

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 19th day of November, 2001.

Original Application No. 378 of 2001.

CORAM :-

Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiquddin, J.M.

Shri Gajadhar Prasad Dubey,
a/ 45 years,
S/o Shri Mahanand Dubey,
R/o 391, Diggi Colony,
Kanpur.

(Sri KK Mishra, Advocate)

..... Applicant

Versus

1. Union of India through
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Allahabad
3. Senior Divisional Personnel Officer,
Northern Railway,
Allahabad.
4. Senior Divisional Electrical Engineer(RSC),
Northern Railway,
Allahabad
5. Divisional Electrical Engineer,
Northern Railway, Allahabad

(Sri AK Gaur, Advocate)

..... Respondents

ORDER (o.r.a 1)

By Hon'ble Mr. S. Dayal, A.M.

This application has been filed for setting aside the impugned orders dated 4-11-1999, 25-5-2000 and 30-11-2000/08-12-2000. A prayer is also made for reinstatement of the applicant on his post with all consequential benefits.

2. The Applicant was proceeded against under Rule 9 of the Railway Servants(Disciplinary & Appeal) Rules, 1968 for his alleged unauthorised absence from duty from 19-9-1998 to 20-4-1999. The Inquiry Officer held the charge of unauthorised absence not established

because the applicant was lying sick under treatment and had sent regular information to the office with certificates of sickness. The disciplinary authority without recording reason of disagreement passed the order of removal from service with immediate effect. The appellate authority rejected the appeal and stated in the appeal that the punishment should have been enhanced. The revisional authority taking a sympathetic view converted the punishment to that of compulsory retirement from service.

3. The applicant has come against the above order before the Tribunal.

4. We have heard Sri KK Mishra, counsel for the applicant and Sri AK Gaur, counsel for the respondents.

5. Learned counsel for the applicant has urged two grounds before us. The first of these is that the disciplinary authority should have recorded reasons of disagreement and communicated the same alongwith the report of enquiry to the applicant to submit his explanation thereto. Learned counsel for the applicant stated that this was the requirement under Rule 10(3) of the Railway Servants (Discipline & Appeal Rule) and in so far as this has not been observed, the order of punishment is bad in law. Learned counsel for the applicant has in this connection relied upon the judgement of Apex Court Yoginath D. Badge Vs. State of Maharashtra and another, (1999) 7 SCC 739 and Punjab National Bank and Others Vs. Kunj Bihari, (1998) SCC 84.

We find from the judgement in Yoginath case (Supra) that in a case where the disciplinary committee gave reasons on the basis of which it disagreed with the finding of enquiring authority and sent a notice based on final conclusion that the charges against the applicant were established by proposing punishment, the disciplinary committee was ^{found} to the applicant not to have given any opportunity of hearing/

before taking a final decision in the matter. The second authority of Punjab National Bank & Ors Vs. Kunj Bihari Misra (Supra) relied upon by the applicant has laid down as follows :-

"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charge of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

6. It is thus the settled law that reasons of disagreement alongwith enquiry report shall be communicated to a delinquent before any definite conclusion is arrived at regarding his delinquency and liability for punishment. In so far as this procedure has not been followed in this case, the punishment order cannot be sustained without fulfilling the requirements which are obligatory under law.

7. Learned counsel for the applicant has also urged that the order of punishment passed by the Assistant Electrical Engineer (RSO), Northern Railway, Kanpur, was beyond the jurisdiction of the officer passing the said order because the officer was not the appointing authority in the case of the applicant. Learned counsel for the applicant mentioned that the Divisional Electrical Engineer was the appointing authority in this case. Since the order of punishment cannot be sustained, we need not examine this issue. The respondents shall, however, take this objection in view at the time of passing any further orders with regard to disciplinary proceedings.

3. We set aside the order of disciplinary authority dated 4/11-11-1999, the order of the appellate authority dated 25-5-2000 and the order of ~~Revisional~~ Authority dated 30-11-2000/8-12-2000. The applicant shall be reinstated in service as a consequence of this order within a period of one month. The disciplinary authority will have right to proceed from the stage of recording reasons and tentative conclusions and communicating the same alongwith enquiry report to the applicant. If the respondents do not ^{opt to} proceed against the applicant or the applicant is absolved of the charges, he shall be entitled to all consequential benefits. There shall be no order as to costs.

Rehmanuddin Khan
Member (J) Member (A)

Dube/