

OPEN COURT**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH ALLAHABAD****PRESENT:****HON'BLE MR.JUSTICE A.K.YOG, MEMBER-J****HON'BLE MRS.MANJULIKA GAUTAM, MEMBER-A**

Allahabad this the 8th day of April, 2009

Original Application No. 411 of 2001

Suresh Chand Sharma,
 S/o late Lala Ram,
 R/o RC-I/NO, Tundla,
 presently working as Crew Controller,
 Tundla. ...Applicant.

By Advocate : Sri . S.K.Om

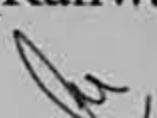
Versus

1. Union of India through Secretary,
 Ministry of Railways,
 Rail Bhawan, New Delhi.
2. Chief Electrical Engineer,
 Northern Railway, Baroda House,
 New Delhi.
3. Additional Divisional Railway Manager,
 Northern Railway, Nawab Yusuf Road,
 Allahabad.
4. Senior Divisional Electrical Engineer,
 (R.S.O.) Northern Railway,
 DRM Office, Allahabad. ...Respondents.

By Advocate : Mr.P.N.Rai, Standing Counsel(Rly)

ORDER**HON'BLE MR. JUSTICE A.K.YOG, MEMBER (J)**

Heard Shri S.K.Om, learned counsel for the applicant and
 Shri P.N.Rai, Standing counsel (Railways) for the Respondents.



2. The applicant was initially appointed as Cleaner on 14.10.1974 by Northern Railways and he was promoted in the year 1996 as Assistant Traction Foreman (ATFR for short), Tundla. He was charge-sheeted vide order dated 10.12.1997 and subjected to disciplinary enquiry which culminated into order of punishment. Copy of the punishment order dated 13.10.98 passed by disciplinary authority is Annexure A-8 Com.-I. Being aggrieved, the applicant filed a departmental appeal which was dismissed vide impugned order dated 11.1.99 (Annexure A-9). For the purposes of deciding this O.A., Appellate order is reproduced which reads:-

"Additional Divisional Rly. Manager, N. Rly./ALD after careful consideration of your appeal quoted above in terms of Rule 22 (2) of Rly. Servants DLP Rule 1968 has passed the following orders:

'I have gone through the whole case, it is seen that Shri S.C.Sharma was charged for not subjecting Driver Shri Janki Prasad to Breath Analyser Test on 27.10.1997 while performing duty 8 -16 hours as Crew Controller at Tundla. The charges were based on the statement of Shri Janki Prasad Driver while deposing before Shri DEE(RSO) on 27.10.97. However, subsequently Shri Janki Prasad gave a written statement that the Breath Analyser Test was performed on him before signing on. From the report of Enquiry Officer, it is seen that the charges against Shri Sharma could not be conclusively proved.'

After going through all the material available on the record, and considering the gravity of the offence, the punishment is reduced to reduction to lowest stage in the same time scale with cumulative affect."

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3. Above-quoted appellate order contains the relevant extract of the order of the Disciplinary Authority. This order was followed by consequential order dated 10.2.99 (Annexure A-10). Disciplinary Authority observed: "*the charges against Shri Sharma could not be conclusively proved.*" Interestingly, the appellate authority after quoting the order of Additional DRM, N. Rly., in a mechanical manner, without referring to material on record, observed/concluded: "*After going through all the material available on the record, and considering the gravity of the offence, the punishment is reduced to reduction to lowest stage in the same time scale with cumulative affect.*"

4. The Apex Court has deprecated practice of recording 'conclusions' without giving reasons and showing application of mind.

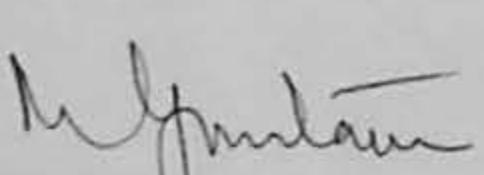
5. Applicant has filed a copy of Enquiry Report (Annexure A-6—Com.-II). The relevant extract in the concluding para of the enquiry report reads as under:

"Therefore, after due application of mind, I hold the delinquent Shri S.C.Sharma guilty of the allegation framed against him. The benefit of doubt may be given to the CO as the charges are not clearly proved."

6. The impugned orders (the orders of disciplinary authority and appellate authority Annexure A-9 and A-10) are clearly arbitrary, without 'reasons' and therefore, cannot be sustained in law.

7. In view of what has been stated above, we set aside impugned orders dated 13.10.1998(Annexure A-8) and 11.1.99 (Annexure A-9) and further make it clear that, no fresh enquiry is warranted in the facts and circumstances of the instant case, apart from the fact that it is very old matter and that the applicant is to retire in near future. The applicant shall be entitled to all consequential benefits which shall/must be extended to the applicant within three months from the date of receipt of a certified copy of this order.

9. O.A. is allowed. No order as to costs.


MEMBER(A)


MEMBER(J)

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