

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 234/1988
~~XXXXXX~~

DATE OF DECISION 29.01.93

Shri V.P. Kochhar Petitioner

Shri B.S. Maine Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Shri J.P. Verghe se Advocate for the Respondent(s)

CORAM:

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

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

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
2. To be referred to the Reporter or not ? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *L*

J. P. SHARMA
(J.P. SHARMA)
MEMBER (J)

P.C. JAIN
(P.C. JAIN)
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

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O.A. NO. 234/1988

Date of Decision : 29.01.93

Shri V.P. Kochhar

...Applicant

Vs.

Union of India & Ors.

...Respondents

CORAM

Hon'ble Shri P.C. Jain, Member (A)

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri B.S. Maine

For the Respondents

...Shri J.P. Verghe se

JUDGMENT

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

The applicant was appointed as a Clerk in the Northern Railway on 21.9.1957 and was confirmed on 31.12.1959. On 13.7.1961, he was transferred on deputation from Northern Railway to the Ministry of Railways (Railway Board) and continued in the service of the Union of India till 4.5.1979, when by the order dt. 27.4.1979/4.5.1979, the Secretary of the Railway Board ordered the imposition of penalty of removal from service on the basis of a charge sheet dt. 18.9.1976 served on him on 22.9.1976. The applicant preferred an appeal against the order of removal from service, which was rejected by the Appellate Authority by the order dt. 12.7.1979. The applicant filed a Civil Suit No. 157/83 in the Civil Court which stood transferred to the Principal Bench of the Central Administrative Tribunal and registered as TA No. 70/86. The Principal Bench remanded this

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case by the order dt.22.9.1987 with a direction to the Appellate Authority to dispose of the matter within two months from the date of receipt of the order and the order of the Appellate Authority dt.12.7.1979 rejecting the appeal was quashed. In pursuance of the direction given by the aforesaid order of the Principal Bench, the Appellate Authority by the order dt.4/5.12.1987 (Annexure A2) again confirmed the penalty of removal from service imposed by the Disciplinary Authority holding that the order of the Disciplinary Authority needs no modification.

2. The applicant in this OA under Section 19 of the Administrative Tribunals Act, 1985 has again assailed the order dt.27.4.1979 passed by the Secretary, Railway Board alongwith the Appellate order dt.4.12.1979 passed on his appeal by the Member, Staff, Railway Board and the Secretary to the Government of India.

3. The applicant has claimed the following reliefs :-

- (a) To quash the impugned orders of the Disciplinary Authority as well as the Appellate Authority (Annexures A1 and A2 respectively).
- (b) To declare the removal of the applicant from service as illegal and unconstitutional and directing the respondents to treat the applicant as in service from the date of his removal from service and to reinstate the applicant in service from the date of removal from service, giving him pay and allowances for the entire intervening period.
- (c) A further direction to the respondents to give all consequential benefits of service, seniority, promotion etc. as would have accrued to him had he not been removed from service.
- (d) Any other relief deemed proper along with costs of the proceedings.

4. The applicant who was Officiating Assistant in the Railway Board was proceeded with a departmental enquiry under Rule 9 of the Railway Servants (Disciplinary and Appeal) Rules, 1968 hereinafter called the Rules. He was served with the statement of article of charge enclosed as Annexure 1 to the Memorandum, which is as follows :-

"That the said Shri V.P. Kochhar, Officiating Assistant in the Office of the Railway Board while serving the Railways, namely Northern Railway from 21.9.1957 to 13.7.1961 and Railway Board from 14.7.1961 onwards had concurrently been in the employment of Posts and Telegraph Department also as a Sorter. Shri Kochhar deliberately concealed the fact of his holding an employment in the P&T Department to the Railway and had been drawing salary from the P&T Department as well as the Railways. Shri Kochhar has, thus, failed to maintain absolute integrity and has contravened Rule 3 of Railway Services (Conduct) Rules, 1956 and Rule 3(i) of Railway Services (Conduct) Rules, 1956."

Along with this article of charge, the statement of imputation of misconduct in support of charge has been enclosed along with a list of documents by which the article of charge framed against the applicant is proposed to be substantiated is enclosed as Annexure 3. The list of witnesses to be examined in the departmental enquiry is also enclosed as Annexure 4 to the above memorandum of charge sheet.

5. In short, the accusation against the applicant has been that while in the Railway service, the applicant has also concurrently held an employment of Sorter in the P & T Department w.e.f. 16.9.1957. The applicant is alleged to have been working concurrently in the two departments of Union of India, namely

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Railways and P & T Department and he had been drawing salary from both the places. Further P & T Department has also lodged an FIR with the Kashmere Gate Police Station for applicant's wrong declaration of non employment elsewhere and drawing wages for the suspension period from 18.5.1958 to 31.5.1963. The police have registered a case against the applicant under Section 420, 468/120 IPC. He was also arrested on 11.2.1976 and later released on bail. Thus according to the respondents, the applicant failed to maintain absolute integrity and has contravened Rule 3 of Railway Services (Conduct) Rules, 1956 and Rule 3(1) of Railway Servants (Conduct) Rules, 1966. The applicant was also put under suspension w.e.f. 19.9.1975.

6. The applicant submitted a reply to the above memo of charges on 25.9.1976 and 31.10.1977 and thereafter Shri J.Thiagarjan was appointed as Enquiry Officer. The Enquiry Officer held the enquiry proceedings on various dates and a statement to the effect has been submitted with the counter (Annexure R1) which is reproduced below :-

ANNEXURE R-1

Statement showing the dates on which inquiry proceedings were held and the names of witnesses whose statements were recorded on those dates.

<u>DATES</u>	<u>PROCEEDINGS TAKEN</u>
31.10.77	Preliminaries were settled by the Inquiry Officer.
16.11.77	
7.12.77	Statement of PWI-Sh.P.L.Arora was recorded.
9.12.77	
17.12.77	
19.12.77	
27.12.77 3.1.78 1.3.78	Proceedings postponed due to the absence of the applicant.
30.3.78	
31.3.78	
22.4.68	

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DATES

PROCEEDINGS TAKEN

Statements of the following four witnesses were recorded ex parte

24.4.78
25.4.78
26.7.78
27.4.78

P.W.2 Leo Ram
P.W.3 Maya Das
P.W.4 R.L. Narang
P.W.5 Ram Jiwan

5.6.78

Statement of P.W.6 Shri Piara Singh was recorded.

6.6.78

Adjourned as G.E.Q.D. Simla expressed his inability to be present on 6.6.78

14.6.78
15.6.78
16.6.78

P.Ws. Leo Ram, Maya Das and R.L. Narang were recalled and were cross-examined by the applicant.

17.6.78

P.W.5 Ram Jiwan was not present. Proceedings adjourned to 19.6.78.

19.6.78

Adjourned as P.W.6 Piara Singh was not present.

10.7.78

Statement of B.Lal, G.E.Q.D. recorded and was cross-examined by the applicant.

11.7.78

P.W.6 Piara Singh was recalled and was cross-examined by the applicant.

26.7.78

Statements of P.W.5 Ram Jiwan and D.Ws. S.N. Mukherjee and K.K. Roy were recorded.

27.7.78

Statements of D.Ws. Mahe sh Hingorani and Tilak Raj Babbar were recorded.

17.8.78

Statement of D.W. Bua Ditta was recorded.

19.8.78

Statement of D.W. Lekh Raj Arya was recorded.

30.8.78

Inquiry proceedings closed.

Inquiry Officer ordered as under :-

"I, therefore, direct Presenting Officer to submit his brief by 15th September, 1978 and thereafter Shri Kochhar will be supplied a copy of the brief on 18.8.78 so as to facilitate him his defence on or before 7th October, 1978."

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The applicant also submitted his brief statement of facts after the conclusion of the inquiry. The Inquiry Officer submitted his report dt.16.11.1978 (Annexure 22). Agreeing with the aforesaid report of the Inquiry Officer, the Disciplinary Authority passed the impugned punishment order dt.27.4.1979/4.5.1979 (Annexure A1).

7. The applicant in the OA has assailed the proceedings of the Inquiry Officer as well as his findings on a number of grounds. It is averred that the Railway Board has no right to initiate the departmental inquiry as the applicant was on the rolls of Northern Railway and it was only the Northern Railway which was competent to proceed with the inquiry. It is also stated that the documents asked for were not supplied; evidence of some of the witnesses were recorded ex parte; the defence evidence called for by the applicant was not allowed to be produced; violation of Rule 9(15) of DAR, 1968, lawyer defence assistance was not provided. The Inquiry Officer was biased and request for change of the Inquiry Officer was not allowed and lastly that no show cause notice was given to the applicant before passing the punishment order by the Disciplinary Authority and that no personal hearing was afforded to the applicant by the Appellate Authority.

8. The respondents in their reply have rebutted all these averments made by the applicant and stated that the copies of relevant documents were supplied and also he was allowed to

inspect the documents relevant for the purpose of the inquiry. Only the inspection of those documents was not allowed which were not relevant or which could not be shown to the applicant under the rules. Regarding the jurisdiction, it is averred in the reply that the Secretary, Railway Board had the jurisdiction to impose the penalty. Secretary, Railway Board was higher than the appointing authority and the matter has been settled in the case of D.N. Asthana Vs. Secretary, Railway Board (OA NO.1778/87) decided on 11.12.1987. It is said that the Inquiry Officer was not biased and the request for change of the Inquiry Officer was rightly disallowed on 30.8.1978 and the applicant participated in further inquiry and did not object to the proceedings. As regards the violation of Rule 9(15) of the Rules, it is stated that it did not vitiate the proceedings because the applicant was given full opportunity by the Inquiry Officer and the applicant has also put in his written brief after he was supplied a copy of PO's written brief. As regards the taking of the evidence ex parte, it is stated that the applicant himself is at fault as the applicant after four sittings of the inquiry proceedings resorted to absenting himself on medical grounds and the hearing was postponed as many as six times. The Inquiry Officer ordered that he should produce a medical certificate that he is unable to attend the inquiry proceedings which was not complied with by the applicant. However, the applicant subsequently cross-examined all the witnesses which

were examined ~~ex parte~~ and no prejudice has been caused and he joined the inquiry proceedings till the end. As regards the request for engaging a lawyer as his defence assistant, it was rightly turned down by the Inquiry Officer because the department was not supported by an expert or a practising lawyer and the applicant was given fullest opportunity to nominate a defence assistant of his choice. As regards the issue of show cause notice by the Disciplinary Authority before passing the punishment

~~order by the order dt. 24.11.1978~~ ^{27.4.79}, sub-rule 5 of Rule 10 of the Rules has been amended that it shall not be necessary to give a Railway servant an opportunity of making representation of the penalty proposed to be imposed. This amendment in the rules, though has been made afterwards, but it is in consonance with the amendment in Article 3 of the Constitution by 42nd amendment which has been introduced w.e.f. 30.1.1977. The respondents, therefore, in the reply have stated that the applicant has no case and the Inquiry Officer has given adequate opportunity to the applicant and after proper analysis of the evidence adduced in the inquiry proceedings as well as on the basis of the documents has given the finding that the charge against the applicant stands proved.

9. We have heard the learned counsel for both the parties at length and have gone through the record of the case. The first

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contention of the learned counsel for the applicant is that the applicant was on deputation from Northern Railway and there was no specific order absorbing him permanently in the Board's office and so his lien was maintained in the Northern Railway. Thus the consent of the Northern Railway, according to the learned counsel, was not taken before removing him and the case of the applicant should have been dealt with under Rule 15 of the Rules, 1968. It is a fact that the applicant was originally employed with the Northern Railway, but he has gone to the Railway Board on 13.7.1961 and there also he got promotion as UDC and then as Assistant in the Board's office, but Rule 15 of the Rules does not apply to such a person and only applies to those who are lent to other departments which states that "Where the services of a Railway servant are lent to any Ministry or Department of Central Government or to a State Government or an authority subordinate thereto or to local or other authority therein." Here the applicant was not lent to any other department or ministry. He continued to work under the Ministry of Railways. Railway Board is the highest authority. So the provision of Rule 15(1) is not applicable in his case. Though General Manager, Northern Railway is the appointing authority as defined under Rule 2(1)(a), but the Railway Board being the higher authority than the General Manager (P), was competent to take action. In view of the above facts, ^{even if} there was no absorption of the applicant in the

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Railway L but in fact he was given promotion as UDC and Assistant in the Board's office, he remains under the jurisdiction of the Railway Board and Secretary, Railway Board had complete jurisdiction over him and the Secretary, Railway Board has full jurisdiction to remove him from service after passing a punishment order in a departmental inquiry. The learned counsel for the respondents has also referred to the decision of the Tribunal in OA 1778/87 (D.N. Asthana Vs. Secretary, Railway Board) decided on 11.12.1987. This contention of the learned counsel, therefore, has no force.

10. The learned counsel for the applicant also stressed that the applicant had asked for documents which have not been supplied to him and in this connection, the learned counsel has referred to the application made by the applicant to the Secretary, Railway Board (Application dt. 25.9.1976 and 31.10.1977 at Annexures A8 and A9 respectively). By the Memorandum dt. 22.1.1977 (Annexure A12), these applications have been disposed of. A list of documents desired to be relied against the applicant has been detailed in Annexure 3 to the Memo of chargesheet. Regarding non-supply of papers pertaining to preliminary inquiry and the evidence recorded therein, the reply of the respondents in the aforesaid Memo is that it is a classified document and the copy thereof cannot be given. The Inquiry Officer in its report dt. 16.11.1979 (Annexure A2) did not rely on the preliminary inquiry at all. The Inquiry Officer has dealt with the evidence oral and documentary, which have been produced before it.

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11. Regarding the complaint filed by P&T Department, the same has been made available to the applicant as is evident by para No. I of the aforesaid Memo. Regarding the register showing alleged attendance of the applicant by P&T Department, the applicant was asked to inspect the same and to take extract from the same if he so desires. Regarding the orders of working hours in the Railways, there are general orders to this effect and no document in this regard could have been furnished to the applicant. Regarding item No.(v) of the correspondence between P&T Department and Railway Board relating to the complaint filed by the P&T Department, the applicant has been asked to inspect the same documents and take extract from the same. Regarding the statement of the witnesses, statement of S/Shri Leo Ram, Maya Dass, Jiwan Ram and Ram Lal have been supplied and no statement of S/Shri Pyara Singh and B.Lal were recorded. Similarly the other documents mentioned in the aforesaid applications of the applicant addressed to the Secretary, Railway Board in the memo dt.22.1.1977 (Annexure A12), the applicant either has been furnished a copy thereof or has been directed to inspect those documents and take extracts from the same. He was also directed to inspect those documents within ten days from the receipt of the memo, failing which it will be presumed that he is not interested to do so and the case will be processed further accordingly. After this memo of January, 1977, the applicant

appears to have made another application on 9.12.1977 (Annexure A13).

He has asked for certain documents introduced by the witness

Shri P.L. Arora and a photocopy thereof be supplied to him.

In this application dt. 9.12.1977, the applicant has not made any grievance for supply of any other documents. A similar application was moved by the applicant on 27.12.1977 (Annexure A14) in which

he has also requested for supply of the photostat copies of the questioned

documents on the basis of which L. Document Officer, Shimla

gave his opinion. After that there is no request by the applicant

for furnishing any further documents. The learned counsel, during

the course of the arguments, also did not point out as to which of

the documents was not supplied and how the non supply of that non

relevant document has prejudiced the applicant either in putting up his defence or in cross-examining the witnesses produced by the

presenting officer. The learned counsel has referred to the

authority of Kashi Nath Dixit Vs. Union of India, reported in

1986 (3) SCC 229 and State of Punjab Vs. Bhagat Ram, reported in

1975(1) SCC 155. In the above authorities of the Hon'ble Supreme

Court, the supply of the relevant documents was made mandatory

observing that when a Government servant is facing disciplinary

proceedings, he is entitled to be afforded a reasonable opportunity

to meet the charges against him ^{in an} effective manner, and no one, facing

the departmental enquiry, can effectively meet the charges unless the

copies of the relevant statements and documents to be used against him

are made available to him. In the absence of such copies, how can the

concerned employee prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible. Similarly in the case of State of Punjab Vs. Bhagat Ram (supra), it has been held, "It is unjust and unfair to deny the Government servant copies of statement of witnesses examined during investigation and produced at the enquiry in support of the charges levelled against the Government servant." "Unless the statements are given to the Government servant, he will not be able to have an effective and useful cross-examination." In the present case, there is no such averment that the statement of witnesses has not been supplied. The memo of January, 1977 clearly goes to show that the applicant has been supplied all the relevant documents and the statement of witnesses. At no subsequent stages of the enquiry proceedings, the applicant has apprised the Enquiry Officer that he has not been supplied with any of the documents which are material or necessary for cross-examining the prosecution witnesses. In view of the above facts and circumstances, it is not open to the applicant to complain that he has been prejudiced by non furnishing of certain complaint in question and that the principles of natural justice are in any way violated. We have also to see that the charge against the applicant was that he was serving in two Government organisations simultaneously, one in the Postal Department and in the Railway department. The evidence that has been relied upon is of the witnesses of the Postal Department and also certain

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documents relating to acceptance of payment etc. from the Postal Department as well as the attendance marked in the registers of the Postal Department. Certain witnesses of the Postal Department, who were working along with the applicant have also been examined. The applicant has been adequately furnished all the documents which were required to cross examine the witnesses and it cannot be said that the applicant in any way has been prejudiced in this matter. The ^{written} brief submitted by the applicant goes to show as well as the grounds of appeal applicant has preferred leave no doubt that the applicant has fully cross-examined the witnesses and has taken every possible defence which could have been taken in the circumstances of the case. We had also the occasion to see the proceedings of the enquiry and we find that the applicant has done effective cross-examination of the witnesses which have come to depose against him. Thus the contention of the learned counsel on this account has no force.

12. The learned counsel has also argued that some of the witnesses have been examined ^{on medical grounds} ~~ex parte~~ and the applicant ~~not~~ granted adjournments. In this regard we have gone through the departmental file. The respondents in their reply in paras 6.24 and 6.25 have clearly stated that after initial four days' sitting, the applicant resorted to absenting himself from the enquiry on medical certificates, consequently the scheduled enquiries were postponed on six occasions,

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namely, 27.12.1977, 3.1.1978, 1.3.1978, 30.3.1978, 31.3.1978 and 22.4.1978. The applicant was, therefore, directed that apart from the routine medical certificate, he should also produce a certificate from the Medical Officer to the effect that he was not in a fit condition even to attend the enquiry. In the rejoinder filed by the applicant, in reply ^{it is} stated that it was meaningless because when the applicant has been submitting medical certificates from the authorised medical attendants, it is not conceivable ^{as} to what proof was required by the Enquiry Officer. In the above situation, the Enquiry Officer has to resort to ex parte proceedings and on 24.4.1978, 25.4.1978, 26.4.1978, and 27.4.1978, witnesses were examined. But when the applicant subsequently resumed ^{his request} and joined the proceedings for supply of copies of the proceedings pertaining to these four days, it was complied with. These four prosecution witnesses were once again called and the applicant was given another opportunity and allowed to cross-examine them on 14th, 15th and 16th June, 1978 as well as 15th July, 1978. In view of the above facts and circumstances, it cannot be said that the applicant was not given adequate opportunity and the proceedings were, though resorted to ex parte, but the applicant has joined and cross-examined those witnesses who were examined earlier. Though the applicant has been at fault and wanted to adopt dilatory tactics, yet the Enquiry Officer has accommodated him by recalling the witnesses already examined. This has not prejudiced the applicant at all and we are, therefore, not persuaded by the argument of the learned counsel

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13. The learned counsel for the applicant argued that the Enquiry Officer was biased and he also prayed for changing the Enquiry Officer because on certain occasions, the presenting officer as well as the Enquiry Officer have communicated with each other in Tamil, the language not known to him. He have gone through the file of the proceedings of the enquiry. On a careful reading of the whole of the matter, the allegation of the applicant against the Enquiry Officer is not at all substantiated. On 31.10.1977, the Enquiry Officer ^{asked} ~~argued~~ the charged officer regarding the inspection of relevant documents, he made certain complaints of having not received certain copies of and documents, he was again given time. In the proceedings of 16.11.1977, there is again an observation by the Enquiry Officer that inspite of the fact that the charged officer was given time to inspect the documents and though he has collected certain copies, but he is not using the time allotted to him for inspection of certain register of which copies could not be readily made available. There are certain registers and other documents which the administration was prepared to show him for inspection and also allowed him to extract notes at his request in the Board's office. There is an observation by the Enquiry Officer that the charged officer did not show any interest

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in the 5 days' time allowed to him to take advantage of the offer for inspection of the documents which the administration was asked to show to him. The proceedings were again adjourned for 7.12.1977. On that day, the charged officer did not nominate his defence assistant. The charged officer, however, informed the Enquiry Officer that he has made a request to change the presenting officer. This request of the applicant before the Enquiry Officer was not justified. Thus the applicant was accommodated to the extent possible and from the proceedings of the enquiry, it appears that the applicant has been given fullest opportunity at his convenience and even during the cross-examination of one of the witnesses, Shri Arora, certain documents were made available for perusal of the charged official. All these 4 documents PE6 to PE 9 were shown to him. It would appear from the record that the witness, Shri Arora was examined on a number of sittings on various dates and his statement runs including the cross-examination in about 26 pages. The Enquiry Officer has given fullest opportunity to cross-examine this witness and even provided him an opportunity if he desired to recall this witness for further cross-examination. The applicant's request for change of the Enquiry Officer was rejected by the Disciplinary Authority by a speaking order. The only grievance of the applicant against the Enquiry Officer expressed before the Disciplinary Authority was that since the presenting officer as well as the Enquiry Officer

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belong to the Southern States and they communicate each other in a language, i.e., Tamil not known to the applicant, so he has the apprehension that something which is not coming on record, is being talked about. However, the Disciplinary Authority has called for an explanation from the Enquiry Officer and he has denied this fact stating that he has never talked with the presenting officer in Tamil and the proceedings are resorted to in English. Thus the contention of the learned counsel that the Enquiry Officer was prejudiced is not at all substantiated.

14. The use of the word bias should be confined to its sphere. Its proper significance is to denote a departure from the standard of even handed justice which law requires from those who occupy judicial office or those who are commonly regarded as holding quasi-judicial office such as an Enquiry Officer or an Arbitrator. Thus it is fundamental principle of natural justice that the officer selected to make an enquiry should be a person with ^{an} open mind and not one who is either biased against the person against whom action is sought to be taken or one who has prejudged the issue. In such a case, if a person is selected ^{as} an Enquiry Officer with the above motive, the enquiry would be a farce. However, the present case does not seem to be attracted by the vice of the bias as observed above. Merely because the Enquiry Officer has disallowed certain questions or asked the delinquent or charged officer to be more

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attentive to the enquiry proceedings and be serious in inspecting the documents, then it cannot be said that the Enquiry Officer has a bias against the charged officer. Mere allegation of the applicant that the presenting officer as well as the Enquiry Officer happened to be knowing a particular language and they often talked in that language cannot be a ground to show that the Enquiry Officer had prejudged the issues against the applicant. It is not on record that the Enquiry Officer at subsequent stage of the proceedings has even talked in a language not known to the applicant. The manner in which the Enquiry Officer has allowed the cross-examination of the witnesses, the accommodation given to the applicant time and again on account of his illness or some other reasons clearly go to show that the Enquiry Officer has been fair and just in conducting the proceedings of the enquiry. The same view has been taken by the Hon'ble Supreme Court in the case of Manek Lal Vs. Dr. Prem Chand, reported in 1957 SCR 575. The clear instance of the fairness of the Enquiry Officer appears to be that the applicant after the close of the evidence in the enquiry prayed for 30 days' time to submit the defence brief on 17.10.1978 and he has been allowed the time. Another question that arises in the case is that the delinquent has given a list of a number of defence witnesses and the Enquiry Officer has curtailed the list to seven defence witnesses. But this cannot be

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said to be an arbitrary exercise of power by the Enquiry Officer. Taking all these facts into account, we do not find any fault in the order of the Disciplinary Authority not to change the Enquiry Officer or the contention of the learned counsel that the Enquiry Officer was biased.

15. The learned counsel for the applicant also argued that there is violation of Rule 9(15) of the DAR, 1968 and stated that since the Enquiry Officer has not followed the procedure laid down in the said rules by not putting the questions to the delinquent or charged officer pointing out the facts given against him in the evidence, so the present enquiry proceedings are illegal. The matter has been considered by the Hon'ble Supreme Court in the case of Sunil Kumar Vs. State, reported in 1980 (3) SCC 304 and the Hon'ble Supreme Court held that every violation of the rules of procedure does not vitiate the proceedings. That case relates to a disciplinary proceeding under the All India Services Discipline Rules, 1969. Rule 8(19) thereof provided for examination of the delinquent official by the enquiring authority after the prosecution evidence is closed. In that case, no such questioning was done and the question whether it has prejudiced the delinquent official and whether it vitiates the enquiry arose for consideration. It was pleaded that because of the non examination, he has been denied of an opportunity to place his

case before the enquiring authority and to explain the circumstances which weighed in the mind of the Enquiry Officer.

The Hon'ble Supreme Court held, "We are similarly of the view that failure to comply with the requirements of Rule 8(19) of 1969 Rules does not vitiate the enquiry unless the delinquent officer is able to establish prejudice. In this case, learned single Judge of the High Court as well as the learned Judges of the Division Bench found that the appellant was in no way prejudiced by the failure to observe the requirement of Rule 8(19). The appellant cross examined the witness himself, submitted his defence in writing in great details and argued the case himself at all stages. The appellant was fully alive to the allegations against him and dealt with all the aspects of the allegations in his written defence. We do not think that he was in the least prejudiced by the failure of the Enquiry Officer to question him in accordance with Rule 8(19)."

In the present case also, the applicant himself cross-examined the witness and the proceedings of the enquiry show that the applicant cross-examined the witness at sufficient length without any objection by the Enquiry Officer. He has also filed his defence statement running in 43 fullscap pages. The only allegation against the applicant has been that while he was in service of the P&T Department earlier, he also got himself employed in the Railway department and continued on record to serve and draw his emoluments from both the departments which

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amounts to misconduct. The evidence which has been led is only to establish these facts. Thus the non L ^{obse rvance} of Rule 9(15) of the Rules has not prejudiced the applicant at all.

16. The learned counsel for the applicant also argued that the report of the Enquiry Officer was not furnished to the applicant and in this connection the learned counsel for the applicant has cited the authority of Allahabad Bench of the Central Administrative Tribunal in Kuber Nath Vs. Regional Director, Postal Services & Anr., ATR 1992 (2) p-9. He has also cited the authority of A.Bhasain Vs. U.O.I., ATR 1989 (1) SC p-50 and the Full Bench decision of Prem Nath K.Sharma Vs. Union of India, Full Bench decisions Volume-1 p-245 and Mohammed Ramzan Khan Vs. Union of India & Ors., ATR 1991 (1) p-120. However, the Hon'ble Supreme Court in the case of S.P.Viswanathan Vs. Union of India, reported in 1992 SCC(L&S) p-155 has affirmed the ratio of the case of Mohammed Ramzan Khan and categorically observed that the supply of the Enquiry Officer's report before passing the punishment order by the Disciplinary Authority shall apply to only those cases which are disposed of by the Disciplinary Authority after the delivery of the judgment in the case of Ramzan Khan, i.e., 23.11.1990. The position of law, therefore, is now settled that in those cases where the Disciplinary Authority has passed the punishment order after the relevant date, i.e., 23.11.1990, non supply of the copy of the Enquiry Officer's

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report will be material. However, in the present case, a show cause notice was issued to the applicant, but in view of the amendment in Article 311 by 42nd Constitutional Amendment, the matter was not pursued further. The said amendment of the constitution has come into effect from 3.1.1977 and the corresponding amendment was made in the Disciplinary and Appeal Rules 10(5) sometimes in October, 1978. Thus the non supply of the Enquiry Officer's report in this particular case does not vitiate the proceedings as the impugned order passed in this case is dated 27.4.1979/4.5.1979. This point, therefore, should not detain us any more. In view of the decision of the Hon'ble Supreme Court in the case of Viswanathan Vs. U.O.I. (supra), the decision in the case of Kuber Nath Vs. Regional Director, Postal Services & Anr. (supra) cannot have a binding effect.

17. The learned counsel for the applicant has also argued that no opportunity of personal hearing was given to the applicant and in this connection has referred to the decision of Ram Chander Vs. U.O.I., reported in 1986 (2) SLJ p-250. That authority lays down that even a personal hearing should be afforded by the Appellate Authority. In this case, there is an observation that the applicant has been heard by the Appellate Authority also before passing the order on the appeal after the remand directed in the earlier decision of the case by its order dt. 22.9.1987 when the appellant was directed to appear before

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the Appellate Authority on 12.10.1987. Thus this authority is not relevant on the facts and in the circumstances of the case.

18. The learned counsel for the applicant has also argued on the principles of natural justice and that a lawyer was not provided as a defence assistant to the applicant. In this case, it was not necessary that a defence ^{have been} assistant lawyer should ~~not~~ be provided because the presenting officer was not a legal expert. The nature of the case also is not of the type where legal issues are involved. The only point to be considered in this case before the Enquiry Officer was that the applicant is the same person who has also served in another department of the Government of India and on this certain factual evidence was led by the administration. It is a fact that a hand-writing expert was examined, but he has also been cross-examined at great length by the applicant himself. So it cannot be said that there was a necessity for allowing the applicant to engage a lawyer as a defence assistant. A lawyer is also not a hand-writing expert in the true sense of the term. In view of this fact, the applicant has not been prejudiced in his defence and has been given adequate opportunity.

19. The learned counsel for the applicant has also referred to the decision in the case of Sunder Dass Vs. Union of India, reported in ATR 1990 (1) CAT p-9. The facts of this case are

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totally different and not applicable to the present case. The authority basically is on the point of acquittal of an employee in a criminal charge and that acquittal was because of the failure of the prosecution to lead evidence. In such a case, it was held that the employer has no option, but to reinstate him and pay him for the period during which he was under suspension. In the present case, though the applicant was prosecuted also on a charge of committing cheating and forgery and the complaint in this connection was lodged by the P&T Department by registering FIR No. 450/75 and the Metropolitan Magistrate, Delhi acquitted the applicant by the judgment dt. 16.3.1989, the judgment itself shows that the finding of acquittal was given that since no documentary evidence has been produced by the Postal Department, so reliance was not placed on the witnesses examined in that case by the prosecution. The learned Metropolitan Magistrate was also critical of the investigation done in that case observing that the investigating agencies have made no efforts to furnish the original documents which have been asked for by the expert for examination. If an effort would have been made to furnish the required documents to the expert and taken in possession the recovered documents, the prosecution would have succeeded in substantiating the allegations. In the present case, the enquiry has been proceeded by the Railway Board where the applicant was employed as Assistant in

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the Board and the Enquiry Officer has conducted the enquiry on the basis of the evidence adduced by the administration, i.e., the Railway Board to the effect that the applicant simultaneously was working in the P&T Department. The voluminous evidence that has come before the Enquiry Officer cannot be said as not in any way sufficient to arrive at the finding given by the Enquiry Officer. In the Railways, the applicant has given his name as V.P.Kochhar, s/o Shri Ram Chand and the date of birth as 15.10.1935 having an identification mark of healed scar near the forehead and height being 5'3³/₈". In reply to question No.49 by Shri Arora, the matter has come on record that the full form of the initial V.P. is Ved Prakash Kochhar. In the P&T Department, the applicant has given his name as Ved Prakash Kochhar, s/o Shri Ram Chand and the date of birth as 15.10.1935 and the mark of identification is healed scar mark above the forehead just below the hair, and the height being 5'5". The applicant has remained under suspension in the P&T Department for the period from 14.6.1958 having joined thereon on 16.9.1957. His suspension was revoked on 1.6.1963. He was again suspended on 17.11.1965 and the suspension was revoked from 3.12.1965. He was again suspended on 11.2.1967 and the suspension was revoked on 7.9.1974. Thus it is evident that the Enquiry Officer has drawn the conclusion on the basis of the evidence of the witnesses examined, i.e., S/Shri Pyara Singh, Dy. Superintendent of Post Offices, Ram Lal.

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Narang, Cashier and colleagues of the applicant working along with him S/Shri Leo Ram, Maya Dass and Ram Jiwan. The Enquiry Officer has also dealt with the evidence of 6 defence witnesses examined by the applicant and analysed evidence with reasonable ness which could not establish taking into account the defence brief submitted by the applicant covering about 42 pages that V.P.Kochhar employed in the Railway and ved Prakash Kochhar, employed in P&T Department are different persons. The Enquiry Officer has also dealt with the evidence of the hand-writing expert who has been cross-examined by the applicant at length. Thus the finding given by the Enquiry Officer is based on proper appreciation of evidence and mere acquittal in the criminal case would not stand in the way of the findings arrived at by the Enquiry Officer. Moreover, there is a material difference in appreciating the evidence in the criminal case where everything has to be established beyond doubt while in the departmental enquiry, the evidence can be considered and logical inferences can be drawn on the basis of reasonable ness. Thus even acquittal in the criminal case cannot at this stage be said to have in any way vitiated the finding of the Enquiry Officer.

20. In this case after remand, the Appellate Authority has fully considered every plea taken in the grounds of appeal by the applicant and the order passed by the Appellate Authority, Member, Staff, Railway Board and the Secretary, Government of India

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Ex-officio runs into 17 pages. Every point taken by the applicant, therefore, has been fully discussed and analysed supporting the finding of the Enquiry Officer and approving the action taken by the Disciplinary Authority.

21. The learned counsel for the applicant has also argued at length that the principles of natural justice have been ignored by the Enquiry Officer, but it is not so. The applicant has been given adequate opportunity to put his case and he has cross-examined the witnesses at length examined against him and also allowed to examine the defence witnesses who are 7 in number. In AIR 1977 Supreme Court p-965, the Chairman, Board of Mining Examination and Chief Inspector of Mines and Another appellant Vs. Ramji, the Hon'ble Supreme Court has considered the principles of natural justice and held in that case that the order of the Board cannot be anathematised as condemning the man without being heard. Their Lordships in para-13 observed as follows :-

"Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential procedural propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt - that is the conscience of the matter."

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22. In view of the above facts and circumstances, we find that the application is totally devoid of merit and needs no interference and the same is dismissed leaving the parties to bear their own costs.

J. P. Sharma
(J. P. SHARMA)

MEMBER (J) 29.1.93

(P. C. Jain)
(P. C. JAIN)
MEMBER (A)

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