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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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C.A. NO. 1553/1991

DATE OF DECISION : 27.02.1992

SHRI R.S.B. YADAV

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

CCRAM

SHRI D.K. CHAKRAVARTY, HON'BLE MEMBER (A)

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

FOR THE APPLICANT

...SHRI H.P. CHAKRAVARTY

FOR THE RESPONDENTS

...SHRI M.L. VERMA

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*

JUDGEMENT

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

The applicant highly skilled Fitter Grade-I, AC Shed, Jhansi, Central Railway filed this application under Section 19 of the Administrative Tribunals Act, 1985, aggrieved by the order dt. 15.5.1991 passed by Assistant Engineer, AC Shed, Central Railway whereby reducing the petitioner from the rank of High Skilled Fitter Grade-I to the rank of Highly Skilled Fitter Grade-II from the pay scale of Rs.1320-2040 to the pay scale of Rs.950-1500 for

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5 years. In this application, the applicant claimed the relief that the impugned order of punishment be quashed and set aside with all consequential benefits. The applicant was issued Standard Form SF-5 on 6.5.1991, but the applicant refused to accept the same. The imputation in the same Memo was that on 27.11.1990 at 9.15, while working on duty, the applicant assaulted Shri D.D.Prabhakar (MS) and abused him. The Asstt. Electrical Engineer, Electric Loco Shed, Jhansi on 15.5.1991, passed the punishment order (Annexure A1) imposing the punishment on the applicant as said above. In this punishment order, it is also written that he has been punished in view of the Railway Board's letter No.E(DRA) 73 RG-6-5 dt. 22.2.1974. The applicant has been working as Highly Skilled Fitter Grade-I since January, 1984 and was transferred to Jhansi in April, 1988 in the same grade and capacity. The applicant has challenged this punishment order on the ground that the said punishment has been passed by an officer not competent to inflict the punishment and so the punishment order dt. 15.5.1991 is without jurisdiction. It is further stated by the applicant that there was no regular or oral enquiry against the applicant under Rule 9 of DAR and the allegation that the applicant refused to accept the chargesheet is false and fabricated. It is further stated that the

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✓ It is further stated that the provisions of Rule 14 have also not been invoked and complied with. Such an order is violative of Rule 9, 10 and 14 of Railway Servant (Discipline and Appeal) Rules, 1968. It is also in gross violation of Articles-14 and 16 and 311(2) of the Constitution of India.

2. The respondents contested the application and stated that the application is barred by Section 20 as the applicant has not assailed the remedy of bye-law. However, the application has been admitted on 16.7.1991.

It is also stated by the respondents that the applicant did not cooperate in the enquiry. Regarding the competency of the authority passing the punishment order, the respondents stated that this is a matter on record. Further it is stated that the applicant refused to accept the SF-5. So he cannot subsequently avail the privilege provided to him for his defence as per RS(D&A) Rules, 1968. It is, therefore, stated that the application be dismissed.

3. We have heard the learned counsel for the parties at length and have gone through the record of the case. The matter was heard on 20.12.1991 and the learned counsel for the respondents was asked to produce the relevant records regarding disciplinary proceedings against the

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applicant on 29.1.1992. The matter was again taken up. After that on 7.2.1992, when the learned counsel for the respondents stated that there is no enquiry file as no enquiry was conducted in the case because of the admission made by the delinquent.

4. The respondents in their counter have not stated that the applicant has admitted the charges on the SF-5 dt.6.5.1991. It appears from the impugned order itself (Annexure A1) that the SF was dt. 6.5.1991 and the punishment was passed on 15.5.1991. It clearly shows that without giving any opportunity to the applicant on the said SF-5, the punishment order has been passed, which is totally illegal and unjustified. It also goes to show that there was no proper enquiry. The simple case taken by the respondents is that the applicant refused to accept the SF-5, but the respondents have not filed any evidence in that regard of refusal of the service by the applicant. Mere allegation to that effect will not suffice as the refusal has to be taken in the presence of two witnesses and the same has to be placed before the Bench when the same is denied by the applicant.

5. In view of the above facts, it is clear that the punishment order has been passed without following the

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procedure prescribed under Discipline and Appeal Rules, 68.

6. The learned counsel for the applicant also filed a photostat copy of the Schedule II under sube rule-4 and sub-rule 2 of Rule 7 where the competent authority for passing a punishment for reduction to a lower post or lower time scale for a Group 'C' staff in the grade in which the applicant is working, is the Senior Scale Officers and Assistant Officers (Junior Scale Group-B) holding independent charge. In this case, the punishment order has been passed by Assistant Electrical Engineer who is a Junior Scale Group-B Officer, but it is not made clear by the respondents that the said respondent was holding an independent charge. The contention raised by the applicant in para-5.5 of the application has only been replied in the matter that it is a matter on record. But during the course of the argument, it has not been shown that the aforesaid punishing authority was competent to pass the order as he was holding the independent charge. Thus the punishment order is also defective on this account. The learned counsel for the applicant has also relied on the decision of Sardar Baseo Singh Vs. State of M.P., reported in III (1990)CSJ (HC) p-45 where the punishment order of dismissal by

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an authority subordinate to that by whom he was appointed, was passed, then such an order cannot be allowed to stand. Even confirmation of such an order by the appellate authority will not make the same valid.

7. In view of the above discussion, the application is allowed. The impugned order of punishment dt. 15.5.1991 is quashed and set aside and the applicant shall be restored to his original pay scale as if there was no punishment order. However, the respondents shall be free to proceed against the applicant, if so advised under the relevant Rules. In the circumstances, the parties to bear their own costs.

J.P. Sharma
(J.P. SHARMA) 27.2.92
MEMBER (J)

D.K. Chakravorty 27/2/92
(D.K. CHAKRAVORTY)
MEMBER (A)

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

J.P. Sharma
(J.P. SHARMA)
MEMBER (J) 27.2.92