

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

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D.A. NO.1692/92

DECIDED ON 10.8.1993

Shri A.P. Sharma .. Applicant

Shri B.K. Batra Advocate for the applicant

Versus

Union of India through the

General Manager, Northern Railway & Ors.

Shri R.L.Dhawan Advocate for the respondents

CORAM: Hon'ble Shri S.Gurusankaran, Member (A)

(Judgement of the Bench delivered by Hon'ble
Shri S.Gurusankaran, Member (A))

The facts of the case lie in a narrow campus. The applicant while working as Assistant Station Master (ASM for short) at Hakimpur station was issued a charge sheet dated 23.4.1990 (Annexure A3) for imposition of minor penalty under Rule 11 of Railway Service (Discipline & Appeal) Rules, 1968 (Rules for short) for alleged failure of exchanging "All Right Signal" with the driver of 4229 up. The applicant submitted his representation (Annexure A4), but the Disciplinary Authority (DA for short) did not accept the explanation stating " I have seen the incident myself" and imposed the penalty of withholding the increment for a period of one year without cumulative effect on 11.6.1990 (Annexure A5). The applicant submitted an appeal dated 30.8.1990 (Annexure A6) to the Additional Divisional Railway Manager as Appellate Authority (AA for short) and the same was rejected on 16.10.1990 (Annexure A7) stating that the violation of the safety rule was noted by Sr.D.S.O. himself during his foot-plate inspection. The applicant then submitted a revision petition dated 29.11.1990 (Annexure A8) to the Chief Operating Superintendent and the same was also rejected by the Revising Authority (RA for short) vice order dated

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4 (Annexure A8)

7.1.1992, Aggrieved by the same, the applicant has filed this application praying quashing the orders of DA, AA and RA and directing the respondents to grant annual increments as if the increment in question had not been withheld and also awarding the cost of the application.

2. The respondents have filed their reply contesting the application.

3. I have heard Shri B.K.Batra for the applicant and Shri R.L.Dhawan for the respondents. The respondents have raised the question of limitation stating that since the appeal was disposed of on 16.10.1990, this application filed on 1.7.1992 is barred by limitation. There is no merit in this submission, since the Rules provide for revision and the revision application submitted in time on 29.11.1990 was disposed of only on 7.1.1992. Since he is aggrieved by the final order of the Revising Authority dated 7.1.1992, this application filed on 1.7.1992 after exhaustion of all statutory remedies is well within the period of limitation. The other preliminary objection raised by the respondents regarding jurisdiction is also without any merit, since the part of cause of action has arisen within the jurisdiction of the Principal Bench, viz, the final order ^{is} passed by the RA ^{and his} headquarters is at Delhi.

4. The first point raised by the learned counsel for the applicant is that the complainant in this case has also acted as judge in that he not only issued the charge sheet but also acted as the DA, thus violating the principles of natural justice. He vehemently argued that as per ~~rule~~ ^{rule} subsidiary rule 4.42/5 of Northern Railway, no intimation

about non-exchanging of all right signal was given to the applicant either by the Station Master of the next stopping station or section controller. There was also no complaint made by any subsequent drivers or guards ~~or~~ ~~guards~~ of other trains on the same day. Shri R.L.Dhawan appearing for the respondents could not satisfactorily provide any explanation on this important aspect except stating that since the D.A. himself ~~had~~ witnessed the violation of the statutory safety rules, there is no bar for his acting as D.A. I find merit in the contention of the applicant. It is by now well settled that a complainant cannot act as the judge also. In the case of Arjun Choudhary Vs. U.O.I. & Ors reported in 1984 SCC (L & S) 290, the Supreme Court has held that a D.A., who is ~~properly~~ ^{materially concerned} can issue the charge sheet, but cannot take part in further proceedings in the matter. Further, at the time of hearing, the respondents could not produce any material evidence supporting the allegation nor could they explain as to why the provisions of statutory subsidiary rule No.4.42/5 was not followed either by the driver or the guard or the Senior Divisional Safety Officer, who made the complaint. Hence on this grounds alone the applicant has to succeed as there has been no evidence at all for coming to the conclusion that the applicant has not exchanged the all right signal.

5. I also find that the request of the applicant to the A.A. and R.M. to give a personal hearing to explain the position was not acceded to by these authorities. The Supreme Court has held in the case of Ramachander Vs. U.O.I. (AIR 1986 SC 1173) that when the charged official submits an appeal, the Appellate Authority should given an opportunity of personal hearing before disposing of the appeal. In the present case,

the applicant had specifically made such a request to both D.A. and A.A. and in the circumstances of the case, the failure to give a personal hearing to him to explain his side of the case is a clear violation of the principles of natural justice.

6. In view of the above and in the conspectus and circumstances of the case, I allow the application with the following directions:

- i) The orders of D.A., A.A., and R.A. are set aside.
- ii) The respondents are directed to restore the increment to the applicant on the due date as though the penalty has not been imposed and pay him all the arrears of pay and allowances.
- iii) The respondents are also directed to pay the applicant Rupees Five Hundred only towards the cost of the application.
- iv) The respondents are directed to comply with the above directions within three months from the date of receipt of a copy of this order.

panchayat
10/8/93
S.GURUSANKARAN
MEMBER (A)

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