

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Dated : This the 19th day of MAY 2004.

Hon'ble Mr Justice S.R. Singh, Vice-Chairman  
Hon'ble Mr. S.K. Hajra, Member (Administrative )

Original Application no. 813 of 1997.

Khan,  
Aftab Ahmad / s/o Sri Hamid Ali Khan,  
R/o Mohalla Maulvi Badan Khan,  
House no. 4/6 Bajaria,  
Farrukhabad.

... Applicant

By Adv : Sri M.K. Updhyaya

V E R S U S

1. Union of India, through Ministry of Railway,  
Railway Board, New Delhi.
2. Divisional Railway Manager, (Engg.) Sr. DEN-II,  
North Eastern Railway, Izatnagar, Distt. Bareilly.
3. Assistant Engineer, N.E. Railway,  
Fatehgarh, Distt. Farrukhabad.

... Respondents

By Adv : Sri A.V. Srivastava

ALONGWITH

Original Application no. 1176 of 1995.

Aftab Ahmad Khan, s/o Sri H.A. Khan,  
R/o Mohalla Maulvi Badan Khan,  
House no. 4/6 Bajiria, Distt. Farrukhabad.

... Applicant

By Adv : Sri H.N. Sharma  
Sri Monaj Updhyaya

V E R S U S

1. Union of India through Ministry of Railways,  
Railway Board, New Delhi.
2. Divisional Railway Manager, N.E. Rly., Izatnagar,  
Bareilly.

Re: 9

...2/-

3. Sr. Divl. Engr.-I, N.E. Rly., Izatnagar.

4. Asstt. Engr. N.E. Rly, Fatehgarh.

... Respondents

By Adv : Sri A.V. Srivastava

O R D E R

Hon'ble Mr. Justice S.R. Singh, VC.

The applicant herein was served with major penalty charge sheet dated 28.10.1985. The allegation against the applicant is that he obtained appointment as casual labour by fraud and misrepresentation. The applicant denied the charge.

2. It would appear from the enquiry report annexed as annexure 9 to the OA that the witnesses mentioned in the charge memo did not appear and the applicant could not get an opportunity to cross-examine the witnesses and, therefore, the enquiry proceedings could not be completed. Yet the enquiry officer held that the applicant obtained employment as casual labour by misrepresentation to the Railway administration. The disciplinary authority by its order dated 17.6.1987 dismissed the applicant from service w.e.f. 19.6.1987. The said order came to be set aside by this Tribunal vide order dated 07.02.1991. The Tribunal infact allowed the OA on the premises that the applicant was not furnished with the copy of enquiry report. Accordingly, while setting aside the order, the Tribunal left it open to the disciplinary Authority to complete the disciplinary proceedings from the stage of furnishing the report of the enquiry officer to the applicant. The applicant was then furnished with the copy of the enquiry report asking him to submit his explanation. The applicant submitted his representation against the enquiry report. The Disciplinary

*Correction has been made on 27.11.89.  
OA 11/11  
V.C. 11/11*

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Authority by its order dated 15/26.9.1995 held that the applicant was not a fit person to be retained in service and accordingly ordered for his removal from service w.e.f. 15.9.1995. The appeal preferred against the said order came to be dismissed by a cryptic one line order, dated 24.09.1996, that order of punishment passed by the competent authority was correct.

3. Heard Sri M.K. Updhayaya learned counsel for the applicant and Sri A.V. Srivastava learned counsel for the respondents, perused the pleadings and also the impugned orders.

4. A perusal of the enquiry report indicates that the Enquiry Officer has although noted various shortcomings and infirmities regarding non-production of material witnesses by the Railway administration and denial of opportunity of cross-examination to the applicant, and yet the applicant was found guilty of obtaining appointment as casual labour by misrepresentation. The Disciplinary Authority visited the applicant with major penalty without recording any categorical findings with reasons on the charge levelled against the applicant. This, in our opinion, tantamount to committing an error in decision making process. The appeal preferred against the punishment imposed by the Disciplinary Authority came to be dismissed by cryptic order without recording any reasons and without proper self direction to the question raised by the applicant in his memo of appeal. Rule 22 (2) of the Railway Servant (Discipline and Appeal) Rules 1968 enjoins the duties of the Appellate Authority to consider the appeal in the light of various facts enumerate in sub clause (a) to (c) of sub Rule 2 of Rule 22. The appeal, it is well settled, is not a ~~purely~~ <sup>empty</sup> formality. The expression "appellate

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authority shall ~~consider~~ <sup>occuring</sup> in sub rule(2) casts a mandatory obligation on the appellate authority to consider the appeal in the light of factors (a) to (c) mentioned in sub rule 2 of Rule 22 vis-a-vis the points raised in the memo of appeal. The appellate authority failed to discharge its mandatory obligation, in our opinion, therefore, the order passed by the disciplinary authority as well as order passed by the appellate authority cannot be sustained.

5. Accordingly, the OA is allowed. The impugned orders dated 15.09.1995 and 24.09.1995 are quashed. The disciplinary authority is directed to take fresh decision in the matter of proper self direction to the enquiry report and the points raised by the applicant in his representation. The applicant shall be deemed to be placed under suspension, and entitled to subsistence allowance till the final order is passed by the disciplinary authority in accordance with law. No costs.

OA no. 1176 of 1995.

This OA has been filed against the transfer order. <sup>162</sup> With ~~the~~ passage of time and change of events this OA has been rendered infructuous. Accordingly the OA is dismissed having become infructuous. No costs.

*Sunay Kumar Ray*  
Member (A)

*DK*  
Vice-Chairman

/pc/