

(Reserved on 06.11.2013)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH,
ALLAHABAD**

(Allahabad this the 25th day of March 2014)

Hon'ble Mr. Shashi Prakash, Member (A)
Hon'ble Dr. Murtaza Ali, Member (J)

ORIGINAL APPLICATION NO.1143 OF 2005
(Under Section 19 of the CAT Act, 1985)

Ahmad Zaman Khan, son of late Hakim Uddin Khan,

Aged about 50 years, Resident of 150/77A,

Muir Road, Rajapur, Allahabad.

-----Applicant.

By: Applicant in person.

Versus.

1. Union of India, Notice to be served upon Railway Board, through Secretary, Ministry of Railways, Rail Bhawan, New Delhi (The Appellate Authority also).
2. General Manager, Central Organization for Railway Electrification, Nawab Yusuf Road, Allahabad-211 001 (The Disciplinary Authority).
3. Shri K.N. Jain, Chief Signal & Telecom Engineer (Retd.), at present Residing at 1, Babar Road, New Delhi.

-----Respondents.

By Advocates:- Sri U.P. Tiwari and M.K. Upadhyaya.

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ORDER

(Delivered by Hon'ble Mr. Shashi Prakash, Member (A))

The present O.A. has been instituted mainly for seeking the following relief:

- "a) issue a writ, order or direction in the nature of certiorari quashing the impugned orders No.E/RE/CON/AZK/2 dated 1.5.2003 (Annexure No.A-1 of Compilation 1 o the O.A.) and order dated 9.11.2005, Annexure-1 of O.A. filed by respondent.
- b) issue a writ, order or direction in the nature of mandamus commanding the respondent nos.1 and 2 to grant all consequential benefits to the applicant in the matter."

2 In brief, the facts of the case as per the O.A. are that the applicant while serving as Assistant Accounts Officer, Railway Electrification at Ranchi received a charge sheet dated 19/23.4.2001. The charges brought against the applicant were that the tender committee, of which applicant was a Member had recommended for acceptance unreasonably high rates for schedule rates of work as well as non schedule items no.1. The applicant submitted his reply to the charge sheet dated 10.5.2001. The enquiry in this regard was completed and Enquiry Officer submitted his enquiry report dated 30.10.2001. The Enquiry Officer arrived at the finding that the article of charges framed against the applicant stood proved based upon merit. However, he pointed out certain omission/deficiency in the charge sheet, to the effect, that it did not contain the provisions of specific Discipline and Appeal Rules with reference to Railway Services (Conduct) Rules, 1968 in the charge sheet. A copy of the enquiry

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report was served upon the applicant on 26.11.2002, to which the applicant gave a reply by his detailed letter dated 12.12.2002. Thereafter the disciplinary authority by letter dated 1.5.2003 agreeing with the findings of the Enquiry Officer awarded the punishment to the applicant by degrading him to a lower time scale post of Senior Section Officer in the grade of Rs.6500-10500/- to be fixed at Rs.9300/- for a period of one month with a direction to restore the present grade of pay, post service and seniority to the applicant after the penalty period is over.

3. Against the aforesaid order of the disciplinary authority the applicant submitted an appeal to the appellate authority dated 26.4.2004. In the appeal he particularly laid emphasis on addressing the point which he had raised in his reply to the disciplinary authority in Para 28(a) to (e) which related to certain important technical issues which required a detailed examination and had been dealt by the inquiry officer in a summary manner. The appellate authority by its order dated 9.11.2005 passed a detailed order disposing of the appeal of the applicant and upheld the order of the disciplinary authority and rejected the appeal.

4. The applicant, Sri Ahmad Zaman Khan appeared in person and argued that the charges brought and the enquiry conducted against him are full of loopholes and deficiencies and have not been undertaken in accordance with the procedure laid down in the relevant Railway Rules. In the first place, he mentioned that both the orders of the disciplinary authority as well as the appellate authority are signed

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by Sri K.K. Sharma, Joint Secretary E&P, Railway Board. He argued that this is anomalous as the appellate authority has to be an officer senior to be officer who has passed the order as a disciplinary authority. However, the main thrust of the argument of the applicant was that the charge that the tender committee approved rates for awarding of the work much higher than the scheduled rates is based upon misconception and has not taken into account certain technical consideration which he had specially raised in his reply. He laid particular stress on the points as mentioned in Para 28 of his reply to the enquiry report submitted to the disciplinary authority. He also highlighted various shortfalls that took place in the conduct of the enquiry in the nature of non supply of Relied Upon Documents (RUD) as well as not allowing him to examine witnesses. On account of the above facts as mentioned by him, the applicant urged that entire exercise of the imposition of punishment on him is non-sustainable and, therefore, liable to be set aside.

5. Sri U.P. Tiwari and Sri M.K. Upadhyay appeared on behalf of the respondents. Their case is that in his capacity as a finance member of the tender committee, the applicant recommended unreasonable high rates both against schedule of rates items as well as non schedule item no.1 for acceptance without ascertaining the reasonability of the rates. For this omission, article of charges were framed against the applicant under Rule 9 of Railway Service (Discipline and Appeal) Rules, 1968. A charge sheet was served upon him and an enquiry conducted by a Senior Officer into the charges framed therein. The enquiry officer came to a finding that the article of charges brought

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against the applicant were established. It is after careful consideration of the report of the enquiry officer that the disciplinary authority imposed the penalty as contained in the impugned order dated 1.5.2003. It was further argued that the appeal submitted by the applicant has been duly decided after consideration of the points raised by him therein and after giving him ample opportunity. A perusal of the appeal submitted by the applicant would reveal that it was less in nature of an appeal and more in the nature of a prayer to re-appreciate the evidence. The appellate authority after taking into account the relevant issues contained in the appeal arrived at his decision to uphold the order of the disciplinary authority. Therefore, the O.A. does not have any tenable legal basis and deserves to be rejected.

6. In his rebuttal, the applicant referred to the supplementary counter affidavit filed by Deputy Chief Personnel Officer (Core), Allahabad dated 7.5.2013 and drew attention to the para as produced below.

"That in reply to the contents of paragraph no.4 of the Civil Misc. Application, it is submitted here that as regards the issue raised by the applicant in this para, it is mentioned that the Tender scheme for construction of open wells have been prepared by two different offices and by two different officers viz for Adra well by Sr.DEN(West), Adra and for RE well by Dy.CE,RE,Ranchi.

"In the construction of open wells, sinking of well is the most important item, which includes open excavation of earth, its disposal, removal of wet soil, bailing out/pumping out of water,

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placing of well curb and loading/unloading of weights above it. Without the execution of all these items, an open well can not be constructed. In Adra's Tender schedule, these items were covered by item no.NS-1 and NS-3, which clearly spoke of sinking of well. In RE Tender Schedule, there was only one Item for excavation of well and all other connected works that too under SOR. With these Items alone, the construction of an open well can not be completed.

In fact, the cost comparison was required to be done in **entirety**, which has not been done. The element of base rates in Adra well and RE well were not same. It is, therefore, felt that the applicant has taken appropriate action in the given circumstances."

7. From the above submission the applicant submitted that it is clear that there was neither any malafide on his part nor any loss to the Railway and therefore there was no occasion giving rise to any action against him for misconduct.

8. Heard counsel of both the parties and perused the pleadings. We have gone through both the orders passed by the disciplinary authority as well as the appellate authority. It is observed from the reply to the enquiry report as well as appeal filed by the applicant that several important issues have been raised therein. On this issue we would like to state while disposing of ~~an~~ appeal, it has now been ^{an} accepted principle that the appellate authority shall take into account and consideration, all the contentions raised in the memorandum of appeal

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and either for independent reasons or based upon the reasoning given by the disciplinary authority arrive at his decisions (Ram Chandar Vs. Union of India) 1986(2) SLJ 249. This is required in order to ensure that the orders passed by appellate authority creates a feeling that the decision taken by him is not arbitrary and summary in nature. This aspect needs also to be kept in mind while passing orders to eliminate giving an impression of unjust treatment. On this matter, certain ground Rules required to be followed in such cases based upon pronouncement of the Courts are reproduced below.

- (i) the procedural aspects as well as the justness of the findings of the disciplinary authority with reference to the admissible evidences;
- (ii) a proper discussion of the points raised in the appeal; and
- (iii) any objective assessment of the lapse on the part of the punished official with a view to coming to a decision that the charge(s) had been established and that the penalty is appropriate/adequate and does not require to be either toned down or enhanced.

9. A perusal of the order passed by the appellate authority has given us the impression that though the appellate order is a detailed one, it has failed to address/touch some of the very vital issues which have been raised in the reply to the enquiry report as well as in the memorandum of appeal. In this regards, it may be relevant to mention that since the charge sheet mainly relates to a technical works, the points raised by the applicant in Para 28(a) to (e) of his reply to the enquiry report which are specific to these charges need to be

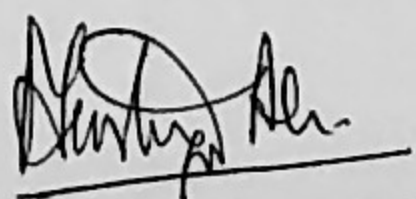
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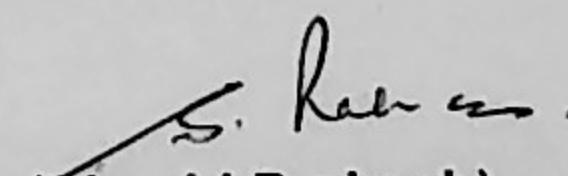
considered in a specific manner and in greater detail so that the applicant does not go away with the impression that his plea in respect of these issues have not been adequately dealt with.

10. Keeping in view, the forgoing facts and circumstances we are of the opinion that the appellate order dated 9.11.2005 is inadequate and does not meet the prescribed condition in as much as it has failed to address certain important points raised by the applicants, particularly those contained in Para 28(a) to (e) of his reply to the enquiry report. Accordingly, we set aside the appellate order dated 9.11.2005 and direct the appellate authority to consider the memo of appeal submitted by the applicant afresh and in a more detailed and specific manner. The technical issues raised by him relating to comparison of the cost to be undertaken in **entirety** instead of in a piecemeal manner requires to be specially addressed.

11. The anomaly in passing of both the orders of the disciplinary authority and appellate authority by the same person as raised by the applicant also needs to be suitably taken care of.

12. Accordingly, the O.A. is allowed.


(Dr. Murtaza Ali)
Member(J)


(Shashi Prakash)
Member (A)

M.R./-