

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 20th day of October, 2003.

Original Application No. 771 of 1996.

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman.
Hon'ble Mr. D.R. Tiwari, Member- A.

Kiran Shanker Srivastava s/o Sri Serveshwar Prasad
R/o House No. 33-A, Railway Dairy Colony,
Gorakhpur. Working as Gaurd 'A' in
North Eastern Railway, Gorakhpur.

.....Applicant

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

V E R S U S

1. Union of India through General Manager,
North Eastern Railway, Gorakhpur.
2. Assistant Divisional Railway Manager,
North Eastern Railway, Lucknow.
3. Senior Divisional Safety Officer,
North Eastern Railway, Lucknow.

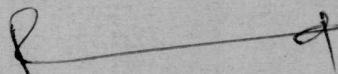
.....Respondents

Counsel for the respondents :- Sri Prashant Mathur
Sri Lalji Sinha

O R D E R (Oral)

By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

By this O.A filed under section 19 of Administrative Tribunals Act, 1985, the applicant has challenged the order dated 15.03.1995 by which disciplinary authority (Senior Divisional Safety Officer, respondent No. 3) awarded penalty to applicant reducing him from the grade of Rs. 1350-2200 to a lower time scale of pay i.e. 1200-2040 for a period of three years fixing his pay at Rs. 1680/- in the lower time scale of pay, after which period he will be restored to his original time scale of



pay, and he will be placed at Rs. 1800/- basic on restoration. His seniority was, however, not affected. Aggrieved by the aforesaid order, the applicant filed appeal which was dismissed by order dated 18.05.1995. The applicant did not challenge the order. However, the General Manager, North Eastern Railway exercising the suomoto power served show-cause notice on the applicant on 18.10.1995 proposing ^{to} enhancement of the penalty under rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968. The applicant submitted his reply on 26.10.1995. Thereafter, the revisional authority by order dated 16.11.1995 enhanced the penalty by following order :-

".....My decision of holding the penalty imposed by Disciplinary Authority as inadequate, is based on the fact that as the Gaurd of the train 5087 UP of 16.12.1994, you grossly failed in your duties as laid down in paras 4.34 (b),(d) and (e). This could have resulted in a very serious accident involving even death to a large number of passengers and Railway staff.

It has, therefore, been decided that the punishment imposed by Sr. D.S.O, N.E. Railway, Lucknow to you earlier in this case be enhanced to reversion to lower scale i.e. Rs. 1200-2040 for a period of 3 years fixing your pay at Rs. 1680/- with cumulative effect and loss of seniority. "

Aggrieved by this order, the applicant filed this O.A.

2. Sri S.K. Om, learned counsel for the applicant has submitted that the General Manager exercised the revisionary power suomoto and no revision was filed by the applicant. It is submitted that the revisional authority has recorded finding that the applicant failed in his duties mentioned in para 4.34 (b), (d) and (e) whereas the applicant was charged only for violation of duties mentioned in para 4.34(



in the memo of charge. The revisional authority, thus, ^{held u} ~~holding~~ the applicant, illegally guilty of violation of duties mentioned in para 4.34 (d) and (e) ^{and u} has illegally enhanced the punishment. It is further submitted that the enquiry officer only found the charge against the applicant partially proved. Copy of the enquiry report has been filed as annexure- 5. The operative para of the enquiry report shows that the charge against the applicant is found partially proved but the revisional authority without looking the record has illegally enhanced the punishment awarded by the disciplinary authority.

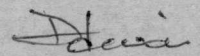
3. Sri Lalji Sinha, learned counsel for the respondent s on the other hand submitted that considering the seriousness of the charge, the enhancement of punishment was warranted and there is no illegality. However, he could not explain how the respondent No. 2 ^{proved} the violation of duties assigned in para 4.34 (d) and (e) which ^{was} ~~are~~ not part of the charge. ^{Further} ~~However~~, the revisional authority had not taken into consideration the report of the enquiry officer in which, even the charge relating to the duties mentioned in para 4.34 (b) was found partially proved.

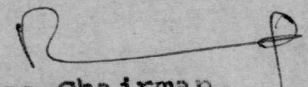
4. We have considered the submissions of counsel for parties. In our opinion, the order of revisional authority enhancing the punishment awarded to the applicant ^{suffered} from manifest illegality and cannot be sustained. The revisional authority has grossly failed to take in-to account that charges ^{was} against the applicant for violating ^{which} his duties mentioned in para 4.34 (b) ^{was} only found partially proved against him but the revisional authority had taken it as fully proved. Further he has also found that the applicant failed in ^{observing} ~~violating~~ his duties with regard

to para 4.34 (d) and (e) which was not part of the charge. In the facts and circumstances, the order is clearly violative of principles of natural justice as the applicant cannot be punished for mis-conduct which was not part of the charge. In our opinion, the applicant is entitled for the reliefs.

5. For the reasons stated above the O.A is allowed in part. The order of revisional authority dated 16.11.1995 (Annexure- 15) is quashed. The applicant shall be entitled for payment of the amount which was deducted from his salary on basis of the impugned order and also for restoration of seniority. The respondents to complete the exercise ^{of implementing this order,} within period of four months from the date of communication of this order.

6. There will be no order as to costs.


Member- A.


Vice-Chairman.

/Anand/