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Court No. 1.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 671 of 1986

Badri Prasad Applicant.

Versus

Union of India and Others Respondents.

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

(By Hon. G.S. Sharma, J.M.)

In this original application filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant had challenged the validity of the orders dated 9.1.1986 terminating his services and the order of rejection of his appeal communicated to him through letter dated 7.10.1986. At the time of hearing of this application arguments ~~were~~ advanced on behalf of the applicant on two points. Firstly, that the applicant was ill and he was not informed of the dates and the disciplinary proceedings were taken ex parte against him and he was deprived of an opportunity of hearing. Secondly, that the name of the applicant did not appear in the original complaint made by one Sri Alvi and he had actually complained against two Parcel Clerks, who were ultimately let off by awarding lesser punishment of stopping their increments for two years, while the applicant was awarded the maximum penalty of removal from service.

2. Sri Prashant Mathur, learned counsel for the respondents, has produced before us the record of the disciplinary proceedings and has contended that every effort was made by the Enquiry Officer to contact the applicant with a view to inform him of the developments in the enquiry proceedings against him, but the applicant was not found at his residence and his family members did not

accept the notices and ultimately they were ~~placed~~ ^{posted} at his house. The applicant was reported to be out in connection with his private treatment. It has also been submitted by Sri Mathur that the name of the applicant figured at the preliminary enquiry stage when the complainant identified the applicant at the spot and named him that he was the actual person who had demanded Rs.80/- as bribe per Motor Cycle. ~~for loading.~~

3. After going through the record of the case and the disciplinary proceedings in the light of the submissions made before us we are not satisfied ^{fully & with} /that the contention of the applicant that ^{really} he was ~~not~~ aware of the development in disciplinary proceedings. What appears is that he did not take the disciplinary proceedings seriously because his name did not figure in the complaint filed by Sri Alvi and he had taken this plea in his statement of defence submitted by him on 29.5.1985 (copy available at page 24 of the paper book). In this ^{way &} view the applicant was under a misapprehension that there was actually no case against him.

4. It is not in dispute that the two Parcel Clerks, who were actually responsible for loading the two Motor Cycles were awarded the punishment of stoppage of increments for two years as the charge of demanding bribe was not found against them and as the enquiry proceeded against the applicant, this charge was found ~~as~~ established against him. Without commenting on the merits of the findings on this point we will simply like to point out that in the complaint filed by Sri Alvi on 6.5.1984 the bribe is stated to have been demanded by two Parcel Clerks and not by one person. The disciplinary authority and the appellate authority should have examined the case of the applicant in this light which was not done. We will, therefore, like to refer the matter to the appellate authority for deciding the appeal afresh after taking into consideration all the aspects of the case of the applicant in the light of the above observations and in view of the provisions of Rule 22 of the Railway Servants (D&A) Rules by passing a speaking order

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and after giving an opportunity of hearing to the applicant.

5. The application is accordingly allowed in part and the appellate order dated 7.10.1986 passed by the Addl. Divisional Railway Manager, Allahabad is hereby set aside and we direct to ^{Shri} re-examine and dispose of the appeal ^{abreli} in the light of the above directions by 30.9.1989. Under the circumstances of the case, the parties will bear their own costs.

6. A copy of this order be given to the learned counsel for the parties within 24 hours.

Sharma
MEMBER (J).

Sharma
MEMBER (A).

Dated: June 29, 1989.

PG.