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

O.A. NO. 2389/2004

New Delhi, this the 29th day of August, 2006

HON'BLE MR. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

Shri V.S. Wilfred,
Sr. Section Engineer (Elect.),
Northern Railway,
I.R.C.A. Building,
State Entry Road,
New Delhi
(Shri B.S. Mainee)

... APPLICANT

VERSUS

Union of India : Through

1. The General Manager,
Northern Railway,
Baroda House, New Delhi
2. Chief Electrical Engineer,
Northern Railway,
Baroda House,
New Delhi
3. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi

... RESPONDENTS

(By Advocate: Shailendra Tiwary)

O R D E R (Oral)

By Mukesh Kumar Gupta, Member (J):

Penalty of reduction to lower stage in time scale of pay in grade of RS.7450-11500/-by two stages (from Rs.9925/- to Rs. 9475/-)for a period of five years with postponing future increments, imposed vide order dated 12.08.2002, as upheld vide appellate authority's order dated 15/16.01.2004, has been questioned in present OA.

2. Shri B.S. Mainee, learned counsel for applicant contended that a Memorandum under rule 9 of Railway Servants (Discipline & Appeal)

Rules, 1968, had been issued on 14/28.05.1998 containing four articles of charge. Numerous contentions have been raised in support of claim laid in present OA, namely -

- i) Though instructions issued by Railway Board on 02.03.1971 required to appoint inquiry officer, who is sufficiently senior to the official whose conduct is being enquired into, the inquiry officer appointed in present case was in same grade as enjoyed by the applicant, i.e. Rs.7450-11500/-.
- ii) That the enquiry had been conducted on 13.10.1999 in the absence of defence helper. Neither he nor his defence holder had notice or information about said date of hearing, and he was also called to attend said proceedings only on telephone. He was forced to sit outside the room of inquiry officer and was not allowed to participate in the proceedings. The bias of inquiry officer is reflected from the fact that he recorded that applicant did not cross-examine three prosecution witnesses examined on the said date. As per established procedure and precedent, inquiry officer ought to have informed the controlling officer of defence helper to relieve him and make available him to attend the proceedings, which had been done by him by issuing communication dated 20.10.1999 fixing date of hearing as 27.10.1999, which course of action had not been adopted while fixing date of proceedings on 13.10.1999.



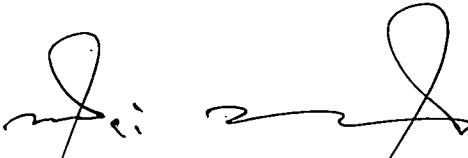
3. He has made detailed representation to disciplinary authority against the findings recorded by inquiry officer available at pages 59-75. The disciplinary authority without considering the same passed laconic and cryptic order on 12.08.2002. Even a detailed appeal had been preferred on 07.10.2002, which had also not been appreciated and bald and non-speaking order had been issued on 15.01.2004. Under these circumstances, it was contended that Tribunal's interference is called for.

4. Respondents resisted his claim and filed detailed reply, interalia contending that present OA is not maintainable as the review application filed by him on 27.02.2004 is pending with competent authority. Shri Shailendra Tiwary, learned counsel in view of the aforesaid fact contended that as per settled law, present OA is premature.

5. We heard learned counsel for parties and perused the pleadings including order passed by disciplinary as well as appellate authorities.

6. We may note that the review petition was filed on 27.02.2004, which had not been disposed of till 07.10.2004, when present OA had been instituted. Notices were issued vide order dated 05.10.2004 and till date the said revision petition remains pending. On perusal of disciplinary as well as appellate authorities' orders, we are of the considered view that his representation had not been considered properly and orders passed are totally bald and laconic in nature. It is well settled law that disciplinary authority should apply its mind to the contentions raised. Similarly, appellate authority should also consider the mandate of rule 22 of the Rules, 1968.

7. Under these circumstances, we quash and set aside said orders dated 12.08.2002 and 15.01.2004 passed by said authorities and remand the matter to disciplinary authority to examine applicant's representation submitted against the findings of inquiry officer and thereafter pass a reasoned, speaking and analytical order. This exercise shall be completed within a period of 45 days from the date of receipt of a copy of this order. In case applicant is aggrieved by such order to be issued, he will be at liberty to raise all contentions available to him under the law, including the one raised herein. No costs.



(Mukesh Kumar Gupta)
Member (J)



(V.K. Majotra)
Vice Chairman (A)

29. 8. 06

/PKR/