

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO.956 OF 1998

ALLAHABAD THIS THE 30th DAY OF November 2006.

HON'BLE MR. JUSTICE KHEM KARAN, VICE-CHAIRMAN
HON'BLE MR. M. JAYARAMAN, Member-A.

Smt. Manju Dixit aged about 35 years
Wife of Sri Pradeep Kumar, Resident of
86- Premganj Sipri Bazar, Jhansi.

.....Applicant

(By Advocate: Sri K. Agrawal/Sri S.K. Mishra)

Versus.

1. Union of India through the Secretary, Ministry of Railways, New Delhi.
2. The Divisional Railway Manager, Central Railway, Jhansi.
3. Additional Divisional Railway Manager (I), Central Railway, Jhansi.
4. The Senior Divisional Personnel Officer, Central Railway, Jhansi.
5. The Divisional Personnel Officer, Central Railway, Jhansi.
6. Sri A.K. Jain, Chief Personnel Inspector, Office of Divisional Railway Manager, Central Railway, Jhansi.

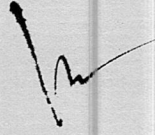
.....Respondents

(By Advocate: Sri P Mathur)

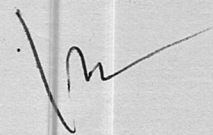
ORDER

BY MR. JUSTICE KHEM KARAN, VICE-CHAIRMAN

The applicant has prayed for quashing (a) order dated 14.7.1997 (Annexure A-1) by which the respondent No.5 dismissed her from service, (b) order dated 8.1.1998 (Annexure A-2) and order dated 28.5.1998 (Annexure A-3) by which her appeal as well as revision were rejected. She prays that the respondents be directed to treat her in service with all consequential benefits.

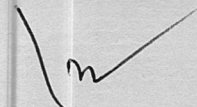


2. There is no dispute ^{that} she was given compassionate appointment in 1989, on death of her father. While she was working as Junior Clerk in the office of Station Master, Jhansi, in May 1997, she was served with a memorandum of chargesheet dated 2.5.1997 (copy of which is Annexure A-5 in compilation No.2). In brief, the charge against her was that while working as Junior Clerk in the office of Station Master, Jhansi, in 1997, she prepared a salary Bill in favour of Asstt. Station Master, Krishna Gopal, for period commencing from 23.3.1997 to 30.4.1997, ⁴ though Shri Gopal was not entitled to the salary of that period and thus she exhibited carelessness and negligence. She denied the charges by sending a written reply dated 12.5.1997. One Ashok Kumar Jain, Chief Personnel Inspector (Opposite Party NO.6) was appointed as Enquiry Officer to enquire into the matter. He submitted a report dated 9.6.1997 (Annexure A-16 in compilation NO.2) holding the charge proved. In turn, the respondent No.3 sent the copy of report to the applicant, asking her to submit representation, if any. The applicant submitted a written representation dated 1.7.1997 (copy of which is Annexure A-18 in compilation NO.2) contending inter-alia that the proceedings were not conducted in accordance with Rules and the Enquiry Officer was highly biased and sole intention was to ensure that the applicant was punished. She alleges that as Punishing Authority was predetermined to punish the applicant, so ignoring the said representation it passed the impugned order dated 14.7.1997, dismissing her from service. She preferred appeal under Rule 18 of Rules of 1968, to respondent NO.4 but the same was rejected vide order dated 8.1.1998. Aggrieved of both these orders, she preferred a revision/review under Rule 25 of Rules of 1968 but that was also rejected vide order dated 28.5.1998. The main grounds on which she is attacking the punishment order ~~are~~ are:



- (i) *That Sri A.K. Jain, the Enquiry Officer being subordinate to the Divisional Railway Manager was not competent to hold a formal enquiry as fact finding enquiry had been conducted by his much superior officer, namely Divisional Railway Manager.*
- (ii) *That her representation for change of Enquiry Officer was not dealt with in terms of Railway Board letter dated 19.6.1974 so the Enquiry conducted by Sri A.K. Jain was totally vitiated in law.*
- (iii) *That in conducting the enquiry, Rule 9 of the Rules of 1968 was violated.*
- (iv) *That the finding of guilt is based on no evidence as the Department did not adduce any evidence to prove the genuineness of the documents and to prove the allegations.*
- (v) *That no oral enquiry was held as required under the law.*
- (vi) *That she was not afforded reasonable opportunity of hearing so much so her request for adjourning the enquiry because of her illness was arbitrarily rejected.*
- (vii) *That she was not given opportunity to lead evidence in her defence.*
- (viii) *That Senior Clerk Smt. Shashi Hunder also found guilty in connection therewith has been let off with minor punishment, whereas the applicant has been visiting with major penalty of dismissal from service.*
- (ix) *That punishment of dismissal is not commensurate with guilt so proved as there is no charge against her that she did so with a view to get wrongful gain or to allow Sri Krishna Gopal to have such wrongful gain.*

3. The respondents have contested the claim of the applicant, by saying that she was given reasonable opportunity of hearing and she herself avoided to avail of the same by absenting on most of dates so fixed by Enquiry Officer for holding the enquiry. They say that it is not correct to say that preliminary enquiry into the matter was held by Divisional Railway Manager so there is no basis to say that respondent

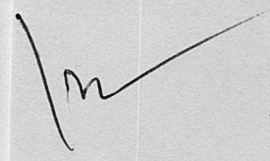


NO.6 could not have held the formal enquiry. It has also been said that there was no clear cut request for change of enquiry officer on the ground that he was biased. According to them, the allegation that Divisional Railway Manager or other officers were predetermined to punish her are not wellfounded. It is, however, conceded in para 19 of the reply that no oral enquiry was held, as according to the respondents, no oral enquiry was required, as documents listed in the chargesheet were sufficient enough.

4. We have heard Sri S.K. Mishra, learned counsel for the applicant and Sri P. Mathur, learned counsel for the respondents and have also perused the entire material on record. Shri P Mathur has also placed on record, written arguments, after the matter was heard.

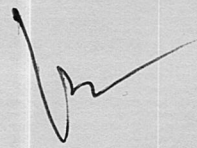
5. We are of the view that orders impugned in this original application deserves to be quashed on the ground that applicant was not afforded reasonable opportunity of hearing and enquiry was not conducted in accordance with law.

6. This much is admitted that the charges were denied by the applicant and it was for this reason that the Disciplinary Authority decided to get the matter enquired into and for that purpose appointed respondent NO.6 as Enquiry Officer. There is further no denial of the fact that the Enquiry Officer did not hold oral enquiry. In other words, he did not ask the Department to lead oral evidence to prove the genuineness or contents of the documents, cited in the chargesheet. The defence of respondents is that no oral evidence was needed at all. There is further no material to satisfy us that the enquiry officer fixed any date for defence evidence. Law on the point is well settled that even if delinquent



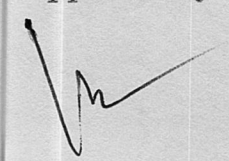
official is not appearing or participating in the Enquiry, or enquiry is virtually proceeding ex-parte, the enquiry officer has to ask the Department to lead its evidence in support of charge or charges and after the evidence is so closed, ask the delinquent official to lead his evidence in defence. It would be appropriate to recall the following observations of the Division Bench of Hon'ble High Court in *Govind Lal Srivastava Vs. State of U.P and others* [(2005) 2 UPLBEC 1530] (Lucknow Bench):-

"Para 12- It is condinal principle of law that in a domestic enquiry the charges levelled against the delinquent officer have to be proved by the Department itself, that too from the material on record and if necessary by adducing evidence. In doing so, it is obligatory on the enquiry Officer to give opportunity to the delinquent officer to controvert report such evidence or to adduce such evidence, which may falsify or felie the case of the department. In nutshell, the delinquent officer has right to demolish the case of the department or prove his innocence, but in no case the delinquent officer is required to disprove the charges before they are put to proof by the Enquiry Officer through agency of the department.....It is always essential in any proceedings, where right of defence or onus of establishing a charge is involved, clear order and intimation about date, time or place and the purpose for which the date has been fixed, should be given by the officer, who is holding enquiry. The delinquent will be hardly knowing as to what report and what additional facts, he should mention before the Enquiry Officer, when charges are not being said to be proved and even before the steps being taken for proving the charges. It is only when the charges are sought to be proved that the delinquent has a right to controvert and rebut the same".



"Para 13- The procedure of domestic enquiry need not be detailed by us.....Even mere non submission of reply to the charge sheet or not asking for opportunity of producing witnesses or evidence would not in itself be sufficient to hold that the opportunity was not availed by the delinquent, though given the Enquiry Officer, on date, time, and place who is to be fixed by him and intimated to the delinquent officer has to proceed with no enquiry by first asking the department to prove the charges by adducing such evidence, which may be necessary for the purpose and relying upon the documents, which may be relevant and thereafter has to afford an opportunity to the delinquent to cross examine the witnesses so adduced or to produce any witness or adduce any evidence in rebuttal....."

7. It is true that Indian Evidence Act does not, in terms, apply to these formal Disciplinary Proceedings so technical rules of Evidence Act cannot be pressed into service but the principles of evidence will apply. We are of the view that if the Department is relying on certain documents in support of charge and if those documents are not admitted to the Delinquent Officials or the same are being disputed by him, the Enquiry Officer must ask the Department to prove the genuineness and contents of those documents before treating the same as evidence. This is because if the documents cited in the chargesheet and denied by the delinquent official, are treated as proved of what is stated therein, without affording an opportunity to the delinquent official to meet the same, by cross-examining their author etc, may cause great prejudice to the employee concerned. In case its author or someone else charged with the duty of maintaining or keeping the record comes as a witness prove its genuineness or contents, the delinquent official gets an opportunity to



test the same by the process of cross examination. It is never the case of the respondents that the applicant had admitted all those documents cited in the chargesheet. So we find that by not holding the enquiry in the manner stated above, the enquiry officer committed a grave irregularity vitiating the finding of guilt as recorded by him.

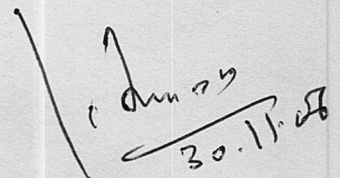
8. In view of what we have found above, the proper course seems to be to set aside the impugned orders with liberty to the Disciplinary Authority to hold fresh enquiry if he thinks so fit from the stage of submission of reply to the chargesheet. There is no need for entering into the other arguments.

9. The Original Application is allowed and impugned orders dated 14.7.1997 (Annexure A-1), 8.1.1998 (Annexure A-2) and 28.5.1998 (Annexure A-3) are hereby quashed but with liberty to the Disciplinary Authority to hold fresh enquiry if he thinks so fit, from the stage of submission of reply to the Chargesheet and orders be passed in accordance with the Rules of 1968 as expeditiously as possible.

No order as to costs.



Member-A


30.11.28

Vice-Chairman.

Manish/-