

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 2⁰⁴ DAY OF AUGUST, 2004

Original Application No.656 of 1997

CORAM:

HON.MR.JUSTICE S.R.SINGH,V.C.

HON.MR.S.C.CHAUBE, MEMBER(A)

Dr.Ishwar Chandra Jaiswal,
a/a57 years,son of Late S.L.
Jaiswal,resident of Qr.No.1204(c)
European Colony, Mughalsarai,
district Varanasi.

.. Applicant

(By Adv: Shri Vikas Budhwar)

Versus

1. Union of India through the Ministry
of Railways, Rail Bhawan,
New Delhi through its Secretary
2. The Railway Board, Rail Bhawan
New Delhi through its
Chairman.
3. The President of India through
Secretary, Government of India,
Ministry of Railways,
New Delhi.

.. Respondents

(By Adv: Shri Lalji Sinha)

O R D E R(Reserved)

JUSTICE S.R.SINGH,V.C.

The applicant was served with a charge Memo
No.SP269/D&A/ICJ dated 28.8.1985 containing the following
allegations:-

"Dr.I.C.Jaiswal, while functioning as Assistant
Divisional Medical Officer, Eastern Railway,
Plant Depot, Mughalsarai, during August,1982

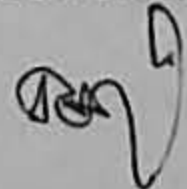
demanded and accepted a sum of Rs 26/- (Rupees Twenty six only) @ Rs 2/- per day for the sick period from 16.8.82 to 28.8.82 = 13 days) from Shri Pyare Ram, Khalasi T.N.G. 355 E.Railway Plant Depot, Mughalsarai, for issuing in his favour the Fit certificate No.A 492271 after keeping him in the sick list (hurt on duty) during the said period on account of "Cont.Rt.thumb(that is contusion on Right thumb.). In terms of Para 904(i) of Indian Railway establishment Code,(Vol.1) the said Shri Pyare Ram was, however, entitled to medical attendance by the said doctor free of charge.

He demanded a sum of Rs 45/-(Forty five only), and ultimately accepted a sum of Rs 34/-(Thirty four) only from Shri Nandlal, Semi-skilled Rivettor(Ticket No.G 75) under Shop Superintendent (G),E.Railway, Plant Depot, Mughalsarai, for issuing him in the Sick List (Hurt on duty) during the period 13.10.82 to 8.11.82 on account of 'Cont.U ab.Lt.leg'(i.e.Contusion with abrasion on left leg). In terms of para 904(i) of Indian Railway Establishment Code,Vol.1 the said Shri Nandlal was however entitled to medical attendance by the said doctor free of charge.

Dr.I.C.Jaiswal demanded and accepted a sum of about Rs 18/-(Rupees Eighteen) only @ Rs 2/- per day from 19.5.82 to 27.5.82, from Shri Balroop, Semi-skilled Rivettor, Ticket No.G 76, under Shop Superintendent(G), Eastern Railway Plant Depot, Mughalsarai, for endorsing Duty Fit Certificate on a P.M.C(private Medical Certificate) issued in favour of the said Shri Balroop by a Private Medical Practitioner named Dr.Ganga Dayal(Regd.No.5718) on account of 'Vever' in terms of para 904(i) of Indian Railway Est ablishment Code, Vol.1 the said Balroop was however, entitled to medical attendance by the said doctor free of charge."

Regd

While the applicant was functioning as Assistant Divisional Medical Officer, Eastern Railway Plant Depot, Mughalsarai during August 1982, he is alleged to have demanded and accepted illegal gratifications as referred to in the charge memo. On receipt of the charge memo the applicant filed his reply. The inquiry into the charges levelled against the applicant was held by Vijailakshmi Sharma, CDI CVC who gave her report on 29.1.1988 holding the applicant guilty of the charges levelled against him. The applicant was served with the inquiry report vide letter dated 4.12.1989 in response to which he gave his representation dated 26.12.1989. The President after considering the inquiry report filed by the applicant found in consultation with the U.P. Public Service Commission, that the charge of illegal gratification levelled against the applicant was established. The President accordingly held that the applicant exhibited lack of integrity and conduct unbecoming of a Government servant, thereby violating Rule-3 of Railway Servants(Conduct) Rules, 1966 and decided to impose penalty of removal from service on the applicant and accordingly issued the order dated 22.1.1991(Annexure A-1) which contained a stipulation to the number of appeal lay against the order, but the applicant had a right to submit a mercy petition to the President under Rule 31 of the Railway Servants(Discipline&Appeal) Rules, 1968. Aggrieved the applicant filed OA No.155/91 and the only infirmity in the inquiry alleged before the Tribunal was that the applicant was not allowed to examine one Dr.M.Razi as his defence witness. The Tribunal held that



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although there was nothing to indicate as to how the evidence of this witness would have materially altered the findings of the Inquiry Officer but in case it could be shown that the respondents refused to allow the applicant to examine the said witness without any justifiable reason, that fact alone would have vitiated the inquiry. The Tribunal then proceeded to examine the circumstances in which Dr.M.Razi could not be examined as a defence witness and held that the inquiry was adjourned to give an opportunity to the applicant to produce his witness but on the date fixed the witness himself indicated his inability to attend the same due to his ill-health and that there was nothing on record to indicate that the applicant requested for further adjournment of the proceedings to enable him to produce his witness. The categorical findings recorded by this Tribunal on this score was: "we cannot accept the contention of the applicant that he was denied reasonable opportunity to defend himself."

On the merits of the findings recorded by the Inquiry officer the Tribunal noted the principles of law that it did not have an appellate jurisdiction with regard to the disciplinary matters and that it cannot substitute the findings of the Inquiry Authority or the Disciplinary Authority by its own findings unless the findings of the Inquiry Authority or the Disciplinary Authority are either perverse on the face of evidence on record or such findings are based on no evidence at all. The Tribunal held that there was no perversity in the findings of the Inquiry officer with regard to article of charges 1 and 3 justifying interference by the Tribunal. Other points raised by the

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applicant /too were repelled by the Tribunal in its judgment dated 12.9.1996. One of such points raised was that the applicant was prejudiced due to non supply of the advice given by the U.P.P.S.C. The Tribunal held that the provisions for supplying the advice of the Commission as contained in the Railway Servants Conduct Rules come after the provisions for imposition of penalty and that the provision requiring supply of Commission's report after imposition of penalty was only to safeguard filing of appeal or revision petition by the delinquent and in that view of the matter there have been no prejudice caused to the applicant till the imposition of penalty due to the reason of failure to furnish a copy of the Commission's advice. In this way ^{of 2} /the matter, the Tribunal gave an opportunity to the applicant to file a revision petition before the President which ^{if} /filed" shall be considered and decided by a speaking order within a period of 3 months from the date of receipt of this order." The applicant then filed a revision under Rule 25 of the Railway Servants (D&A) Rules. The revision petition came to be dismissed by the President vide order dated 2.5.1997 which reads as under:-

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GOVERNMENT OF INDIA

MINISTRY OF RAILWAYS

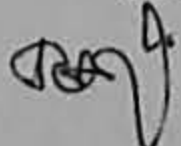
(RAILWAY BOARD)

No.E(O)1-89/PU-2/2

New Delhi dated 2.5.97

O R D E R

The President has carefully considered the revision petition dated 24.10.1996 filed by Dr.I.C.Jaiswal Ex-ADMO/Eastern Railway Mughalsarai against the penalty of removal from service imposed on him vide order



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No.E(O)1-89/PU-2/2 dated 22.01.1991. The President after careful consideration of the petition and all other records of the case, has observed as under:-

"I have carefully considered the revision petition dated 24.10.1996 filed by Dr.I.C. Jaiswal, Ex-ADMO/Eastern Railway, Mughalsarai against the penalty of removal from service imposed on him vide orders dt.22.01.1991. I have also considered all other relevant records of the case, including the defence statement dated 11.10.1985 submitted by Dr.I.C.Jaiswal in reply to the charge memorandum No.SP269/D&A/ICJ dated 28.8.85 the inquiry report and proceedings thereof as also his representation dt.26.12.1989 on the inquiry report.

I also find that reasonable opportunity was given to Dr.Jaiswal, both during the inquiry and thereafter. The penalty of removal from service was imposed on Dr.Jaiswal strictly in accordance with the rules and procedures and also the principles of natural justice. I am convinced that there is no merit in the revision petition of Dr.Jaiswal which calls for revision/modification in the penalty. I therefore, reject the revision petition preferred by Dr.Jaiswal."

The Revision Petition of Dr.Jaiswal is accordingly rejected. Dr.I.C.Jaiswal is hereby informed of the President's decision.


Dr.Jaiswal is required to acknowledge receipt of the order in writing.

Sd/

A.K.Basu

Jt.Secy(E)Rly.Board

Dr.I.C.Jaiswal
Ex.ADMO
Eastern Railway



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The learned counsel appearing for the applicant has raised before us two submissions:-

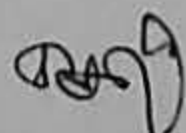
- i) That the applicant was denied opportunity to examine the material witness Dr.M.Razi which vitiated the inquiry proceedings; and
- ii) That the revisional order is a non-speaking order and hence it is liable to be set aside.

The learned counsel for the respondents, on the other hand, has refuted the submissions and urged that Dr.M.Razi was a defence witness and the applicant was given an opportunity to examine him but by means of his letter dated 13.1.1988 the witness expressed his regrets to appear before the Inquiry officer since he was suffering from diabetes Mellitus and Hypertension with Coronary insufficiency and therefore it was not possible for him to take extraneous journey by train.

We have given our anxious consideration to the submissions pointed out hereinabove. The Tribunal in its earlier judgment has repelled all the points raised by the applicant including the point regarding examination of Dr.M.Razi. It is not the case that the applicant was denied opportunity to produce the defence witness. There is nothing on record to show that after the letter of Dr.M.Razi, copy of which has been annexed to the supplementary counter affidavit, any effort was made by the applicant to get the inquiry postponed with a view to enabling him to summon Dr.M.Razi in support of his case. The plea as to denial of opportunity upto the stage of punishment was specifically turned down by the Tribunal in its earlier order and no new ground was made out in the revision petition so as to warrant interference by the President in exercise of revisional power under Rule 25 of the Railway Servants(D&A) Rules,1968. We have no reason to take a contrary view on this score.

Ref

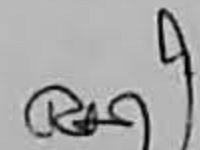
Shri Vikas Budhwar, counsel for the applicant has then submitted that the revisional order is a non-speaking order despite direction by the Tribunal to dispose of the revision by a speaking order. It is true that by virtue of sub-rule(3) of Rule 25 of the Railway Servants (D&A) Rules, 1968 an application for revision is required to be dealt with in the same manner as if it were an appeal under these rules. The Hon'ble Supreme court in 'Ram Chander Vs. Union of India, AIR 1986 SC 1173 took^x has held that the appellate order must be a reasoned one. In the instant case, however, the order passed by the President in exercise of revisional power under Rule 25 of the Railway Servants(D&A) Rules 1968, in our opinion, cannot be said to be a non-speaking order. The order dated 2.5.1997(Annexure A-2) is a reasoned order passed after proper self direction to all the relevant materials on record including the defence statement. The President, in our opinion, was not required to pass a detailed order while disposing of the revision under Rule 25 of the Railway Servants(D&A) Rules, 1968. The order extracted hereinabove, would indicate that the President was conscious of the points raised by the applicant in the revision petition and has disposed of the revision after proper self direction to the points raised and the material on record. The order shows application of mind to the facts of the case and the grounds taken in the memo of revision. The order being one of affirmance was not required to say more than what has been said in the order dated 2.5.1997. The view we are taking finds support from the decision of Hon'ble Supreme Court in State Bank of India Bhopal Vs. S.S.Koshal, 1994 27 ATC 834.



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In view of the above discussion, we find no merit in this OA and the same is accordingly dismissed. We, however, make no order as to costs.


MEMBER(A)


VICE CHAIRMAN

Dated: August 20, 2004

Uv/