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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,  
NEW DELHI

DA 1105 of 1986

Date of decision 28-8-89

P.C.Gautam

....

Applicant

Versus

Union of India and others

Respondents.

For the Applicant - Mr. R.L.Sethi, Advocate

For the respondents - Mr. D.N.Moolri, Advocate.

B.S.SEKHON:

Departmental enquiry under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 was conducted against the Applicant in respect of the following articles of charge:-

1. That Shri P.C.Gautam, Asstt. Guard, was responsible for unauthorised absence on 1.8.83 by failing to work his proper link train 39 UP ex Tundla to Delhi.
2. That Shri P.C.Gautam was responsible for forging the documents and charging forged running allowance by 39 UP ex TDL to Delhi on 1.8.83 although he had not worked 39 UP.
3. That Shri P.C.Gautam was responsible for concealing his absence on 1.8.83 and for making forged signature on Asstt. Guards' roster on the day after 1.8.83.
4. That Shri P.C.Gautam was responsible for absenting himself on 2.8.83 & 3.8.83 by way of failing to turn up to work 11 UP ex CNB to DLI

as per his appearance on roster of Tundla for fraudulently charging running allowance right from CNB to DLI.

5. That Shri P.C.Gautam was responsible for travelling by 13 UP ex TDL to DLI on 1.8.83 without authority to travel.

At the time of initiation of the enquiry, the Applicant was holding the post of Asstt. Guard Scale Rs.225-308. The Inquiry Officer held the charges proved. After receipt of the report of the Inquiry Officer, the disciplinary authority vide its order dated June 18, 1984 (copy Annexure-1) imposed the penalty of reduction in rank. Applicant was reverted to the post of Leverman, Grade-II in Scale of Rs. 210-270 permanently for 5 years with immediate effect. The disciplinary authority awarded the aforesaid penalty after agreeing with the findings of the Inquiry Officer and holding the Applicant guilty of the charges levelled against him. Applicant's appeal was rejected by the appellate authority vide order dated April 9, 1985 (copy Annexure 2). The Applicant thereafter preferred a revision, which has also since been rejected.

2. The salient grounds upon which the Applicant has impugned the order made by the disciplinary authority are that the Inquiry Officer, who also acted as disciplinary authority was biased against him; he was not given a show cause notice and reasonable opportunity; there has been violation of the principles of natural justice, equity and fair play; the impugned order has been made

without application of mind; he does not know English and his request for Hindi version of the charge-sheet was not granted and the disciplinary authority himself cannot act as Inquiry Officer.

3. Apart from the plea of limitation, the respondents have contested the Application on merits. As per the defence set out in the counter, Applicant had been granted reasonable opportunity of defending himself; the disciplinary authority is competent to Act as Inquiry Officer under the Rules; the impugned orders are just and warranted on the basis of the record; the statement of the Applicant that he does not know English is <sup>a</sup>white-lie; Applicant had been given full opportunity to defend his case and was offered the facility of defence helper also. The revision preferred by the Applicant is also stated to have since been decided vide order dated 11-11-85. The punishment imposed on the Applicant is stated to be proportionate to the gravity of the charges proved against him.

4. We have heard the arguments addressed by the learned counsel for the parties and have perused the relevant records.

5. During the course of arguments, the learned counsel for the Applicant launched a four-fold attack against the impugned orders. The following grounds were stressed by the learned counsel for the Applicant:

- i) Applicant was not afforded a reasonable opportunity for defending himself. There has been thus a violation of <sup>the</sup>principles of natural justice as also of Article 311 of the Constitution.

- ii) The inquiring authority as also the disciplinary authority had contravened the Rules as the Applicant had not been furnished with a copy of the findings of the Inquiry Officer alongwith the enquiry report.
- iii) The disciplinary authority, who was biased against the Applicant could not act as inquiring authority and it is a case of the disciplinary authority acting both as a prosecutor and as a judge. The learned counsel also added that the Applicant had preferred complaints against the disciplinary authority, who was actuated by mala fides.
- iv) The quantum of punishment is too excessive and disproportionate to the alleged lapses.

6. A faint attempt was also made by the learned counsel to assail the findings of the Inquiry Officer. The learned counsel for the respondents countered by stating that reasonable opportunity had been granted to the Applicant, who opted not to participate further in the enquiry. It was also submitted by the learned counsel for the respondents that the Applicant is conversant with the English language and notwithstanding the aforesaid, he was furnished with a Hindi version of the charge-sheet. It was further submitted by the learned counsel for the respondents that under the Rules, the disciplinary authority is bound to act as Inquiry Officer also. The allegations of mala fide against the disciplinary authority are baseless; the disciplinary authority was never actuated by any mala fides against the Applicant while conducting the enquiry or making the impugned order. According to the learned counsel, the quantum of punishment cannot be regarded as excessive or disproportionate and that it is not a case of a prosecutor acting as a judge. The learned

counsel also questioned the right of the Applicant to ask the Tribunal to reappraise the evidence and to substitute the findings recorded by the inquiring authority.

7. A bare perusal of the order made by the appellate authority (Annexure R-7) reveals that the aforesaid order has not been made in conformity with the provisions of Rule 22(2) of the Rules. The appellate authority also did not grant a personal hearing to the Applicant. In view thereof, the order made by the appellate authority is hit by the dictum of the Supreme Court in 'Ram Chander v. Union of India,'

AIR 1986 SC 1173. The following observations made by the Supreme Court in para 24 of the judgment in 'Ram Chander'(supra) are instructive in this behalf:-

"Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair-play and justice also require that such a personal hearing should be given."

In view of the order we propose to make, we are advisedly not expressing any opinion on the merits

or demerits of the rival contentions put forward by the learned counsel for the parties, lest any expression of opinion on our part should prejudice either party's case.

8. The proper order to be made in the facts and circumstances of this case and which we hereby make is to remit the case to the appellate authority with the directions that the appellate authority shall pass a fresh order on the appeal of the Applicant in accordance with law and after affording an opportunity of personal hearing to the Applicant. Accordingly, the order dated 9-4-85 (Annexure A-2) made by the appellate authority as also the order dated 1-11-85 (R-10) made by the revisional authority are hereby quashed. The appellate authority is directed to pass a reasoned order in accordance with law within a period of three months from today. It is scarcely necessary to add that the appellate authority shall also consider such other grounds as are raised by the parties during the course of hearing. No order as to costs.

*D.K. Chakraverty*  
(D.K. Chakraverty)  
AM

*B.S. Sekhon*  
(B.S. Sekhon)  
VC

28-8-89