

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

Original Application No. 249 of 2004

Thursday, this the 13th day of August, 2009

Hon'ble Mr. Ashok S. Karamadi, Member (J)
Hon'ble Mrs. Manjulika Gautam, Member (A)

S.K. Tiwari, Son of Shri Ram Phakir Tiwari, Booking Clerk, Mirzapur, Northern Railway, Allahabad Division, Allahabad.

Applicant

By Advocates: Sri S.K. Tewari
Sri A. Pandey,
Ms. Renu Singh.

Vs.

1. Union of India through the General Manager, North-Central Railway, Allahabad.
2. Divisional Railway Manager, North-Central Railway, Allahabad.
3. Additional Divisional Railway Manager, North-Central Railway, Allahabad Division, Allahabad.
4. Senior Divisional Commercial Manager, North-Central Railway, Allahabad Division, Allahabad.
5. Divisional Commercial Manager, North-Central Railway, Allahabad Division, Allahabad.

Respondents

By Advocate: Sri A.K. Pandey

ORDER

By Hon'ble Mr. Ashok S. Karamadi, J.M.

This application is filed for quashing of the impugned orders passed by the respondents dated 30.01.2000, 03.08.2000, and 16.11.2001. These orders are passed by the Disciplinary

Authority, Appellate Authority and the Revisional Authority. The applicant has also prayed for consequential benefits.

2. The brief facts of the case are that the applicant was appointed on 01.09.1981 as Booking Clerk, and since then he has been continuously working. The conduct of the applicant was satisfactory, and there was no compliant whatsoever by the superior authority concerned against the applicant. The applicant while serving as Senior Booking Clerk, was suspended on 17.12.1996, and subsequently served with a memo of charges dated 15.01.1997 on the allegation that he has made embezzlement of Rs.136/- as per entry shown in the Accounts foil and Passenger foil. The applicant further states that the charges leveled against him are vague and there is no documentary proof in support of the same, and requested for exonerating from the charges. The applicant submitted his reply on 21.08.1997 denying the charges leveled against him by stating that the alleged Passenger foil has not been prepared by him. The inquiry was held, the Inquiry Officer submitted his report dated 06.03.2000 and held that the charges leveled against the applicant are not substantiated, and thereafter the respondent No. 5 by the letter dated 13.03.2000 called upon the applicant to submit his defence/representation as he was not agreed with the findings of the Inquiry Officer without mentioning any specific reasons or the evidence in the disagreement letter, on the receipt of the same the applicant submitted representation dated 03.04.2000. The respondent No. 5 without considering the representation, and contention of the applicant has passed the

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impugned order dated 31.05.2000 by imposing the penalty of Rs.4900/- equal to reduction from the post of Senior Booking Clerk to Booking Clerk at the initial in grade Rs.3200-4000/- for a period of three years with permanent effect. Being aggrieved by the same, the applicant preferred an Appeal, the Appellate Authority dismissed the same by the order dated 03.08.2000. Against that a Revision was preferred, and the same was also rejected by the Order dated 16.11.2001. Hence, this O.A. is filed for the above relief.

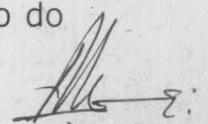
3. On notice the respondents have filed the Counter Affidavit, and stated that after issue of show cause notice by the Disciplinary Authority, the applicant replied for the same, and further stated that the Disciplinary Authority has not mentioned that he is not satisfied with the findings of the Inquiry Officer. The applicant was afforded with full opportunity of hearing and the orders were passed after affording the applicant full opportunity by following the proper procedure in accordance with law, and there is no illegality in awarding the penalty to the applicant, and the explanation given by the applicant for condoning the delay in filing the O.A. are not sufficient, on these grounds sought for dismissal of the O.A.

4. The applicant has filed the Rejoinder Affidavit, reiterating the same contentions as raised in the O.A. as well as M.A.

5. We have heard the learned counsel for the parties and perused the pleadings and materials available on record.



6. The learned counsel for the applicant contended that the Inquiry Officer after holding the inquiry has come to the conclusion that the charges against the applicant are not substantiated due to lack of cogent documentary evidence, in spite of that the Disciplinary Authority proceeded to pass the punishment order, which is illegal and arbitrary, and also the Appellate order and the Revisional order are illegal. To consider the contention of the applicant, we have perused the Inquiry Officer's report and the Disciplinary Authority's order. It is clear from what is borne out from the record that the charges leveled against the applicant are not proved, with the said conclusion the inquiry report is submitted to the Disciplinary Authority. The Disciplinary Authority even though issued a show cause notice to the applicant, it is not stated in the show cause notice on what reason the Disciplinary Authority is not accepting the report submitted by the Inquiry Officer, even otherwise the contention taken by the applicant in the reply to the show cause notice are also not considered in a just and proper manner, that being so the grievance of the applicant that the Disciplinary Authority has not acted in the manner known to law, even though the Appeal was preferred against the same, raising all the grounds, the Appellate Authority without application of mind mechanically dismissed the same by five lines order. The Disciplinary Authority while disagreeing with the Inquiry Officer's report has failed to give an opportunity to the applicant, by bringing to the notice of the applicant the reasons for the disagreement with Inquiry Officer's report, after that if necessary the applicant should have been heard in the matter by affording him an opportunity, failing to do



so by the Disciplinary Authority has resulted in passing the impugned order against the principles of natural justice. This, our view, is based on the principle of law laid down by the Hon'ble Supreme Court and the Hon'ble High Court of Allahabad. The decision relied upon by the applicant, reported in '(2006) 9 SCC 440 Lav Nigam vs. Chairman & MD, ITI Ltd. and another' has been followed by the Hon'ble High Court of Allahabad in 2008 O.N. Srivastava vs. Punjab National Bank and others, in which it is held as under

"Enquiry Officer exonerating petitioner-Disciplinary authority disagreeing and imposing penalty of dismissal on petitioner-But no opportunity afforded by disciplinary authority to petitioner before imposing penalty-Impugned order unsustainable - Order of disciplinary and appellate authorities quashed with all consequential benefit-However, open to O.Ps to conclude disciplinary proceedings in accordance with law after affording opportunity to petitioner from stage enquiry report submitted-And pass fresh order-Consequential benefits to be subjected to further orders of disciplinary authority."

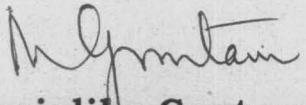
It is further seen from the pleadings that the grievance of the applicant with regard to the contention taken in the Appeal memo against the Disciplinary Authority' order has not been considered by the Appellate Authority in the manner in which it has to be considered, i.e. by application of mind on taking into consideration the grounds urged by the applicant, and the reasons for rejecting the same, as it is clear from the Appellate order, the Appellate Authority acted illegally in an arbitrary manner, and as such, the Appellate order is unsustainable in law. The Revisional Authority has also not considered the case of the applicant in a just and proper manner in accordance with law, and as such same is also unsustainable in law. The applicant has made out a case for grant of the relief, and accordingly we reject the contention of



the respondents that the impugned orders were passed in accordance with law. Having regard to the same, we thought it just and proper in the interest of justice, to set aside the appellate order and also that of Revisional Authority's order, and it will be appropriate to direct the Appellate Authority to pass a fresh order in accordance with law on taking into consideration the grounds urged in the Appeal as well as the observations made in this Order.

7. In view of the foregoing reasons, the O.A. is allowed. Impugned orders are quashed. However, it will be open for the respondents to conclude the disciplinary proceedings in accordance with law after affording opportunity to the applicant from the stage of submission of inquiry report, and pass a fresh order. The consequential benefits shall be subject to further order passed by the Disciplinary Authority.

8. There shall be no order as to costs.


[Manjulika Gautam]
Member 'A'


[Ashok S. Karamadi]
Member 'J'

/M.M/