

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 1147 OF 1998
ALLAHABAD THIS THE 12th DAY OF March 2004

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A
HON'BLE MR. A. K. BHATNAGAR, MEMBER-B

J.N. Chaudhary,
S/o Shri J.L. Chaudhary,
Permanent Way Inspector Grade-II now
Section Engineer (Permanent Way),
Janghai, District-Jaunpur.Applicant

(By Advocate Shri N.L. Srivastava)

Versus

1. Union of India,
through its General Manager,
Northern Railway,
Badauda House,
New Delhi.
2. Divisional Superintendent Engineer-II,
Northern Railway, Lucknow.
3. The Additional Divisional Rail Manager-I,
Northern Railway, Lucknow.
4. Divisional Superintendent Engineer (Co-ordination),
N.R., Lucknow.

.....Respondents

(By Advocate Shri P. Mathur)



O R D E R

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A

In this O.A* filed under section 19 of Administrative Tribunals Act 1985, the applicant has prayed for quashing the impugned punishment order dated 23.06.1997 with all consequential benefits.

2. The facts of the case, in short, are that on 23.07.1996 the applicant was working as Chief Permanent Way Inspector (in short C.P.W.I.) now . . . designated as Senior Section Engineer in the pay scale of Rs.7450-11500/-. On 23.07.1996 there were two P.W.I.s working under him and the duties of each P.W.I. was to maintain 35kms Track Parameter. On 23.07.96 the Express Train No.4265-up derailed . due to mistake of Shri A.A. Khan P.W.I.who was the Incharge of relevant Track Parameter at Janghai. After derailment a joint note was prepared by the officers of Engineering Department. As per the applicant only one representation from Mechanical Department and Engineering Department should sign the joint note but just to increase the majority of the Mechanical Department three officers had been nominated from the Mechanical Department. They formed an opinion against the Engineering Branch and thereby violated instructions of Accident Manual of Railway Department. The applicant submitted a dissent note to respondent no.2 on 30.07.1996 pointing out the irregularities in the joint note. However, the applicant was served a chargesheet dated 04.12.1996. The applicant denied the charges, enquiry officer was appointed and after the conclusion of enquiry the punishment order dated 23.06.1997 was passed. The applicant filed an appeal on 07.08.1997 before the appellate authority i.e. respondent no.3. Since the same was not decided for more than a year the



the applicant filed this O.A. on 05.10.1998 and the same was admitted on 30.10.1998. The O.A. has been contested by the respondents by filing CA.

3. Shri N.L. Srivastava, learned counsel for the applicant submitted that the impugned punishment order dated 30.06.1997 is illegal as the applicant was not given a reasonable opportunity of hearing because he was not supplied the copy of the enquiry report before the issue of the punishment order. The action of the respondents is violative of Principles of natural justice. The Enquiry Officer did not supply the copies of the relied upon documents as mentioned in (Annexure A-4) SF-5 though he requested for the same vide his letter dated 28.04.1997 and 10.05.1997.

4. The learned counsel for the applicant further argued that the names of three persons have been mentioned as prosecution witness in the chargesheet but none turned up during the enquiry and thus, the applicant was denied the opportunity of cross examination. The learned counsel for the applicant finally submitted that the appellate order passed on 06.05.1999 (RA-1) is non-existent in the eyes of law as the same could not be passed by the appellate authority once the O.A. had been admitted on 30.10.1998.

5. Resisting the claim of the applicant the learned counsel for the respondents submitted that there is no violation of any statutory rules in conducting the enquiry against the applicant and the impugned punishment order was passed after affording full opportunity of hearing to the applicant.

6. The learned counsel for the respondents further



submitted that though the applicant is aware of the appellate order dated 06.05.1999 he has not challenged the same by filing any amendment application and since the punishment order has merged with the appellate order the applicant cannot be given any relief.

7. We have heard the counsel of the parties, considered their submissions and perused records. In para 4.5 the applicant has averred that he made application for supply of the documents mentioned in (Annexure A-4) of the chargesheet dated 04.12.1996 on 28.04.1997 and 10.05.1997 when the enquiry officer did not supply the documents. This version of the applicant has not been refuted by the respondents in para 7 of their counter affidavit. The specific allegation of the applicant in para 4.7 is that the prosecution witnesses did not turn up during the enquiry and he was denied the chance of cross examining them. This point of the applicant has also not been rebutted anywhere in the CA. In para 4.11 the applicant has stated that the copy of the enquiry report was not supplied to the applicant before passing the impugned punishment order dated 23.06.1997. This argument of the applicant has also not been specifically rebutted by the respondents. In fact the respondents have given vague reply in para 12 of the counter affidavit. We do not agree with the contention of the learned counsel for the respondents that the impugned order of punishment was passed after affording the full opportunity to the applicant. In view of the law laid down by the Hon'ble Supreme Court of India in the case of Kashinath Dikshita Vs. U.O.I. A.T.R. 1986(2) S.C. 186/we find that the applicant has been denied the reasonable opportunity to defend himself and thus, there has been violation of Principles of Natural Justice. We also find substance in the argument of the learned counsel for the applicant that the

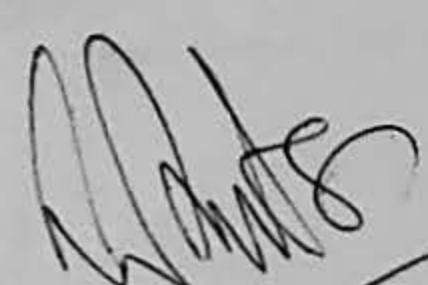
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appellate order dated 06.05.1999, passed after the D.A. was admitted on 30.10.1998, is nonest in the eyes of law. The Hon'ble Supreme Court in the case of U.O.I. Vs. Mohd. Ramzan Khan 1990(2) S.C.A.L.E. 1094 has held that whenever there has been an enquiry officer and he has furnished the report to the disciplinary authority at the conclusion of the enquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and render the final order liable to be challenged thereafter. The law laid down by Hon'ble Supreme Court is directly applicable in this present case. Thus, in our opinion once there has been violation of Principles of Natural Justice, the impugned punishment order dated 23.06.1997 cannot sustain in the eyes of law.

8. In the facts and circumstances and our aforesaid discussions, the D.A. is allowed. The punishment order dated 23.06.1997 is quashed with all consequential benefits. As regards the appellate order dated 06.05.1999, the same is also quashed being nonest in the eyes of law.

9. There shall be no order as to costs.


Member-J


Member-A

/Neelam/