

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1364 of 1998

Allahabad this the 27th day of January, 2004

Hon'ble Mr. Justice S.R. Singh, Vice Chairman,
Hon'ble Maj Gen K.K. Srivastava, Member(A)

Chakki Lal Son of Shri Hira Lal, Permanent resident
of Village and Post Ratausa, Tahsil Mauranipur, Distt.
Jhansi U.P.

Applicant

By Advocates Shri Satish Dwivedi
Shri Anil Dwivedi

Versus

1. Union of India through the Secretary, Ministry
of Railway, Government of India, New Delhi.
2. The Assistant Divisional Railway Manager, Central
Railway, Jhansi.
3. The Assistant Engineer, Central Railway Head
Quarter, Jhansi.
4. Permanent Way Inspector (Yard), Central Railway,
Jhansi.

Respondents

By Advocate Shri G.P. Agarwal

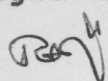
O R D E R (Oral)

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

Heard Shri Satish Dwivedi, counsel for the
applicant and Shri G.P. Agarwal, learned counsel
representing the respondents. We have also perused the
pleadings.

2. By the charge memo dated 06.02.1995 the
applicant was charged with the unauthorised absence

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from duty from 20.08.92 to 15.01.95. It appears that the Enquiry Officer in his report held the charge levelled against the applicant as proved. Copy of the inquiry report, according to the averments made in the O.A. , was not furnished to the applicant and the disciplinary authority agreeing with the findings recorded by the Enquiry Officer imposed the penalty of removal from service by the impugned order dated 08.12.95. The applicant preferred appeal vide memo dated 18.01.96 (annexure A-14). The appellate authority, it appears, upheld the penalty of removal from service vide order dated 20.05.97, which was communicated to the applicant vide letter dated 27.05.97(annexure A-2). Revision preferred against the said order too met with the fate of dismissal. Aggrieved, the applicant has preferred the instant original application.

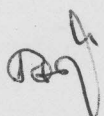
3. Shri Satish Dwivedi, learned counsel appearing for the applicant has urged that the points raised by the applicant in his memo of appeal(annexure A-14) were not properly adverted to by the appellate authority and the order passed by the appellate authority too is cryptic and contains no reasons. Actual order passed by the appellate authority is not on record before us but as stated in the counter affidavit, the appeal was dismissed upholding the penalty of removal from service. The Revisional Authority too, according to the counter-affidavit, dismissed the revision by a non speaking order. Shri Dwivedi has submitted that non-supply of the inquiry report seriously prejudiced the applicant in his defence. Shri Agarwal on the other hand submitted that non submission of the inquiry report by itself would not vitiate the impugned order of

punishment in view of the fact that unauthorised absence from duty is well established on the basis of material on record, and the applicant too did not dispute his long absence from duty.

4. The question that arises for consideration is as to whether the appellate authority was duty bound to consider the questions raised by the applicant in the memo of appeal including the question as to effect of non-supply of the inquiry report. Perusal of Sub-rule (2) of Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968 would indicate that the appellate authority is duty bound to consider:-

- (a) whether the procedure laid down in these rules has been complied with, and if not, whether such non compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
- (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
- (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders; or
 - (i) confirming, enhancing, reducing or setting aside the penalty; or
 - (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case:"

The expression "shall consider" occurring in sub rule (2) of Rule 22, in our opinion casts an obligation on the appellate authority to address itself to the issues raised by the aggrieved party in the memo of appeal.



5. As stated above, one of the questions raised by the applicant in his memo of appeal was that he was not furnished with a copy of the inquiry report, which resulted in breach of natural justice. The jurisdiction of punishing authority to impose the penalty of removal was also challenged in the memo of appeal. These questions, in our opinion, ought to have been adverted by the appellate authority while deciding the appeal. The appeal, it may be pointed out, is not an impity formality. The appellate authority should have considered the facts and circumstances of the case and decided the appeal by a reasoned and speaking order. Though the actual order has not been brought on record but from the averments in the C.A. it appears that the appeal and revision of the applicant were dismissed by a non-speaking order.

6. At this stage counsel for the respondents submitted that it was not incumbent upon to appellate authority to reconsider the matter, Once he agreed by the findings of the disciplinary authority. We are not impressed by the submissions made by Shri G.P. Agarwal.

7. In view of the above discussion and conclusion we are of the view that the orders passed by the appellate and revisional authority should be set aside and the matter remitted to the appellate authority for deciding the appeal afresh.

8. Accordingly the O.A. succeeds and is allowed in part. The impugned orders passed by the appellate and revisional authorities are quashed. The appellate authority is directed to reconsider

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the appeal and decide if afresh by a reasoned and speaking order after considering the points raised in the memo of appeal, within four months from the date of receipt of a copy of this order. No order as to costs.

Deva
Member (A)

RG
Vice Chairman

/M.M./