

Open Court.

Central Administrative Tribunal
Allahabad Bench : Allahabad.

Original Application No.122 of 1998.

Allahabad this the 17th day of March 2004.

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

Hon'ble Mr. D.R. Tiwari, Member-A.

A.K. Raha,
Ex. Driver (Electric)
Gr. A. N. Rly.
Allahabad. Resident of 206,
L.I.G. Colony, Sector-2,
Jhunsi, Allahabad.

.....Applicant.

(By Advocate : Sri B. Tewari)

Versus.

1. Union of India
through General Manager,
N. Rly. New Delhi.
2. The Divisional Rly. Manager,
N. Rly. Allahabad.
3. The Addl. Divisional Rly. Manager,
N. Rly. Allahabad.
4. Sr. Divisional Electrical Engineer, (R.S.O)
N. Rly. Allahabad.

.....Respondents.

(By Advocate : Sri P Mathur)

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

Heard Sri B Tewari learned counsel for the applicant,
Sri P Mathur learned counsel for the respondents and
perused the pleadings.

2. By impugned order dated 26/28.11.1996 (Annexure A 1),
was ~~✓~~
the applicant visited with the penalty of compulsory
retirement from service with effect from 20.11.1996. The
charge against the applicant was that while working

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as Driver Passenger in Train No.5622Dn on 4.9.1995, he failed to control his train and home signal B.E.O. which was in danger position and thereby violated the general Rule 3.78 (i) (a) (b) and 3.80 (i) and 3.81 (c). The Enquiry Officer held the charge levelled against the applicant not proved. The Disciplinary Authority, however, disagreed with the findings recorded by the Enquiry Officer and found the applicant guilty and imposed penalty of compulsory retirement w.e.f. 26/28.11.1996 by order impugned herein.

3. The learned counsel for the applicant has raised three submissions: First, that the order of compulsory retirement with retrospective effect was not sustainable; second, that the Disciplinary Authority was not justified in holding the applicant guilty of charges levelled against him and imposing the penalty of compulsory retirement without first communicating his tentative findings of disagreement with the Enquiry Report to the applicant; and third, that the charge levelled against the applicant was merely a charge of negligence and therefore, the applicant was not liable to be punished on such a charge.

4. Sri P Mathur learned counsel for the respondents, in reply, has submitted that since the applicant had accepted the charges, it was not necessary for the Disciplinary Authority to have communicated his tentative disagreement with the findings recorded by the Enquiry Officer to the applicant; that the charge against the applicant was not a charge of simple negligence but that of a grave negligence amounting to misconduct warranting disciplinary action against him; that the applicant has approached the Tribunal without availing

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the statutory remedy of appeal and hence the O.A. is liable to be dismissed on this ground alone.

5. The order of punishment was passed on 26/28.11.96 giving it retrospective effect from 20.06.1995. In our view, the punishment with retrospective effect i.e. from a date anterior to the date of impugned order of punishment was not justified. However, it can be sustained on merits it may be made effective from the date of the order. So far as the second question as to whether the Disciplinary Authority was under legal obligation to communicate the reason for disagreement to the Charged Officer alongwith the report of enquiry before holding the charged officer guilty of charge levelled against him suffice to say that after the judgment of Hon'ble Supreme Court in case of Managing Director (ECIL) Hyderabad Vs. B Karunakar (JT 1993 (6) SC-1) it has been provided that where the Inquiring Authority holds a charge as not proved and the Disciplinary Authority takes a contrary view, the reasons for such disagreement must be communicated in brief to the Charged Officer alongwith the report of Inquiry so that the charged officer can make an effective representation. This procedure, it is provided in the Railway Board's letter, would require the Disciplinary Authority to first examine the report as per the law laid down and formulate its tentative views before forwarding the Inquiry report to the charged officer. The acceptance of the charge, if any, on the part of the applicant did not find favour with the Inquiring Authority and in case the Disciplinary Authority was in disagreement with the view taken by the Inquiring Authority it ought to have formed a tentative opinion and furnished the reasons of disagreement to the applicant alongwith copy of enquiry report with a view to affording an effective opportunity of making his submission. This procedure

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though laid down in the Railway Board Circular has not been followed in the instant case. The order of punishment, therefore, stands vitiated due to breach of principle of natural justice.

6. As regards ~~the~~ submission that the alleged imputation of misconduct/misbehaviour was merely a case of negligence not amounting to misconduct suffice to say that the word misconduct is not capable of precise definition and in the fact situation of a given case performance of duty in a manner inconsistent with the faithful discharge of duty, say, e.g. a case of gross negligence, may tantamount to misconduct warranting disciplinary action. Applicability of State of Punjab and others Vs. Ram Singh Ex-Constable, (1992) 4 Supreme Court Cases 54 and Vishwanath Mishra Vs. U.P. Public Services Tribunal and others, 1985 (2) A.L.R. 708 relied on by learned counsel for the applicant would depend on a finding as to whether the lapse on the part of applicant was in the realm of simple negligence or a gross negligence, reflecting lack devotion to duty. Since this question has not been examined by the Disciplinary Authority, expression of any opinion on the question as to whether the lapse on the part of the applicant reflected lack of devotion to duty or it was a case of simple ignorable negligence is not required at this stage.

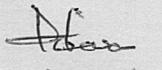
7. So far as the plea of maintainability of the O.A. due to the reason that the applicant has approached the Tribunal without availing remedy of appeal, we are of the view that 'ordinarily' O.A. should not be 'admitted' unless the applicant has exhausted the alternative remedy. In view of the assertion that the appeal was filed we are not persuaded to dismiss the O.A. On the

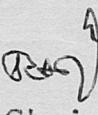
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respondents' plea that applicant did not avail of the remedy of appeal.

7. In view of the above discussion, the O.A. succeeds and is allowed. Impugned order dated 28.11.1996 is set aside. Applicant shall be entitled to consequential benefits. It is, however, clarified that the respondents shall have liberty to proceed in the matter in accordance with law and in the light of the observations made in this order.

No costs.


Member-A.


Vice Chairman.

Manish/-