

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 27th DAY OF January, 2011)

**Hon'ble Dr.K.B.S. Rajan, Member (J)
Hon'ble Mr. S.N. Shukla, Member (A)**

**Original Application No. 1583 of 2004
(U/S 19, Administrative Tribunal Act, 1985)**

K.C. Srivastava S/o Shri Subh Karan Nath, Ex. E.C.R.C., North Eastern Railway, Gorakhpur Mohaddipur, Gorakhpur.

..... Applicant

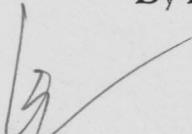
By Advocate: **Shri Sudama Ram**

Versus

1. Union of India through the General Manager, North Eastern Railway, Head Quarter, Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway, North Eastern Railway, Lucknow.
3. Senior Divisional Commercial Manager, North Eastern Railway, Lucknow.
4. Divisional Commercial Manager, North Eastern Railway, Lucknow.

..... Respondents

By Advocate: **Shri K.P. Singh**



O R D E R

(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)

SF-5 major penalty charge-sheet for alleged absence from duty of different spells was issued to the applicant in June 2000 and an inquiry was conducted. The Inquiry report was given on 16.1.2001, which reads as under :-

“निष्कर्ष

जॉच में भाग न लेना उनका कर्तव्य के प्रति उदासीनता का धोंतक है अतः उनके ऊपर भारतीय रेल आचरण नियमावली 986 की धारा 3(1) की उप धारा (1), (11) के लिए उत्तरदायी है।

ह0 / अस्पष्ट

(वी०पी० उपाध्याय)
प्रवर वाणिज्य निरीक्षक / गोरखपुर (प)
दिनांक 16.01.2001

2. The applicant was removed from service based on the inquiry report vide order dated 19.2.2001. The applicant filed an appeal but the Appellate Authority, by an order dated 12.4.2001, dismissed the appeal. Revision Petition was filed by the applicant and the Revisional Authority by order dated 6.9.2001 rejected the Revision Petition. The applicant also exhausted the provision for submission of mercy petition. There is however no response. The applicant, therefore, filed OA No.513 of 2003 for quashing the previous order as mentioned above. The Tribunal vide order dated 14.1.2004 quashed the orders of the Appellate Authority and Revisional Authority and directed them to reconsider the same by passing a speaking order. The Appellate



Authority in pursuance of the aforesaid order passed the following orders :-

N.E. RAILWAY
Office of the
Divisional Railway Manager (C)
Lucknow, Dt. 18.5.2004

No.C/SS-A/Absent/2000/KCS

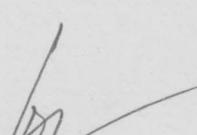
To,
Sri K.C. Srivastava
Ex. ECRC Gorakhpur
Home Add. QRs. No.456. A
Rly Stadium Colony,
Mohaddipur, Gorakhpur

Sub - Appellate Authority's decision
Ref - NIP of even no. dated 12.04.2001.

In compliance of Hon'ble CAT/Allahabad judgment dated 15.01.04 in OA No.513 of 2003 K.C. Srivastava Vs. U.O.I. I have reconsidered the appeal dt. 12.03.01 submitted by the applicant who has been removed from service by the Disciplianry Authority vide order No.C/SS-A/Absent/2000/KCS dated 19.2.01.

The applicant has raised no. of grounds in appeal, inter alia, non observation of provisions of rule 9 of R.S. (D&A) Rules, 1968, findings of Inquiry Officer without discussing the merit of the case, the punishment being very hard and violative of rules of natural justice etc.

I have heard him in person on 02.01.04 also the report of Inquiry Officer reveals that several dates of inquiry were fixed by the Inquiry Officer but the applicant deliberately never attended the inquiry, the dates fixed by the Inquiry Officer were 23.08.2000, 31.08.00, 09.09.00, 16.11.00, 30.11.00, 18.12.00, 09.01.01 and 15.01.01. Not only this, he even did not submit his defence statement, his non cooperation with the inquiry left the Inquiry Officer with no option but to proceed ex-parte under Rule 9(23) of R.S. (D&A) Rules, 1968. Thus the Inquiry Officer has correctly complied with the procedure laid down in Rly. Servant D& A Rules, 1968. The findings of the Disciplinary Authority are fully supported by the evidence on records and the penalty of removal imposed by the Disciplinary Authority appears to be appropriate.



However, on seeing the economic hardship being faced by the applicant and his family, as brought out in his appeal and during his personal hearing, I deem it fit to give the applicant one more chance to improve upon his working/attendance in his job and on purely humanitarian grounds. I modify the penalty of removal from service and order for reverting the employee on the initial grade of the post E. C. R. C. in grade 4500—7000 with reduced pay of Rs.4500. The intervening period with effect from the date of removal to the date of his joining will be treated as dies non.

Sd/
Alok Singh

3. The Revision petition filed by the applicant also had been dismissed.

4. Aggrieved by the aforesaid order the applicant has filed this OA praying for quashing and set aside the charge-sheet, inquiry report, Disciplinary report, Appellate authority order as well as Revisional Authority order dated 26.6.2004.

5. The respondents have contested the OA. They have justified the penalty inflicted upon the applicant and legality of the entire proceeding.

6. Learned counsel for the applicant invited our attention to very inquiry report. He submitted that Principle of natural justice should be complied with even when the departmental proceeding is conducted ex parte. **Since the applicant would participate at the any stage of proceeding, it is essential for the inquiry officer to send a notice to the charged official at each stage.** The counsel invited our attention



to the decision under the provisions of Rule 14 of the CCS (CC & A) Rules, in this regard. In the instant case, the inquiry report would reflect that none of the provisions of the CCS (CC&A) Rules, had been complied with. The Inquiry officer had misconstrued that in the event of ex parte proceedings, even the prosecution need not prove the case, whereas, the prosecution shall have to prove the case first and due notice to the delinquent individual should be given even if he had been set ex parte in the past proceedings. This not having been done, there is no sanctity to the inquiry conducted by the respondents.

7. Learned counsel for the applicant also submitted that the Appellate Authority is duty bound to reflect his mind after consideration of the entire records and the proceedings have duly followed. He submitted that a duty is cast upon the Appellate Authority to ensure adherence to the proceedings strictly in accordance with the rules even if in the appeal, the applicant would not have been rest the same on the ground. The decision by the Apex court in the case of **Ram Chander vs Union of India 1986 (3) SCC 103** and later cases of **Narinder Mohan Arya vs United India Insurance Company Ltd. (2006) 4 SCC 713**

8. Learned counsel for the respondents submitted that when the applicant was thoroughly non cooperative there is no option to the inquiry authority but to furnish the report as above. He has also submitted that the authorities were considerate in reducing the inquiry penalty imposing.

9. Arguments were heard and documents perused.

10. We are fully agree with the submission of the counsel for the applicant in respect of the following -

- (a) When an inquiry is held the charged official entitled to notice at each stage so that he may participate in the proceeding. However, claim any recalling orders passed earlier during his absence, the reference to the Govt. of India instructions referred to by the applicant's counsel is the most appropriate.
- (b) The Appellate Authority is under legal obligation to ensure that the entire proceedings have been conducted in strictly in accordance with the rules. The Appellate Authority stands in the position of a judge and thus he ensure that the applicant has been given a fair treatment. The decision by the Apex Court in the case of Ram Chander vs Union of India and Narinder Mohan Arya vs United India Insurance company Ltd. fully supports the case of the applicant.

11. With the above settled law position as affirmed by the Apex Court in the case cited by the applicant's counsel, we have no hesitation to hold that the enquiry has not been conducted in a manner as has been expected and required by the rules. Thus, the entire proceeding right from the stage of closing of the prosecution witness by the Inquiry Officer upto the decision by the Appellate authority cannot stand judicial scrutiny. Had the Inquiry Officer been slightly conscious enough to go strictly according to the Rules on the subject, the

respondents would not have courted themselves to such a situation. It is appropriate to refer to the observation of the Apex Court in the case of ***Bhuyan v. Hari Prasad Bhuyan, (2003) 1 SCC 197***, wherein it has been observed as under:-

An inadvertent error emanating from non-adherence to rules of procedure prolongs the life of litigation and gives rise to avoidable complexities. The present one is a typical example wherein a stitch in time would have saved nine.

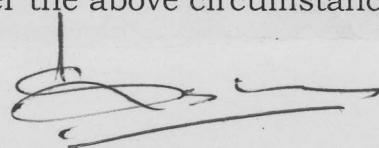
12. In view of the above, the **OA is allowed.** The impugned orders as hereunder are quashed and set aside.

- (i) Memorandum of Charge sheet (SF-5) dated 5.6.2000 (Annexure A-1),
- (ii) Report of the Inquiry Officer dated 16.1.2001 (Annexure A-2),
- (iii) order of imposition of penalty by DCM/Northern Railway, Lucknow (D.A.) vide N.I.P. dated 19.2.2001 (Annexure A-3)
- (iv) Appellate order passed by the Sr. Divisional Commercial Manager, N.E. Railway, Lucknow) revising the order of the disciplinary authority vide his order dated 18.5.2004 (Annexure A-4)
- (v) Office order dated 22.6.2004 (Annexure A-5); and
- (vi) revisional order dated 3.2.2005 (Annexure A-5/A)

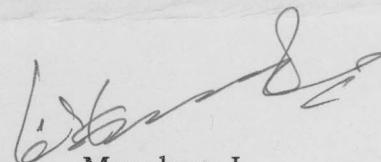
13. Respondents are directed to give all consequential benefits including back wages as per permissible under the rules. This

order shall be complied with within a period of two months from the date of receipt of copy of this order.

14. Under the above circumstances no order as to costs.



Member-A



Member-J

RKM/