary authority did not agree with the findings of the enquiry officer and inflicted the penalty of dismissal from service vide order dated 29.3.1988. The applicant filed an appeal on 24.1.1988 and the appellate authority after due consideration reduced the penalty of dismissal from service to that of reversion to the substantive post of Leverman permanently vide impugned order dated 3.6.1988.

The appellate authority further ordered that the period of absence from the date of dismissal to the date of reinstatement would be treated as leave due. Consequently, the applicant joined as Leverman on 2.9.1988. The review application filed by him on 28.6.1988 in accordance with the Rules has not been disposed of by the respondents. The principal grounds of challenging the appellate order are that

- i) the applicant had worked for nearly 7 years as A.S.M and that he had performed the duties even of the Station Master for about 3 years in absence of an incumbent for that post.
- ii) He has, therefore, acquired prescriptive right on the post to which he was promoted after proper section etc.,
- iii) the enquiry report and the findings of the enquiry

officer were not supplied to the applicant before inflicting the penalty by the disciplinary authority which procedure violates the principles of natural justice as held in the Full Bench Judgement in **Prem Nath K. Sharma Vs. Union of India & Ors. 1988 (3) SLJ CAT 629.**

iv) The orders of dismissal and reversion have been passed by the officers who were not his appointing authority.

4. By way of relief he has prayed for the following reliefs:-

i) set aside and quash the dismissal from service order dated 29.3.1988 from the post of Asstt. Station Master Grade Rs.1200-2040, alongwith the revised (appellate) reversion orders from the aforesaid post to the post of Leverman Gr.Rs.950-1500

ii) direct/command/order the Respondents to reinstate the applicant on the post of ASM, and pay him back wages alongwith arrears and allowances etc.

iii) Pay him the wages for the period of dismissal from service i.e. 17.4.1988 to 5.9.1988 which are legally due to him even in terms of Respondent's order (A-1).

5. The learned counsel for the applicant Shri G.D. Bhandari further elaborated the grounds taken in the O.A. to challenge the impugned order.

6. The learned counsel for the respondents Shri Shyam Moorjani on the other hand contested the various submissions of the applicant and further submitted that the order passed by the disciplinary authority merged into the order of the appellate authority. The appellate authority cannot be charged for non-application of mind or for passing a non-speaking order, as the very fact that the appellate authority reduced the penalty from dismissal to reversion is indicative of the fact that it took into consideration all relevant factors.

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The learned counsel, therefore, submitted that it is not open to the applicant to question the decision of the disciplinary authority as that order merged in the order of the appellate authority and, therefore, the case of the applicant is bereft of merit and needs to be dismissed.

7. We have heard the learned counsel for both parties and considered the material and perused the record carefully. On our enquiry the learned counsel for the respondents admitted that the disciplinary authority had not given a show cause notice to the applicant even though the said authority had disagreed with the findings of the enquiry officer for the reasons recorded in its order dated 29.3.1988. In our opinion the matter can be decided only on this short point, as impugned orders dated 9.3.1988 and 3.6.1988 are not legally sustainable on the ground that disciplinary authority did not give any show cause notice to the applicant before imposing the penalty on him after disagreeing with the findings of the enquiry officer. It is well settled that before the disciplinary authority disagrees with the findings of the enquiry officer and records its own findings based on reasons the delinquent official should be given an opportunity of representation to show cause as to why findings in his favour should not be modified/amended for the reasons given in the show cause notice. In **Narayan Missra vs. State of Orissa 1969 (3) SLR SC 657** the Supreme Court has held:-

"....In other words, the Conservator of Forests used against him the charges of which he was acquitted without warning him that he was going to use them. This is against all principles of fair play and natural justice. If the Conservator of the Forests wanted to use them, he should have apprised him of his own attitude and given him an adequate opportunity. Since that opportunity was not given, the order of the Conservator of Forests modified by the State Government cannot be upheld. We accordingly set aside the order and remit the case to the Conservator of Forests for

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dealing with it in accordance with law. The Conservator of Forests wants to take into account the other two charges, he shall give proper notice to the appellant intimating to him that those charges would also be considered and afford him an opportunity of explaining them."

In the instant case also no show cause notice was given to the applicant. On this short ground, the impugned order of dismissal from service dated 9.3.1988 and the impugned appellate order dated 3.6.1988 are liable to be set aside and quashed. We order and direct accordingly.

The respondents are, therefore, directed to reinstate the applicant as A.S.M. as expeditiously as possible but preferably within 3 months from the date of receipt of this order. After reinstating the applicant, the respondents, however, shall be at liberty to proceed against the applicant with the disciplinary proceedings in accordance with law, if so advised.

The O.A. is disposed of on the above lines.

There will be no order as to costs.

Abul
(I.K. RASGOTRA)
MEMBER(A)

29/5/92
(P.K. KARTHA)
VICE-CHAIRMAN

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May 29, 1992.