

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD**

(THIS THE 29th DAY OF December, 2010)

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

**Original Application No.265 of 2005
(U/S 19, Administrative Tribunal Act, 1985)**

1. Amit Kumar, Aged about 40 years
Son of Shri Pop Singh, R/o 33A, Sun City
Vistar Vatika, Pilibhit Road, Bareilly.

..... **Applicant**

Present for Applicant : Shri. T.S. Pandey, Advocate

Versus

1. Union of India, through Secretary, Ministry of Railways
(Railway Board), New Delhi.
2. Senior Divisional Commercial Manager,
North Eastern Railway, Izzat Nagar,
Bareilly.
3. Divisional Railway Manager,
(Appellate Authority), Izat Nagar,
Bareilly.

..... **Respondents**

Present for Respondents : Shri Prashant Mathur, Advocate.

O R D E R

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

Charge sheet under the Railway Servants (D & A) Rules, 1968 was issued to the applicant while he was functioning as Mobile Clerk in the Railways on 08-07-2003, which was withdrawn



and in its place, a Rule 9 charge sheet was issued on the very same day. The charges are as under:-

श्री अमित कुमार, मोबाइल बुकिंग लिपिक/बरेली सिटी के विरुद्ध दीर्घ दण्ड आरोप पत्र।

आरोपों का सार :-

श्री अमित कुमार, मोबाइल बुकिंग लिपिक/बरेली सिटी दिनांक 19.11.

02 से 04.07.03 तक बिना किसी सूचना के डियूटी से अनाधिकृत रूप से अनुपस्थित रहे । लम्बे समय से बिना कोई सूचना दिये डियूटी से अनुपस्थित रहना इनकी घोर लापरवाही एवं कर्तव्य उदासीनता का घोतक है ।

इस प्रकार इन्होने रेल सेवा आचरण नियम 1966 के उप नियम 3.1

(ii) एवं 3.1 (iii) का स्पष्ट उलंघन किया है ।

2. The applicant having denied the charges, regular inquiry was conducted which was concluded on 23-05-2004 and the inquiry officer filed the report and the ultimate finding is as under:-

7- फाइन्डिंग

जंव कार्यवाही में अभिलेखों एवं साक्ष्य के आधार पर आरोपित कर्मचारी श्री अमित कुमार मो० बुकिंग लिपिक बरेली सिटी पर रेल सेवा आचरण नियम 1966 के नियम 3.1 {11} एवं 3.1 {111} के स्पष्ट उल्लंघन का आरोप सिद्ध होता है ।

3. The applicant had furnished his representation vide letter dated 07-09-2004 and the Disciplinary authority, vide order dated 10th September, 2004 imposed the penalty of removal from service. (Annexure A-1 refers).

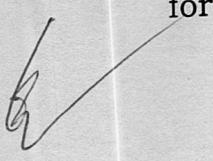
Appeal filed by the applicant too was not successful, and the appellate authority had rejected the same, vide Annexure A-2 order dated 30-12-2004.

4. The order of penalty and order of the appellate authority are under challenge in this O.A. on the following grounds:-



- (a) The impugned order is wholly illegal, arbitrary and unfounded.
- (b) Having initiated the proceedings for minor punishments, there was no justification for withdrawing the same. The initiation of fresh proceedings for major penalty shows legal malice.
- (c) In the absence of any evidence in support of the charge imposition of major penalty in the nature of removal from Service is not only irrational, illogical and unfair but is also arbitrary.
- (d) The reasons recorded by the Disciplinary is beyond the scope of charges leveled in the charge sheet are clearly perverse and based on no evidence.
- (e) The punishment order has been passed in gross violation of Article 14 of the Constitution of India.
- (f) The punishment imposed does not commensurate the gravity of the charge.

5. Respondents have contested the O.A. They have stated that on the basis of the gravity of the alleged misconduct, it became essential to issue a major penalty charge sheet. The applicant was not only on unauthorized absence for a substantial period but was also not informing about the same. Though the applicant claimed that telegrams were sent by him, there is no evidence that such telegrams were received. No grounds have been made out for interference by the Tribunal.



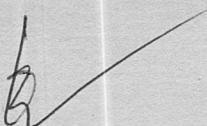
6. Rejoinder has been filed by the applicant stating that during the period of absence from duty, he was under medical treatment of the competent Doctors and the fitness certificate was issued by the competent Railway Doctor which had been filed. The full period of absence given in the penalty order is not a part of the charge. The inquiry authority, instead of requiring the prosecution to prove their case, expected the applicant to prove his innocence and the charges have not been proved by the prosecution at all. The inquiry officer had failed to appreciate the evidence in support of the applicant

7. Respondents have filed supplementary counter affidavit while the applicant on his part filed a supplementary rejoinder affidavit.

Counsel for the applicant argued that the period of absence was for a total period of 7 months and 17 days and that the same was owing to sickness of the applicant. He has contended that the medical certificates cannot be dismissed or discounted and as regards intimation, he has submitted that he had sent necessary information which would suffice in so far as leave on medical treatment is concerned.

The counsel relied upon the following decisions:-

- (a) 2004 (4)SGT 842
- (b) ATJ 2002 (1) 79
- (c) 2003 (2) ATJ 44.



8. Counsel for the respondents submitted that in so far as medical leave is concerned, the Medical Certificate should be submitted within 48 hours. Again, there must be due communication for leave.

9. In order to have full appreciation of the case, the original records of disciplinary proceedings were requisitioned, which have been produced. The same had been thoroughly scanned and the following aspects emerged from the said records:-

- (a) Prior to issue of charge sheets communication was sent on 19.6.2003 to the applicant to report for duty.
- (b) Charge sheets in SF file dated 08.7.2003 was issued to the applicant which was received by him on 15.07.2003.
- (c) The applicant asked for the relied upon document vide letter dated 19.7.2003.
- (d) On 22.7.2003 the relied upon documents were supplied to him which was acknowledged by the applicant on 03.09.2003.
- (e) On 29.9.2003 Enquiry Officer was appointed.
- (f) After holding the enquiry proceedings on various dates *Inquiry Officer* renders his report on 11.8.2004.
- (g) The Applicant furnished representation against enquiry report on 07.09.2004
- (h) On 10.09.2004 the *Disciplinary Authority* passed the penalty order which reads as under :-



आदेश

पूर्ण केस को ध्यानपूर्वक पढ़ा । कर्मचारी का बचाव असान्य है । इनकी पदस्थापना बरेली सिटी स्टेशन पर है तथा यह विश्राम के बाद किसी पूर्व सूचना के अनुपस्थित हो गये जिसका बचाव इन्होने यह कह कर दिया कि गम्भीर पीलिया से पीड़ित होने के कारण ये लखनऊ में अपना इलाज कराते रहे । परन्तु किन परिस्थितियों तथा किस की इजाजत से, अपने पदस्थापना के स्टेशन से 250 किमी० दूर जाकर इन्होने डाक्टर की सलाह ली, इसका कोई जिक बचाव में नहीं है । ऐसा करना सेवा नियम के विरुद्ध है । दिनांक 9/3/2003 को पीलिया से फिट होने के दूसरे ही दिन दिनांक 10/3/2003 को इनका हाथ फैक्चर हो गया, जो असामान्य co-incidence है । यदि इसे मान भी लिया जाय तो हाथ फैक्चर से इन्हे दिनांक 30/6/2003 को फिट प्राप्त हो गया था, परन्तु आज तक { यानि दिनांक 9.9.2004 } ये अपने कार्यस्थल से, बिना कोई आरोग्यस्थी०/पी०एम०सी० दिये अनुपस्थित चल रहे हैं । इन सभी तथ्यों को ध्यान में रखते हुए यह प्रतीत होता है कि अपने सरकारी कार्य के प्रति उत्तरदायित्व की कर्मचारी में कमी है तथा आगे रेल सेवा में रहने में इनकी रुचि भी नहीं है । अतः कार्य में लापरवाही तथा अनियमित कार्यशैली के कारण इन्हें रेल सेवा से तत्काल प्रभाव से हटाया जाता है ।

Before analyzing the above order, it is preferable to have a look at the inquiry report and the supporting documents attendant to the same.

10. The inquiry officer had, in accordance with the rules, asked the applicants questions, referring to the prosecution deposition, and asked the actual fact. The applicant did reply as to the necessity to be away from duty. Again, the inquiry officer asked for copy of the communication allegedly sent to the department by the applicant and in reply the applicant stated that since it was a

telegraphic communication he had only the postal receipt which had been handed over to the inquiry officer. Question No. 2 and answer to it in the evidence of the applicant seen from the records refers. The exact wordings are as under:-

जॉच अधिकारी द्वारा परीक्षण

प्रश्न सं. 1— आपने अपने बयान में कहा है कि आपने 19.11.2002 से 4.7.2003 की अवधि में रोगग्रस्त होने के कारण उपस्थित न होने के सम्बन्ध में लिखा है । जबकि दि 0 13.3.2004 को जॉच में श्री आर०एस०रौकली

ने लिखा है कि आप 15.11.2002 को विश्राम लेने के पश्चात बिना किसी सूचना के अनुपस्थित हो गये । वास्तविकता क्या है, वर्णन करें
उत्तर — प्रार्थी द्वारा कथित आरोप पत्र में दर्शायी अवधि दिनांक 19.11.2 से 04.7.03 के अनुरूप ही दिया है । किंतु अभिलेखीय तथ्यानुसार जो वाणिज्य अधीक्षक बरेली सिटी द्वारा बतायी है वो भी ठीक है ।

प्रश्न सं० 2 आपने अपने बयान में कहा है कि आपने रोगग्रस्त होने की सूचना पोस्टल डाक द्वारा एवं तार से अपने नियंत्रक पर्यवेक्षक को प्रेशित किया । किस पर्यवेक्षक को सम्बोधित करते हुये सूचना दी थी तिथि तथा उस पत्र की प्रति दिखाये ।

उत्तर — मैंने आपने रोगग्रस्त होने की सूचना पोस्टल रसीद सं 2826 ता० 28/11/02 छ्च लखनऊ से स्टेशन प्रबंधक बरेली सिटी को दी थी । इसके बाद तार क्षरा सूचना 28/1/03 को तथा दिनांक 12/5/03 पोस्टल रसीद स० 1460/156 के द्वारा मंडल वाणिज्य प्रबन्धक इंजिनियर 1460/157 के द्वारा स्टेशन प्रबंधक/बरेली सिटी का दी थी, उसके फोटो काफी आपको दी जा रही है । इसके बाद उपस्थित होने पर समस्त चिकित्सीय प्रमाण अपने नियंत्रक अधिकारी महोदय को सौप दिये । भेजे गये पत्रों की प्रतियाँ मेरे पास नहीं हैं । डाक रसीदों की फोटो प्रतियाँ संलग्न की जा रही हैं ।

प्रश्न सं० 3 इस सम्बन्ध में यदि कोई और जानकारी देना जानकारी देना चाहते हों तो वर्णन करे

उत्तर — जितने तथ्य प्रार्थी के ज्ञान में थे वे सभी तथ्य जॉच प्रक्रिया में अभिलेखित कर दीये हैं इसके अतिरिक्त अन्य कोई तथ्य अब मेरे ज्ञान में शेष नहीं हैं ।

हस्तांतर
अमित कुमार
दि. 23/5/04

जाँच कार्यवाही समाप्त की जाती है । आरोपित कर्मचारी को कहा गया कि वह अपना *Defence Written Brief* 10 दिन के अन्दर अधोहस्ताक्षरी को भिजवाने की व्यवस्था करें ।

हस्तांतर

बचाव सलाहकार

हस्तांतर

आरोपित कर्मचारी

हस्तांतर

जांच अधिकारी

आरोप पत्र संख्या - सी/एस/एस/इज्जत/एन्टीफाड/03/09 के विरुद्ध व/व जाँच बरेली सिटी में दि 0 23-5-2004

उपस्थित

श्री अमित कुमार *MBC/Bareilly City* आरोपित कर्मचारी
 " मोहन स्वरूप *Retd Guard* बचाव सलाहकार

अभियोजन पक्ष की कार्यवाही 13.3.04 को समाप्त हो गई थी आज जाँच तिथि को आरोपित कर्मचारी से कहा गयाये कि किवह अपना बयान दें ।

श्री अमित कुमार मो० ब्रुकिंग बाबू का बयान

महोदय,

निवेदन है कि कथित प्रकरण के अन्तर्गत प्रार्थी मो० ब्रुकिंग क्लर्क बरेली सिटी पर कार्यरति रहते प्रार्थी दिनांक 19.11.02 से 04.7.03 की अवधि में अचानक रोगग्रस्त हो जाने के कारण कार्य पर उपस्थित न हो सका, रोग ग्रस्थ अवस्था में बाध्य हो कर प्रार्थी द्वारा सूचना पोस्टल डाक द्वारा एवं तार से अपने नियन्त्रक पर्यवेक्षक को प्रेषित किया जैसा कि जाँच प्रक्रिया में बताया व दिखाया भी है । क्योंकि ऐसा सभी कुछ स्वेच्छापूर्वक नहीं किया गया है बल्कि रोगग्रस्त हो जाने की अवस्था के कारण ही कार्य स्थल न पहुंच सका जो प्रत्यक्षदर्शी एवं स्वयं ही साक्षी है ।

अतः न्याय की प्रबल आशा सहित याचना है कि रोगग्रस्त अवधि की विवरता को दूषित कर तथ्यानुसार प्रार्थी निसंदेह आरोप मुक्त होने योग्य है ।

यही मेरा बयान है।

हस्तांतर
 अमित कुमार
 दि. 23/5/04

11. The inquiry officer had dealt with the above in his inquiry report as under:-



(ii) दिनांक 13.3.04 को जाँच के दौरान अभियोजन पक्ष के गवाह से प्रश्न संख्या में पूछा गया कि कर्मचारी 15.11.02 से 17.11.02 तक स्वीकृत LAP पर था । कर्मचारी का यह तथ्य गलत पाया । कर्मचारी द्वारा अपने बयान में 19.11.02 से 4.7.03 की अवधि में रोगग्रस्त हो जाने के कारण कार्य पर उपस्थित न हो सका, गलत बयान दिया जब कि कर्मचारी 15.11.02 को विश्राम लेने के उपरान्त बिना किसी सूचना के अनुपस्थित हो गये, जाँच में स्वयं स्वीकार किया है।

(iv) मंडल रेल प्रबन्धक/काठ इंजिनियर के पत्र सं ३० ई/161/0 दि ० ५/७/९१ में स्पष्ट निर्देश है जब कर्मचारी सिक करता है इसे 48 घन्टे के अन्दर अपना सिक प्रमाण पत्र अपने पर्यवेक्षक के पास भेजना आवश्यक है । सिक से लैटने के बाद सिक प्रमाण पत्र देगे, वह मान्य नहीं होगा । कर्मचारी की बात को ही सही माना जाये तो पहली सूचना 28.11.2002 को लखनऊ से भेजी गई है जो नियम के अनुसार नहीं है।

12. Vide the receipt attached, the date indicated 20-11 (2002). The prosecution has admitted receipt of the telegram. Once the prosecution had so confirmed, it is for the prosecution to prove that the telegram was relating to the leave or otherwise. The inquiry officer had asked for copy of the telegram from the applicant, which the applicant did not have, as normally, telegrams are sent on a form at the telegraphic office, without any such copies being retained. The inquiry officer has expected the applicant to prove his innocence, rather than warranting the prosecution to prove its case.

13. The charge sheet has not indicated the receipt of telegram. The charge is not to the extent that the applicant was required to send communication within 48 hours. The prosecution has not reflected in its brief as to this provision. Nor did the witness

indicate the same in his deposition. It is the addition of the inquiry officer. Even if the requirement is that within 48 hours communication had to be sent, the inquiry officer ought to have indicated the extent of delay. This has not been indicated. Reference to the order relating to communication within 48 hours is of the Inquiry officer and not by the prosecution. Though he is well within his power to refer to such orders, these must be reflected in the charge sheet.

14. In fact, on receipt of the inquiry report, the applicant had, in his representation dated 07-09-2004 clearly stated that he had sent a telegram on 20-11-2002 and the receipt had been attached. This is the very same receipt which seems to have been misread by the applicant as well as the inquiry officer as 28-11-2002. The inquiry officer had, at least at one place, presumably by inadvertence, indicated the date as even 28-11-2003! Had the prosecution produced the telegram received by the office, the same would have thrown due light as to the contents thereof and the same would have clinched the issue.

15. Thus the lacuna in the inquiry report is that though there has been reference to the telegram, the receipt of which had not been denied by the prosecution, instead of asking for the same from the prosecution side, the inquiry officer had ignored the same on the ground that the applicant had not provided a copy of the same.

[Signature]

16. The disciplinary authority, on receipt of the representation against the inquiry report, did not consider the points raised by the applicant in his representation. He had not itemized any points as such in his order. A perusal of the order as extracted above, would go to show that the disciplinary authority has held that the applicant **was not supposed to leave for Lucknow without leave of the authorities** and that his absence even beyond the period of his medical treatment confirms that **he is not interested in continuing in Railway Service**. The charge sheet issued was for unauthorized absence for the period from 19-11-2002 to 04-07-2003. There is no reference to the non-seeking of permission to move to Lucknow, which has been taken as one of the main reasons for the disciplinary authority to come to the decision as contained in the above order. Again, **there is no indication about the exact charge or of his concurrence with the finding of the inquiry officer. Instead, the disciplinary authority has referred to the applicant's alleged absence beyond the period of treatment. These are not the contents of charge sheet and thus they are beyond the scope of the charge sheet.**

17. The appellate authority's order reads as under:-

संदर्भित अपील पर अधोहस्ताक्षरी द्वारा निम्नलिखित निर्णय लिया गया है :

पूर्ण केस का अवलोकन किया । कर्मचारी द्वारा अपनी अस्वस्थता के सम्बन्ध में जो अभिलेख प्रस्तुत किया गये हैं, उनकी मूल प्रति न तो जाँच अधिकारी को ही दिखा पाये न ही अपनी अपील के साथ संलग्न की है । साथ ही तार न तो मण्डल कार्यालय को प्राप्त हुआ है और न



ही इसके सपोर्ट में लगाई गई छाया प्रतियों से स्पष्ट हो रहा है कि यह तार किसके द्वारा किसको भेजा गया है ।

कर्मचारी द्वारा अपने अस्वस्थ रहने के सम्बन्ध में दो चिकित्सा प्रमाण पत्र संलग्न किये गये हैं, जिनकी अवधि क्रमशः दिनांक 18.11.2002 से 9.3.2003 तक तथा 10.3.2003 तक है । प्रथम प्रमाण पत्र में इन्हें दिनांक 10.3.2003 से तथा दूसरे प्रमाण पत्र में दिनांक 30.6.2003 से कार्य करने योग्य करार दिया गया है । एक चिकित्सा प्रमाण पत्र की अवधि समाप्त होने के ठीक दूसरे दिन से दूसरा प्रमाण पत्र जारी किया जाना भी प्रमाण पत्रों को संदेह के घेरे में लाता है । क्योंकि जिस अनाधिकृत रूप से अनुपस्थित रहने के कारण — कर्मचारी को दीर्घ दण्ड आरोप पत्र जारी किया गया था, उसी की कार्यवाही पूर्ण होने से पूर्व ही ये पुनः दिनांक 16.7.2003 से मचिधि/बरेली सिटी के यहाँ पर सिक करके अनुपस्थित हो गये । इन्हें सिक केवल तीन दिनों का ही दिया गया था जिसका कोई एक्टेशन अथवा किसी प्रकार की सूचना प्राप्त नहीं हुई । दिनांक 4.9.2003 का मात्र एक प्रार्थना पत्र जिसमें इनके द्वारा दिनांक 16.7.2003 को अचानक बीमार हो जाने तथा अपनी पुत्री का इलाज हेतु केन्द्रीय चिकित्सा, नई दिल्ली में होने के सम्बन्ध में स्टेशन प्रबन्धक/बरेली सिटी को दिया ।

उपरोक्त सभी तथ्यों से ऐसा प्रतीत होता है कि कर्मचारी श्री अमित कुमार, मोबाइल बुकिंग लिपिक कार्य के प्रति लापरवाह, उदासीनता एवम् अनाधिकृत रूप से अनुपस्थित रहने का आदी है । इसी आधार पर मैं अनुशासनिक अधिकारी द्वारा दिये गये दण्ड को यथावत रखता हूँ ।

18. The appellate authority stated that copy of the receipt in proof of dispatch of telegram does not reflect as to whom it had been given. Nor has it been received in the office. However, as per the inquiry report, the prosecution witness did confirm telegram having been received a few days after the applicant absented himself. The prosecution witness has reiterated that save that telegram there had been no communication. There is no finding by the inquiry authority as to the non receipt of the telegram. The inquiry authority had only held that copy of the same was not produced by

the applicant. The office of the appellate authority had in their note to the appellate authority had, recorded the very deposition of the prosecution witness but in the same vein stated that the telegram was not received in the office! This note of the office has, been believed by the appellate authority without considering the inquiry report and the representation by the applicant. In fact, the appellate authority's order has extracted verbatim the maximum part from out of the office note only.

19. A word as to the extent of the functions of an appellate authority narrated in the following cases would be appropriate at this juncture:-

(1) **Ram Chander v. Union of India, (1986) 3 SCC 103 ,**

"4. The duty to give reasons is an incident of the judicial process. So, in *R.P. Bhatt v. Union of India* (1986) 2 SCC 651 this Court, in somewhat similar circumstances, interpreting Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which provision is in pari materia with Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, observed:

It is clear upon the terms of Rule 27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the rules has been complied with; and if not, whether such non-compliance has resulted in violation of any of the provisions of the Constitution of India or in failure of justice : (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or remit back the case to the authority which imposed the same.

It was held that the word consider in Rule 27(2) of the Rules implied due application of mind. The Court emphasized that the appellate authority discharging quasi-

judicial functions in accordance with natural justice must give reasons for its decision. There was in that case, as here, no indication in the impugned order that the Director General, Border Road Organization, New Delhi was satisfied as to the aforesaid requirements. The Court observed that he had not recorded any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record."

(ii) Narinder Mohan Arya v. United India Insurance Co. Ltd., (2006) 4 SCC 713

37. *Consideration of appeals .(1) In case of an appeal against an order of suspension, the Appellate Authority shall consider whether in the light of the provisions of Rule 20 and having regard to the circumstances of the case the order of suspension is justified or not and confirm or revoke the order accordingly.*

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 23, the Appellate Authority shall consider:

(a) whether the procedure prescribed in these Rules has been complied with and if not, whether such non-compliance has resulted in failure of justice;

(b) whether the findings are justified; and

(c) whether the penalty imposed is excessive, adequate or inadequate, and pass orders:

I. setting aside, reducing, confirming or enhancing the penalty; or

II. remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

* * *

32. *The Appellate Authority, therefore, while disposing of the appeal is required to apply his mind with regard to the factors enumerated in sub-rule (2) of Rule 37 of the Rules. He was required to show that he applied his mind to the relevant facts. He could not have without expressing his mind simply ignored the same.*

33. *An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regards the compliance with the requirements of law while exercising his*



jurisdiction under Rule 37 of the Rules.

34. *In Apparel Export Promotion Council v. A.K. Chopra which has heavily been relied upon by Mr. Gupta, this Court stated:*

16 . The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. (emphasis supplied)

35. *The Appellate Authority, therefore, could not ignore to exercise the said power.*

36. *The order of the Appellate Authority demonstrates total non-application of mind. The Appellate Authority, when the Rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as to enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The expression consider is of some significance. In the context of the Rules, the Appellate Authority was required to see as to whether (i) the procedure laid down in the Rules was complied with; (ii) the enquiry officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (iii) whether penalty imposed by the disciplinary authority was excessive*

20. Thus, at each stage, there has been some lacuna or the other. Had the authorities followed the rules strictly, their orders would have been upheld. It is appropriate to borrow the words of the Apex Court in the case of ***Lakshmi Ram Bhuyan v. Hari Prasad Bhuyan, (2003) 1 SCC 197***, wherein the court has held as under:-

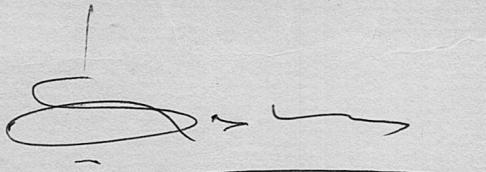
An inadvertent error emanating from non-adherence to rules of procedure prolongs the life of litigation and gives rise to avoidable complexities. The present one is a typical example wherein a stitch in time would have saved nine.



21. We have absolutely no hesitation to hold that the entire inquiry proceedings have been vitiated by the serious legal lacuna at each stage, i.e. inquiry report, penalty order and appellate order. As such, the penalty order and the appellate order are liable to be quashed . Accordingly, the orders at Annexure A-1 dated 10-09-2004 and Annexure A-2 dated 30-12-2004 are hereby quashed and set aside. The appellant is entitled to reinstatement in the post of Mobile clerk and as regards his backwages, (without any interest element) the same is to be paid to the applicant in accordance with law after duly verifying the fact that the applicant was not gainfully employed during this period.

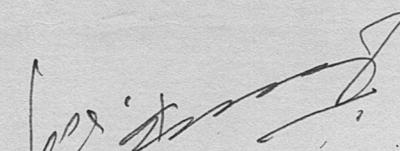
22. Time calendared for reinstatement is two months from the date of receipt of copy of this order, while for payment of backwages, time scheduled is four months from the date of reinstatement or 30th June, 2011 whichever is earlier.

23. Under the circumstances, there shall be no orders as to costs.



(S.N. Shukla)
Member (A)

Shashi



(Dr. K.B.S. Rajan)
Member (J)