

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

Original Application No.286 of 1998.

Allahabad this the 11th day of March 2004.

Hon'ble Mr. Justice S.R. Singh, Vice Chairman.

Hon'ble Mr. S.C. Chaube, Member-A.

V.K. Gaur aged about 42 years
S/o Shri G.S. Gaur R/o RB III
Sector 11 Or No.62 Railway Colony,
Agra Cantt 282001.

.....Applicant.

(By Advocates : Sri Rakesh Verma/
Sri R.K. Nigam)

Versus.

1. Union of India
through General Manager,
Central Railway Mumbai CST.
2. Divisional Railway Manager,
Central Railway, Jhansi.
3. Addl. Divisional Railway Manager (I)
Central Railway, DRM's Office, Jhansi.
4. The Senior Divisional Mechanical Engineer,
Central Railway, Jhansi.

.....Respondents.

(By Advocate : Sri D.C. Saxena)

O R D E R

(By Hon'ble Mr. Justice S.R. Singh, V.C.)

Heard Sri Rakesh Verma learned counsel for the applicant and Sri D.C. Saxena learned counsel for the respondents. We have also perused the pleadings and order impugned herein.

2. The applicant a Railway Servant being Lab Superintendent was served with minor penalty chargesheet dated 08.11.1996 containing the following statement of imputation of charges of misconduct/misbehaviour



framed against him:-

"Shri Vinod Kumar Gaur while working as Lab. Supdt. RSK Sithouli (Gwalior) has committed the following misconduct/misbehaviour in that -

- 1) He lodged a complaint dated 5.1.1995 against Railway Administration. On investigation of the said complaint, the allegation made therein were not substantiated.
- 2) He failed to seek administrative intervention in redressal of administrative grievances but lodged baseless complaint with Vigilance.

The above said fact was detected during the investigation of the complaint for which Shri Gaur has been held responsible.

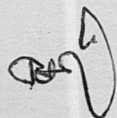
Thus by his above act of misconduct, he behaved in a manner which is unbecoming of railway servant and thereby contravened the provision made under Rule No.3.1 (iii) of Railway Services (Conduct) Rules, 1966.

(R.K. Mishra)
Sr. D.M.E. JHS
Disciplinary Authority".

3. The applicant submitted his explanation denying the charges levelled against him and demanding a copy of investigation report referred to in the statement of imputation of charges of misconduct/misbehaviour. Disciplinary Authority did not furnish the copy of vigilance report to the applicant and after considering the explanation submitted by the applicant passed the following order:-

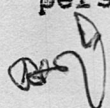
"After careful consideration of all the relevant records and the explanation submitted by the delinquent employee, I have come to the conclusion that Shri Gaur has lodged a false complaint to the vigilance. In your explanation you have asked for a copy of investigation report and the enquiry/report. However since the penalty proposed to be imposed is minor as per standard form No.11, there is no need to hold an enquiry in this case. Further vide Rly. Bds. letter No.E(D&A) 68 RG 6-26 dt; 29.6.68 there is no need of supplying the delinquent with a copy of vigilance investigation report and therefore I conclude that you are not interested to submit a proper explanation to the SE-11 issued to you. Your explanation received is unsatisfactory and therefore I imposed the punishment of Reduction to the lower stage in the same time scale for a period of 3 years (NC).

(R.K. Mishra)
Sr. D.M.E. JHS.
Disciplinary Authority".



4. A conspectus of the order dated 23.05.1997 (Annexure A-I) would indicate that although the order aforestated was signed by the Disciplinary Authority on 26.05.1997, it was issued on 23.05.1997 vide No. P-19/3843/VC/COM dated 23.05.1997. The appeal preferred against the said order came to be dismissed by a non speaking order dated 18.07.1997. Both these orders are sought to be quashed by means of this O.A.

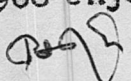
5. Sri D.C. Saxena learned counsel for the respondents has raised preliminary objection regarding maintainability of the O.A. on the ground that the applicant has an alternative remedy of revision under Rule 25 of Railway Servant (Discipline and Appeal) Rules 1968 and therefore, the Tribunal should not entertain the present O.A. It is true that Rule 25 of Rules referred to above provides for revision and power under Rule 25 is invocable either at the behest of Railway Servant or sue moto but the fact of the matter is that word 'ordinarily' used in the inhibitory clause of ~~under~~ section 20 of Administrative Tribunals Act 1985, only gives a discretion to the Tribunal not to admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. Sub- Section 20 (2) provides that for the purposes of Sub- section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances: (a) if a final order has been made by Government or other authority or officer or other person Competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or (b) where



no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired. The O.A. was admitted vide order dated 23.03.98. Having regard to the facts and circumstances of the case, we are not inclined to dismiss the O.A. at this stage even if it be held that the applicant failed to avail the remedy of revision under Rule 25 of the Rules.

6. On merits, we find that the Disciplinary Authority passed the impugned order of punishment without complying with the requirements of Railway Board's letter No.E(D&A) 68 RG 6-26 dated 29.06.68, a copy of which has been annexed as Annexure A-VII to the O.A. The said letter clearly provides that although it is not necessary to give access to the Govt. Servant to the Vigilance report, but if any reference is made, it would not be possible, to deny access to these reports. The charge memo, as stated supra, clearly made reference to the Vigilance report and in the circumstances, therefore we are of the view that the copy of Vigilance report ought to have been furnished to the applicant with a view to giving him an effective opportunity to submit his explanation in the matter. In our opinion, failure to do so is tantamount to an error in the decision making process warranting interference by the Tribunal.

7. The appellate order too is vitiated due to the reason that it has not been passed after considering the points raised by the applicant, in his memo of appeal Rule 22 (2) of the Railway Servants (Discipline & Appeal) Rules, 1968 enjoins upon the appellate authority to



"consider" the various factors referred to in clauses (a), (b) and (c) and then pass appropriate order. The word "consider" used in Rule 22 (2) is significant in that the appellate authority must properly advert itself to the infirmity, if any, pointed out by the Railway Servant in the punishment order. But in the instant case, the appellate order does not appear to have been passed after proper consideration of the issues raised in the appeal. Accordingly, both these orders are liable to be set aside.

8. In view of the above, the O.A. succeeds and is allowed. The impugned orders are set aside. Disciplinary Authority shall have liberty to pass a fresh order after furnishing a copy of vigilance report to the applicant with a view ^{to} giving him an opportunity to have his say in the matter.

No costs.

Manish
Member-A.

Manish
Vice-Chairman.

Manish/-