

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 11/11 day of April 2001

Coram :-

Hon'ble Mr. Rafiq Uddin , Member- J.
Hon'ble Mr. S. Biswas , Member- A.

Original Application No. 280 of 1996

M.K. Mishra, Khalasi, Train Lighting,
Electrical (General) Branch, Northern Railway
Allahabad.

.....Applicant

Counsel for the applicant:- Sri K.S. Saxena

V E R S U S

1. Union of India through the General Manager.
Northern Railway, Baroda House, New Delhi.
2. The Senior Divisional Divisional Engineer (General)
Northern Railway, Allahabad.
3. The Assistant Electrical Engineer (General)
Northern Railway, Allahabad.
4. Sri S, N. Tewari, D.T.L.I, Northern Railway
C/o Sr, DEE (G), N. Rly. Allahabad.

.....Respondents.

Counsel for the respondents :- Sri A.K. Gaur

O R D E R

(By Hon'ble Mr. S. Biswas, Member- A.)

S.R.

By this application under section 19 of the
Administrative Tribunal's Act, 1985, the applicant has
sought the following reliefs :.

(13)

1) that the punishment order dt.22.03.94 and the appellate order dt. 29.11.95 may be quashed with the consequential benefits by way of arrears of pay etc.

2. The applicant while serving as a Helper Khalasi directly under respondent No. 3 was charge-sheeted on 22.1.90 under Rule-9 of Railway Servants (Discipline and Appeal), Rules 1968. He vide his letter dated 25.06.90 wanted certain additional documents, which were mentioned in the S.E.F.O's report dt. 13.10.89 in annexure III to the charge-sheet for enabling him to give a proper and convincing reply to the charges. The disciplinary authority appointed an inquiry officer before the charged officer could submit his reply. The main prosecution witness sri B.N. Pathak was not made available for cross examination, whereas, the charges were framed against the applicant on personal animosity like, and dislike, of the said P.W. The applicant was statedly denied reasonable opportunity ~~in~~ defending the charges and even the appellate order is not a speaking order.

3. By the several representations ^{applicant} ~~stated~~ ^{stated} that the Enquiry Officer ^{was} ~~is~~ ^{is} personally ill-disposed towards ^{him} and therefore, he should not be engaged as the Enquiry Officer but no heed was paid to his request. The Enquiry Officer consequently submitted an exparte report on ^{services} ~~services~~ and not on facts, but on prejudice against him.

4. In his argument the learned counsel for the applicant also mentioned that there is ^{no punishment} ~~is~~ like permanent reduction ^{but} ~~it~~ could only be an indefinite reduction subject ^{to} ~~review~~ by competent authority and declare with ^{fit} ~~in~~ due course.

S.B.

8. The applicant alleged in his written defence before the disciplinary authority that the main private witness Sri B.N. Pathak was not made available for cross-examination by him in as much as when said Sri Pathak was called for examination on 10.08.91, the applicant was not called. The disciplinary authority has not made any comment on this specific denial of the principle of natural justice. The respondents have themselves admitted in the written counter " Sri B.N. Pathak was not presented before the Enquiry Officer due to some administrative reason". This is also an invalidating default of the question of dispensing principle of natural justice.

9. We have gone through the order of the disciplinary authority as well as the appellate authority. Both are non-speaking and have omitted to deal with the submissions made by the applicant. The appellate order is cursory and disdainfully brief. The appellate authority had made specific submission that neither he nor his defence helper Sri V.K. Dwivedi were even once summoned and he had also alleged that his representation dt. 29.01.94 to the disciplinary authority was not considered on points. One of the relevant issue, raised in his defence was denial of his request for change of Enquiry Officer. The appellate authority made no comment on this.

10. The disciplinary authority in his punishment order dt. 22.03.94 has imposed the penalty of "reduction to the post of Khalasi permanently in the Gr. of Rs. 750- 940 (RPS)"

11. This is as pointed out by the learned counsel for the applicant is not a prescribed penalty as classified in RB's notification No. E (D&A) 62-RG-6-46 dt 30.7.64 (NRS) No. 2747, where such ^{punishment} notification is to be adjudged,

5. The respondents have contended that the process was conducted as per rules. The applicant did not specify any reason for change of Enquiry Officer who was nominated for the purpose. The department did not ^{reply} ~~reply~~ on any document which were not furnished to the applicant. The enquiry was to be carried out exparte as despite notice for inquiry and time given by the department where he was working, ^{the company charged officer (CO)} ~~he~~ did not attend the enquiry which which refusal necessitated completion of the process exparte.

6. Heard the counsel for the parties on facts and law points.

7. The respondents have refuted the allegation that the relied upon documents were not supplied to the applicant by stating that the documents relied upon and relevant to the charges were supplied. Additional. Additional documents not relied were not supplied. The Enquiry Officer was compelled to make the enquiry exparte as the applicant despite ^{and} notice, time arranged for him for the purpose, did not attend the inquiry. The respondents, however, have not replied to several requests made for change of Enquiry Officer. Out of 4 representations made by the applicant seeking change of the Enquiry Officer first 3 were indeed silent on the reasons for which the applicant sought change of the Enquiry Officer but ^{the} ~~the~~ ^{this} further letter dt. 15.09.91 is specific. The applicant mentioned that his personal relations with the Enquiry Officer one Sri S.N. Tewari were 'strained' and that he was revengeful. In our view, when civil consequences were likely to follow from an inquiry to be conducted by an Enquiry Officer who was already having strained relations with the charged officer, to overlook the request of the charged officer for change of the Enquiry Officer was not justified.

it should be worded only as " it is reduced to the lower/ grade/ service of.....until found fit by the competent authority to be restored to the higher post/ grade/ service of if....." The disciplinary authority has omitted to do this and in the result the applicant was condemned to permanent reduction which is not one of the prescribed punishment, to be awarded.

12. The applicant asked for personal hearing before the appellate authority which has also been denied.

13. In view of the foregoing discussions, we are of the view that the original order as well as appellate order suffer from non^{non-} application of mind and observance of the principles of natural justice. In the result, both these order dt. 22.3.94 and 29.11.95 as impugned are set-aside with consequential reliefs and benefits of pay arrears.

14. There will be no order as to costs.

S. B. S.
Member- A.

R. S. S.
Member- J.

/Anand/