

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 1ST DAY OF JULY, 2002

Original Application No. 789 of 1998

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MAJ.GEN.K.K.SRIVASTAVA, MEMBER(A)

Nakchhed, son of Ghura, resident
of Ganj Khaja, P.O.Morai
Mughalsarai, district Varanasi.

... Applicant

(By Adv: shri S.K.Dey)

Versus

1. Union of India through
General Manager, Eastern Railway
Calcutta-1.
2. The Assistant Engineer(II)
Eastern Railway, Mughalsarai.
3. The P.W.I Karam Nasha at
Chandauli, Eastern Railway,
district Varanasi.

... Respondents

(By Adv: Shri K.P.Singh)

O R D E R(Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

By this application u/s 19 of A.T.Act 1985 applicant has challenged the order of punishment dated 31.10.1996 by which applicant has been deprived of increment for one year with cumulative effect and has also been warned to be careful in future. The aforesaid order has been maintained in appeal, as ^{the u} ~~appeal~~ and appeal has been dismissed by order dated 12.3.1997. Shri S.K.Dey counsel for the applicant has submitted that disciplinary proceedings against the applicant were initiated on the complaint of Asstt. Engineer(II) and Assistant Engineer(II) Eastern Railway Mughalsarai has dismissed the appeal of the applicant. It is submitted



that the Assistant Engineer was himself complainant, he could not legally hear the appeal arising out of an order passed on his complaint. It is stated that the order suffers from bias and cannot be sustained. It is also submitted that a bare reading of the order discloses that he had applied his personal knowledge for holding that the appeal was not valid and has not examined the ~~memo~~^{Charge} levelled against the applicant and his defence. To substantiate the aforesaid submissions applicant placed before us the memo of charge which is (Annexure 1) which clearly states that the complaint was filed by Assistant Engineer(II) who has decided the appeal of the applicant.

The learned counsel for the respondents, on the other hand submitted that as the applicant admitted the charge in his reply no prejudice has been caused to the applicant and interference by this Tribunal was not called for. We have carefully considered the submissions of the counsel for the parties. However, we are not convinced that applicant has not suffered any prejudice. The Appellate Authority on the basis of its personal knowledge has failed to assess judicially ~~the~~^{the} defence of the applicant. The defence of the applicant was that for a few moments he was away from the site as he was compelled to go to attend the nature's call. The ~~moment of reaching the~~^{he saw the coming of} train, he ran and reached the spot and removed the flag. His submission was that the absence was bonafide and there was no negligence of duty. In our opinion, since the Appellate Authority was himself complainant, he could not appreciate independently the defence of the applicant, without there being any prejudice. In the facts and circumstances of the case the possibility of prejudice and bias cannot be

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ruled out and the order of the Appellate Authority cannot be sustained. Thus, the applicant is entitled for relief.

For the reasons stated above the OA is allowed in part. The order of the Appellate Authority dated 12.3.1997(Annexure 6) is quashed. The appeal of the applicant shall stand restored and shall be considered and decided afresh in accordance with law by the Appellate Authority who shall be other than the Asstt. Engineer(II) who was complainant in the matter. As the matter is very old, the appeal of the applicant shall be decided by a speaking order within four months from the date a copy of this order is filed. However, there will be no order as to costs.



MEMBER (A)



VICE CHAIRMAN

Dated: 1st July, 2002

Uv/