

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION No.327/1996

THURSDAY, THIS THE 30TH DAY OF MAY, 2002

HON'BLE MAJ. GEN. K.K. SRIVASTAVA .. MEMBER (A)

HON'BLE MR. A.K. BHATNAGAR .. MEMBER (J)

Krishna Kumar Upadhy,
Electrical Signal Maintainer,
Northern Railway, Sammoh,
District Etawah. ... Applicant

(By Advocate Shri R.P. Srivastava)

Versus

1. Union of India, through
the General Manager,
Northern Railway,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Allahabad.
3. The Senior Divisional Signal and
Telecommunication Engineer,
Northern Railway, Allahabad.
4. The Divisional Signal and
Telecommunication Engineer,
Northern Railway, Aligarh.
5. The Assistant Signal and
Telecommunication Engineer,
Northern Railway, Aligarh. ... Respondents

(By Advocate Shri A. Tripathi)

ORDER - (ORAL)

Hon'ble Maj. Gen. K.K. Srivastava, Member (A):

In this O.A., filed under Section 19 of the A.T.
Act, 1985, the applicant has challenged the punishment order
dated 27.9.1994, imposing the penalty of withholding two

...2..



increments for two years with cumulative effect and the appellate order dated 3.4.1995, rejecting the appeal and Revisional order dated 28.9.1995, enhancing the punishment of stoppage of increments from 2 years to 5 years and has prayed that the above orders be quashed and direction be issued to the respondents to pay the arrears of pay consequent upon cancellation of the punishment orders.

2. The facts, in brief, are that the applicant is working as E.S.M. Gr.II in the scale of Rs.1200-1800/- with effect from 8.8.1984 at Mehrawal Station under D.S.T.E., Northern Railway, Aligarh. The applicant was served with a major penalty charge sheet (S.F.5) on 1.1.1992. The applicant ^{he forwarded} his reply to the charge sheet on 10.1.1992 denying the charges, inquiry was conducted and the impugned punishment order dated 27.9.1994 was passed. The applicant appealed to the D.S.T.E., Aligarh, who rejected the appeal of the applicant vide order dated 3.4.1995. The applicant filed revision before the Senior D.S.T.E., who, vide order dated 28.9.1995, ^{he enhanced} enhanced the punishment of withholding of 2 increments from 2 years to 5 years with cumulative effect. Hence, this O.A.

3. The learned counsel for the applicant submitted that the punishment order is not tenable in the eyes of law because the inquiry was not conducted properly, inquiry report was not given before passing the impugned punishment order and during inquiry, no prosecution witness was examined. The appellate order dated 3.4.1995 is cryptic and the arguments advanced by the applicant have not been considered.

4. The learned counsel for the applicant finally submitted that the revisional authority, before enhancing the punishment did not issue the show cause and thus adequate opportunity was not given to the applicant to defend his case.

5. Contesting the claim of the applicant Shri A. Tripathi, the learned counsel for respondents submitted that due opportunity was given to him. He participated in the inquiry and the inquiry report was given as has been averred in para 23 of the counter. As regards issuance of show cause notice by the Revisional Authority before enhancing the punishment, the learned counsel for the respondents submitted that the applicant filed the revision and considering the facts of the case, the revisional authority decided the same. There was no requirement of issuing the show cause notice. The learned counsel for respondents also submitted that the applicant has been punished on a number of occasions for mis-conduct in the past also.

6. We have considered the submissions of the learned counsel for the parties and perused the records.

7. The averment of the respondents in para 23 of the counter is that the extract of the inquiry report was given to the accused employee vide letter No.Sig./E-7/P/KKU/668, dated 27.9.1994. The photo copy is stated to have


been annexed as Annexure-CA-1. We find that Annexure-CA-1 is the list of S.F.11 issued to the applicant during the period from January 1981 to August, 1991. The inquiry report or the extract of the inquiry report has neither been filed by the applicant as he alleges that it was not supplied to him, nor by the respondents. Even if for argument sake we accept the plea of the respondents that the extract of the inquiry report was given on 27.9.1994, the question which arises before is as to how the Disciplinary Authority could issue the punishment order on the same day. We do not accept this argument of the respondents.


8. As regards the appellate order, we would like to observe that the appellate order dated 3.4.1995 is cryptic. The grounds advanced by the applicant in his appeal dated 27.11.1994 have neither been considered nor discussed in the appellate order. Therefore, the appellate order is liable to be quashed. In our view, it was necessary for the Revisional Authority also to have issued a show cause, if, on the revision petition, he decided to enhance the punishment. This has not been done and therefore, the order of the Revisional Authority cannot stand in the eyes of law and is liable to be quashed.

9. In the facts and circumstances and aforesaid discussions, the O.A. is partly allowed. The Appellate order dated 3.4.1995 (Annexure-A1), revisional order dated 28.9.1995 (Annexure-A2) are quashed. The case is remanded

back to the Appellate Authority to consider the appeal of the applicant afresh ^{in the light of our observations} and pass a reasoned and speaking order within 4 months from the date the order along with a copy of the appeal is filed before the Appellate Authority, after giving ^{in the applicant's} him personal hearing. In order to avoid delay, the applicant is given liberty to file the copy of the appeal dated 27.11.1994, along with the order of this Tribunal within 2 weeks. The Appellate Authority will also consider the other consequential benefits which may accrue to the applicant ^{in case} after he decides the appeal. ^{in applicant's favour}

No order as to costs.


MEMBER (J)


MEMBER (A)

psp.