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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 342 of 1986.

S.K. Samadhia .... Applicant.

Versus

Union of India & others .... Respondents.

Hon'ble Ajay Johri, A.M.
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

In this application filed under Section 19 of the Administrative Tribunals Act XIII of 1985, S.K. Samadhia, who was working as a Electrical Signal Maintainer (ESM) at Agra Cantt., has challenged the order dated 28.11.1985 passed by the Senior Divisional Signal and Telecommunication Engineer (Sr.DSTE), Jhansi, respondent no.3, removing him from service. The applicant was charged for gross neglect of duty and careless working while functioning as ESM at Raja Ki Mandi station on 13.6.1985 in the day shift. He was held responsible for getting work done on Point No.1028 at Raja Ki Mandi station of replacing sleeper without giving a disconnecting memo and for clearing Starter Signal for the Chhatisgarh Express by picking up the relay for clearing the fault of Point No.102 which was flashing without ensuring correct setting of point and clamping and padlocking which resulted in head on collision between Chhatisgarh Express and Dn. Special Goods Train at about 10.30 hours on 13.6.1985. A proper enquiry was held against the applicant and the punishment of removal from service was imposed by Sr.DSTE The applicant had filed an appeal against the orders of removal before the Divisional Railway Manager (DRM) but the appeal was also dismissed by an order dated 21.1.1986. According to the

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applicant the appellate order was passed without hearing him and without any notice being given to the applicant. The grounds on which he has challenged his orders of removal are that the order has been passed arbitrarily without any supporting reasons and by ignoring material evidence and he has been removed from service without being given the opportunity of being heard. The Enquiry Officer submitted his report on 29.11.1985 but the order of removal was passed on 28.11.1985. He had also pleaded that though the charge-sheet was issued to him by DSTE, who was competent to remove him from service the punishment was imposed by Sr.DSTE. Thus there has been interference by higher authority and though it was proved that he was not associated with meggering work still he has been held responsible. The Enquiry Officer was junior in rank to one of the witnesses. So he could not examine him and his defence arguments have not been considered. He was also not supplied the copy of the statement of one Krishna Narain and the charge was not proved against him.

2. The reply on behalf of the respondents has been filed by Head Clerk of the Operating Safety Branch of DRM's office, Jhansi. In his affidavit he has said that he is well acquainted with the facts of the case. He has said that the point involved was not 1028 but 102B and the charge-sheet indicated violation of General Rules 3.51(3) and Subsidiary Rule 3.51-1 and paras 723 and 902(b) of the Signal Engineering Manual. The applicant was held responsible only for clearing signals by picking up relay WKRI without clamping the points and verifying position at site. The signals could not be lowered with the position of points 102A & 102B unless the relays are interfered with. The flashing of points was reported before the accident and it was put right.. According to the witnesses the applicant was in the relay room and the Inspector, K.G. Sharma, in the panel room. So he must have picked the relay. The applicant was given full opportunities and afforded all possible facilities to defend himself. The date on the final order was erroneously shown

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as 28.11.1985. The enquiry report was submitted on 29.11.1985 and the orders were passed the same day and delivered to the applicant on 30.11.1985. There was no interference with the enquiry proceedings. The applicant did not object to the signing of Form-7 by Sr. DSTE. The appeal was also considered by the appropriate authority, i.e. Addl. DRM.

3. In his replication the applicant has raised other technical issues regarding how the departure signal can be lowered and not the reception signals. According to him the Commissioner of Railway Safety had also aadversely commented on the design of Panel interlocking of Raja Ki Mandi Station and the circuits were faulty so much so that they violated the principles of interlocking. A number of sheets of the panel interlocking were corrected after the accident. The applicant has further talked about the faulty circuits which are violating the principles of interlocking which according to him, is the basis of complete signalling system. According to him once the signal has been lowered it should not be possible to alter the route and if the route gets disturbed or altered, the signal should go to danger immediately. In the instant case after lowering the signal, the signal did not go on danger when the position of point no. 102 got changed. He has further said that even if it is presumed that the relay was picked up by him then the first effect of it would be that point nos. 102-A or 102-B could not be able to be tested but the Assistant Station Master (ASM) has admitted that he tested these points. According to him the Addl. DRM could also not act as the appellate authority and it was DRM who should have disposed of his appeal. Thus he has been made to suffer irreperable loss. He has further said that the Sr.DSTE was not at Jhansi on 29.11.1985. He was at Faridabad. He came to Agra on 30.11.1985 but the letter of removal purported to have been signed by him on 28.11.1985 was handed over to the applicant on 30.11.1985 at about 10.00 hours. Thus the removal order had been signed before the Sr.DSTE left Jhansi for Faridabad which

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could not have been possible because the enquiry report was submitted only on 29.11.1985. According to him the enquiry was also manovered to be completed and record time as the Ministry of Railways has to make the statement in the Parliament and the number of other enquiries also involved in derailment, etc. was still pending on that date and they were not hurried up.

4. We have heard the learned counsel for the parties. The learned counsel for the applicant contended that the enquiry conducted by the Commissioner of Railway Safety (CRS) on which the Enquiry Officer had relied on the reports had not been given to the applicant and only certain extracts were given for his perusal. He further contended that Moreover, the applicant was not in the relay room between 10.05 and 10.30 hours. The relay room was closed at about 10.05 hours and was not reopened thereafter and a point cannot be tested if a relay has been picked. Therefore, according to him the statement of ASM that he had tested the point would go to indicate that the charge at the relay was picked was not based on any correct evidence. From the register of the key of the relay room it is also observed that the key was handed over to ASM at 10.05 hours, as per the entries in the book. Therefore, it was a case of no evidence. ESM is also not responsible for setting the points and it should have normally been set by the two Signal Inspectors, who were present on the date. He also laid stress on the fact that though the enquiry report was submitted on 29.11.1985 the punishment order had already been issued on 28.11.1985. Copies of certain statements were also not given to the applicant. The learned counsel for the respondents, however, repelled these contentions and submitted that all the necessary documents had been given to the applicant and that the enquiry was done in a proper manner. The learned counsel for the applicant, however, maintained that there was no concrete evidence at all. It was only circumstantial and the whole evidence is vague.

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The D&A File in this case was also submitted by the learned counsel for the respondents. We have perused the case file as well as other documents carefully.

5. As far as the question of documents is concerned, at page 16 of the D&A File there is a note signed by the applicant on 9.11.1985 in which he has certified that he had inspected the record and taken extracts thereof for necessary action with reference to his letter to Sr.DSTE dated 1.11.1985. The letter of 1.11.1985 is placed at Sl.No. 25 of the same file and gives a list of 23 items all of which evidently had been inspected or extracts were taken wherever necessary from them by the applicant. However, during the enquiry he had demanded the copies of the statement given by the witnesses. These were given to him after some delay. The learned counsel has relied on the case of The State of Punjab v. Bhagat Ram (AIR 1974 S.C. 2335). In this case the Hon'ble Supreme Court had held that it was unjust and unfair to deny the Government servant copies of statements of witnesses examined during investigation and produced at the enquiry in support of the charges levelled against the Government servant and that a synopsis did not satisfy the requirements of giving the Government servant a reasonable opportunity of showing cause against the action proposed to be taken. Though the Government servant is given an opportunity to cross-examine the witnesses, the Hon'ble Supreme Court held that unless the statements are given to him he will not be able to have an effective and useful cross-examination. According to the learned counsel the delay in supplying the copies of the statement has adversely affected the case of the applicant. In the findings the

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Enquiry Officer had exonerated the applicant of the charge of gross neglect of duties and careless working and held him not responsible for getting work done on point no. 102-B without giving disconnection memo. He, however, held him responsible for clearing the starter signal for the Chhatishgarh Express by picking up relay WKR1 to clear the fault of point no. 102 which was flashing without ensuring the correct setting of point and clamping and padlocking which resulted in headon collision between the two trains.

6. On the facts of the case against the order of punishment removing him from service the applicant had put in his appeal on 2.12.1985 to DRM and this appeal was disposed of by Addl.DRM. In his appeal the applicant has taken a stand that the way the punishment order has been worded he has a feeling that the enquiry officer was ordered to give a report which Sr.DSTE wanted and he was not allowed to give his free decision as adduced from the statement of the witnesses and other concerning records and,therefore, there was interference in the meeting out of justice. He had further pointed out that the Enquiry Officer was junior in rank and service to the Signal Inspector Gr.I who was also a witness and, therefore, the Enquiry Officer was not competent to record the evidence of his

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senior. The copies of the statements of the witnesses were also not given to the applicant till 10.00 hours on 25.11.1985 and when he sought adjournment the same was refused and the arguments of defence forwarded by the applicant have not been considered by the Enquiry Officer. He has further pointed out certain other discripancies and he had, therefore, requested for consideration of his appeal and for granting a personal interview so that he could explain his case. In his appellate order Addl.DRM has recorded as follows :-

> "I have carefully considered the appeal made by Sri Samadhia, ESM on the punishment imposed by Disciplinary Authority, i.e. Sr.DSTE and find that Shri Samadia is guilty of the charges and punishment imposed is commensurate with the allegations lebelled on him and it does not require to be charged.
>
> The punishment imposed to stand good."

This appellate order does not give any indication that the appellate authority had considered all the points raised by the applicant in his appeal and he had also granted the personal interview to him before passing the final order on the appeal on 31.12.1985. It has been observed by the Hon'ble Supreme Court in the case of Ram Chander v. Union of India & others (1986 Lab.I.C. 885) that where, in appeal under Rule 18(ii) of the Railway Servants (Discipline & Appeal) Rules,1968 against the penalty of removal under Rule 6(viii) imposed on the servant was dismissed by the appellate authority by an order which did not indicate whether any attempt had been made on the part of the appellate authority to marshall the evidence on record with a view to decide about the sustainability of the findings recorded by the disciplinary authority and where it did not indicate that the mind had been applied as to whether the act of misconduct with which the railway servant was charged together with the attendant circumstances and the past record were such that he should have been visited with the extreme penalty

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of removal from service for a single lapse had observed thus in para 24 of this judgment :-

> "24. Professor de Smith at Pp. 242-43 refers to the recent greater readiness of the Courts to find a breach of natural justice 'cured' by a subsequent hearing before an appellate tribunal. In Swadeshi Cotton Mills v Union of India, (1981) 2 SCR 533 : (AIR 1981 SC 818) although the majority held that the expression "that immediate action is necessary" in S.18AA(1)(a) of the Industries (Development and Regulation) Act, 1951, does not exclude absolutely, by necessary implication, the application of the audi alteram partem rule, Chinnappa Reddy,J. dissented with the view and expressed that the expression 'immediate action' may in certain situations mean exclusion of the application of the rules of natural justice and a post-decisional hearing provided by the statute itself may be a sufficient substitute it is not necessary for our purposes to go into the vexed question whether a post-decisional hearing is a substitute of the denial of a right of hearing at the initial stage or the observance of the rules of natural justice since the majority in Tulsiram Patel's case (AIR 1985 SC 1416) unequivocally lays down that the only stage at which a Government servant gets a reasonable opportunity of showing cause against the action proposed to be taken in regard to him' i.e. an opportunity to exonerate himself from the charge by showing that the evidence adduced at the inquiry is not worth of credence or consideration or that the charges proved against him are not of such a character as to merit the extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case, is at the stage of hearing of a departmental appeal. Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case that the Appellate Authority must not only give a hearing to the Government servant concerned but also

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pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing shoule be given."

A perusal of D&A file indicates that certain notes were put up by the disciplinary authority on the appeal preferred by the applicant and thereafter the appellate authority gave the appellate order on 31.12.1985. In terms of the Hon'ble Supreme Court's observations it is of an utmost importance after the 42nd amendment that the appellate authority must not only give a hearing to the Government servant but also pass its reasoned order dealing with the contentions raised by him in the appeal. Since the appellate order is not a speaking order in terms of the Hon'ble Supreme Court's directions on this short point that it is not sustainable, we quash the appellate order and remit the case back to the appellate authority with a directions that it should hear and dispose of the appeal after affording a personal hearing to the appellant on merits by a reasoned order inconformity with the requirements of Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules,1968 as early as possible but in any event not latter than three months from the date of issue of these orders. We have no doubt that the appellate authority will also consider the technical aspects raised by the applicant in his appeal in regard to lowering of the departure/reception signals in the event of the point being defective and the relay having been picked and also on the issue whether the evidence is adequate enough to fix the responsibility on the applicant.

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7. The application is disposed of in terms of the above. Parties will bear their own costs.

MEMBER (J).

MEMBER (A).

Dated: April 12th, 1988.

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