

[Reserved]

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

This, the 21st day of December, 2010

**HON'BLE MR. S.N. SHUKLA, MEMBER (A)
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)**

Original Application No. 1060/2005
(U/Sec. 19, Administrative Tribunal Act, 1985)

Yogesh Prasad Tripathi,
a/a 54 years, S/o Late S.N. Tripathi,
R/o Village Kakra, P.O. Dubawal,
District Allahabad. Applicant

Vs.

1. Union of India, through
General Manager,
North Central Railway,
Allahabad.
2. General Manager (P/C)
Northern Railway,
Borada House,
New Delhi.
3. Divisional Railway Manager,
North Central Railway,
Allahabad.
4. Senior Divisional Personnel Officer,
North Central Railway,
Allahabad.
5. Senior Divisional Commercial Manager,
North Central Railway,
Allahabad.
6. Divisional Commercial Manager,
North Central Railway,
Allahabad. Respondents

Advocate for the Applicant .. Sri K.K. Mishra

Advocate for the Respondents .. Sri S.K. Rai.

ORDER

{DELIVERED BY HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)}

The Applicant has invoked the jurisdiction of this Tribunal Under Section 19 of the Administrative Tribunal Act 1985 impugning the order dated 21.3.2006 passed by Respondent No.6, Annexure A.15 and the

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order dated 27.5.2005, Annexure A.26 passed by the Appellate Authority, whereby the Applicant was removed from service with immediate effect.

2. Brief facts are that the Applicant entered as a Trains Clerk in the Railway Department and thereafter he was promoted as Chief Train Clerk. On 31.7.1991, he was declared unfit by the Divisional Medical Officer for the post of Chief Trains Clerk. Thereafter, Screening Committee of the Respondent Department again medically examined the Applicant and found that the Applicant is fit for the post of Catering Inspector in the grade of Rs. 1400—2300/- and accordingly he was posted as Catering Inspector, Kanpur. On 9th of August, 2001 the Applicant was promoted as Catering Inspector Grade I in the pay scale of Rs.5500—9000. On 8th September, 2001 the Applicant was issued a Chargesheet for major penalty. Since the Applicant did not make available himself to the Appointing Authority, therefore, the Respondent Department to inform the Applicant regarding the inquiry, published a notice in the Newspaper on 2.11.2001 and 4th of November, 2001 informing the date of inquiry which is scheduled to be held on 19.11.2001. On 19.11.2001 a representation was received by the Respondents wherein the Applicant stated that he is suffering from illness. In his representation he has not given any address whatsoever therefore, again the Department made a publication in the Newspaper, the date of inquiry. A Registered Letter has also been forwarded at the residential address of the Applicant. Allegedly the family members of the Applicant, returned the Registered Letter by saying that they did not have the address of the Applicant. The Appointing Authority passed an order dated 21.3.2002 (Annexure A.15).

3. The Respondent No.5 on 25.11.2003 passed an order for a denovo inquiry. On the same very day he also appointed Enquiry Officer to go into the charges leveled against the Applicant vide chargesheet dated 3rd September, 2001. On 3rd December, 2003, the Respondent No.6,

widrew the order dated 25.11.2003 while ordering a denovo inquiry and directed the Appellate Authority to hear the appeal filed by the Applicant dated 6.5.2002 which is pending before him. Thereafter, the Respondent No.5, heard the Appeal of the Applicant and rejected the same vide order dated 27.2.2004. Against this order the Applicant approached this Tribunal in O.A. 113/2005 which was allowed vide order dated 14.12.2005. This Tribunal while allowing the O.A. of the Applicant set aside the order dated 27.2.2004 and remitted the matter back to the Appellate Authority to decide the Appeal afresh in terms of Rules 22 (2) of the Railway Servants (Disciplinary & Appeals) Rules 1968. Thereafter in terms of the judgement dated 14.12.2005 passed by this Tribunal dated 14.2.2005, the Appeal of the Applicant was heard and the same was rejected by an order dated 27.05.2005. Now the instant O.A. has been filed seeking quashing of above stated orders.

4. We have heard the Ld. Counsel for the respective parties and perused relevant records. The Ld. Counsel for the Applicant, has vehemently argued that the very foundation of the *ex-parte* Enquiry Report is baseless and Respondent No.5 and 6 are biased against him and therefore, on one pretext or other, they wanted to throw the Applicant out of service. Therefore, they did not serve the chargesheet upon the Applicant and *ex-parte* inquiry was conducted. Thereafter when denovo inquiry was ordered vide order dated 25.11.2003, the same was also withdrawn at the instance of the Respondents without recording any reasons. Therefore, the principle of natural justice has not been complied with by the Respondents while conducting the inquiry which has resulted into dismissal of services of the Applicant.

5. Ld. Counsel for the Respondents has drawn our attention to letter dated 25.5.1996 wherein the Respondents have decentralized the administrative control under decentralized rules. The authority who has passed the order dismissing the services of the Applicant is well within his right to pass the impugned order. It is further pointed out that every

effort has been made by the Respondents to serve the chargesheet upon the Applicant and a notice was also published in the Newspaper on different dates indicating the date of inquiry. However, the Applicant chose not to appear. Faced with the situation, the Enquiry Officer conducted an *ex parte* inquiry and held the Applicant guilty of serious charges resulting into his dismissal. It is further stated that with regard to the denovo inquiry, as per the brochure issued by the Railways on Disciplinary and Appeal Rules in the year 2001, the action for denovo inquiry can only be decided by a next higher authority i.e. the Additional Divisional Railway Manager. Whereas in the instant case, the same very Appellate Authority before whom the Appeal was filed passed an order on 25.11.2003 ordering the denovo inquiry. Therefore, in terms of the brochure of the year 2001, the entire matter was reconsidered by the Additional Divisional Railway Manager, Allahabad who passed the order dated 10.02.2004 whereby withdrawing the earlier order of denovo inquiry and accordingly, the Appeal was ordered to be heard. This order dated 10.02.2004 passed by the Additional Divisional Railway Manager, was not challenged by the Applicant before any Court of law. Moreover, the Applicant submitted himself to the jurisdiction of the Appellate Authority has no objection whatsoever was ever raised by the Applicant at that time. Now after passing the impugned order, the Applicant has raised the voice, which is not permissible under the law. The Appeal dated 6.2.2002 was ordered to be heard on merit. Therefore, the ground raised by the Applicant of malafide of the Respondents in withdrawing the denovo inquiry stand falsified. With regard to the third contention raised by the Applicant that the authority who passed the order is not competent to pass the impugned order dismissing him from service. In this regard, the Respondent has clarified that the Respondents have issued a letter on 14.9.2004, whereby prescribing the authority for imposition of penalties of dismissal, removal or compulsory retirement of non-gazetted staff Notification of Disciplinary Authority. From the bare

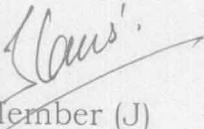
perusal of the same it is clear that Senior Scale Officer i.e. D.C.M. is competent to pass the order in the case of the Applicant. We are satisfied that the Respondents have passed the impugned order well within the four corners of the Rules and after complying with the principles of natural justice. It can be seen that when the chargesheet was served upon the Applicant every possible efforts have been made by the Respondents to serve the chargesheet i.e. by affixing the chargesheet at the residential address of the Applicant and thereafter through Registered Post and lastly a public notice in the News Paper. It is in the knowledge of the Applicant that the Disciplinary Proceedings are pending against him but to delay for the reason best known to him, he has chosen not to appear which resulted in the *ex-parte* inquiry. Thereafter alleging that the principles of natural justice has not been applied by the Respondents. This stand falsified when this Tribunal set aside the earlier order on 14.2.2005 and remanded the matter back to the Appellate Authority to decide the matter afresh, even then the Applicant did not submit any document in support of his contention which clearly shows that there is nothing with the Applicant to support his case and, therefore, this ground is not available to him.

6. The point raised by the Applicant in the O.A. was not even raised by him in the Appeal preferred before the Senior Divisional Commercial Manager, under Rule 18 of the Railway Servants" (Disciplinary & Appeal) Rules 1968 (Annexure A.16). Once, the issue has not been raised before the Appellate Authority at the relevant time and now the same before this Tribunal itself shows that the Applicant is not interested in completing the inquiry and he only wanted to prolong the proceedings.

7. We have perused the copy of the letter dated 14.9.2004 (Annexure S.R.4) where the Respondents have designated the authorities under the head "Schedule of Power" wherein the DCM is competent to pass the order in case of the Applicant. Therefore also this ground is also not available to him.

8. After remand of the matter by this Tribunal, the Appellate Authority heard the Applicant and passed a detailed order wherein they have noticed that there are financial irregularities committed by the Applicant resulting into losses to the Respondents. For these allegations, the Applicant has been removed from services. Since the Applicant did not submit any document even before the Appellate Authority, thererefore, it is presumed that he has nothing to say with regard to his case and he wanted to prolong the matter on one pretext or the other. The chargesheet was issued way back in 2001 which was completed at last on 27.5.2005 and still the Applicant is before this Tribunal alleging that the inquiry and subsequent punishment is not in accordance with the law. From the bare perusal of the order dated 14.2.2005, it is clear that the earlier order dated 27.2.2004 was set aside as the orders was not speaking orders and the liberty was granted to the Respondents to pass a fresh order. The impugned order at Annexure A.26 has considered all the aspects of the matter and have provided an opportunity of hearing to the Applicant. Thereafter concurrence has been given to the Inquiry Report. Therefore, seeing from any angle, the inquiry has been conducted by the Respondents after complying with the principles of natural justice i.e. before imposing the penalty the Applicant was provided ample opportunity to defend his case, which the Applicant fails and thereafter, even before the Appellate Authority did not submit any documents in support of his case. Therefore, it is to be concluded that there is nothing to defend his case before the Inquiry Officer.

9. In view of the above discussion, we are firmly of the view that impugned orders warrant no interference by this Tribunal. Consequently, the O.A. is dismissed. No order as to costs.


Member (J)

Sj*


Member (A)