

Central Administrative Tribunal, Allahabad.

Registration T.A.No.116 of 1986 (Civil Appeal No.97 of 1985)

Union of India and another	...	Applicants
	Vs.	
Buddha Lal	...	Respondent.

Hon. Ajay Johri, AM
Hon. G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

This appeal against the judgement and decree dated 26.8.1985 passed by the VII Munsif Shajahanpur in suit no.467 of 1982 has been received from the Court of District Judge Shajahanpur u/s.29 of the Administrative Tribunals Act XIII of 1985.

2. The plaintiff-respondent Buddha Lal (hereinafter referred to as the plaintiff) had filed the suit giving rise to this appeal in the Court of Munsif Shajahanpur for setting aside the order dated 16.1.1982 passed by the Asstt. Signal & Telecommunication Engineer (for short ASTE) Moradabad and the order dated 6.5.1982 passed by Divisional Signal & Telecommunication Engineer Moradabad dismissing his appeal in a case under the Railway Servants (Discipline & Appeal) Rules, 1968. (hereinafter referred to as the DA Rules) Shortly stated the plaintiff while employed as a Khalasi under the Signal Inspector Sri G.S. Jetley, defendant applicant no.2 at Rosa incurred his displeasure by refusing to do his personal work. The Electric Signal Maintainer (for short ESM) Sri S.N. Ganguli was also annoyed with the plaintiff on account of this fact and he had deputed two other persons, namely, Zamil Ahmad and Jag Dutta to look after the house hold work of defendant no.2. On the false complaint of Sri S.N.Ganguli, ESM that he was shoe gar-

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landed by the plaintiff on 17.10.1974, a disciplinary inquiry was initiated against him and the defendant no.2 himself was appointed the inquiry officer against all canons of law. The defendant no.2 submitted his report holding the plaintiff guilty in the absence of any independent evidence and by way of punishment, his pay was reduced to the lowest stage in his time scale. The appeal filed by the plaintiff to the Sr.DSTE on 23.11.1981 was dismissed by the ASTE himself and the plaintiff was not afforded adequate opportunity of hearing and he was punished without any evidence (in the absence of any legal evidence against him) and the punishment awarded to him was illegal and against the principles of natural justice.

3. In the written statement filed on behalf of the defendants by Sri Jetley, ASTE Moradabad, it was stated that the disciplinary inquiry against the plaintiff was not conducted by the defendant no.2 and he had simply forwarded the preliminary investigation made against the plaintiff and the actual inquiry was made by the Signal Inspector Chandausi Sri R.K.Gupta who had conducted the inquiry independently and impartially in accordance with rules and on his finding the plaintiff guilty, report was submitted by him to the disciplinary authority. The disciplinary authority after agreeing with the inquiry report had awarded the punishment to the plaintiff for the misconduct committed by him.

4. The learned Munsif had allowed the parties to produce the oral and documentary evidence in the case and after considering the evidence before him, he came to the conclusion that the inquiry officer was not biased against the plaintiff but he disagreed with the finding of guilt recorded against the plaintiff by the inquiry officer on the ground that the evidence of the witnesses was of

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doubtful nature and the findings cannot be said to be based on legal evidence. The trial Court further held that the appeal of the plaintiff was dismissed as time barred in the absence of any legal provision and the plaintiff was not afforded adequate opportunity of hearing in appeal. The order of punishment as well as the appellate order were, therefore, set aside and the suit was decreed with costs.

5. Aggrieved by the findings recorded against them, the defendants preferred this appeal which has come before us under the changed law. It has been contended on behalf of the defendants that the learned trial Court went beyond the scope of the suit in reappraising the evidence of the witnesses examined before the inquiry officer and the appeal of the plaintiff being barred under the specific provisions of DA Rules, the learned Munsif erred in holding that the appeal ~~xxx~~ could not be termed to be time barred in the absence of any rules. We have ourselves examined the entire record in the light of the submissions made before us.

6. It appears from the plaint allegations that the plaintiff deliberately made certain wrong allegations that one month after the alleged incident the report was made by the defendant no.2 against the plaintiff about his shoe garlanding and the defendant no.2 himself was appointed as inquiry officer and had conducted the inquiry against the plaintiff. It was also incorrectly stated that the appeal preferred by him to the Sr.DSTE was decided by the ASTE himself. The plaintiff seems to have made these wrong

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allegations with a view to mislead the Court and afterwards he amended the plaint half heartedly by stating that Sri R.K.Gupta was appointed as inquiry officer but the allegation that the defendant no.2 was appointed inquiry officer still remains in the plaint^{with}/other allegations aforesaid. The incident of garlanding Sri S.N. Ganguli, ESM is stated to be of 17.10.1974. A report to this effect was made by Sri Ganguli to the concerned Police station the same day through proper channel vide copy paper no.49/1-C and the plaintiff was also placed under suspension on the same day vide copy of order paper no.49/3-C by the defendant no.2 Sri Jetley. It is, therefore, incorrect to say that the report of this incident was made by Sri Ganguli about a month after the incident and the entire incident was concocted. The plaintiff has deliberately concealed the fact of placing him under suspension. The charge sheet served on the plaintiff is dated 20.11.1974 and¹ was served on him¹ in the same day. It is, therefore, not correct to say that the report of shoe garland¹ was made to the railway administration on 18.11.1974.

7. There may be some force in the contention of the plaintiff regarding the lack of evidence. The inquiry report on record shows that the complainant himself (Sri S.N.Ganguli) had not appeared as a witness in support of his complaint and the inquiry officer did not find the charge proved against the plaintiff. The disciplinary authority, however, in his impugned order of punishment held the plaintiff guilty. It appears from his order that out of the 3 witnesses examined before the inquiry

officer Sri S.N.Sahni had not supported the version of the complainant as he did not see anything with his own eyes. The other two witnesses examined had volunteered themselves to stand as eye-witness. No sufficient ground for the non-production of the complainant Sri S.N.Ganguli has been mentioned and it is simply mentioned that subsequently he went on leave. The Court or Tribunal has, however, not to reappraise the evidence and as a matter of fact, the reappraisal can be done only by the appellate authority, which could not be done as the appellate authority did not consider it necessary on the failure of the plaintiff to file the appeal in time.

8. The other finding of the learned trial Court that the plaintiff was not afforded adequate opportunity of hearing by the appellate authority and the appeal was wrongly held to be time barred is not wholly correct. The appeal was dismissed by the Sr.DSTE and not by ASTE as alleged by the plaintiff. The appeal was filed by the plaintiff on 15.3.82 while the prescribed ^{time} limit for filing an appeal is 45 days. The appeal was, therefore, clearly filed after the statutory period fixed for filing appeals under the DA Rules and it was rejected on this ground without entering into the merits of the appeal. In view of the peculiar nature of the evidence and the fact that the complainant himself could not appear before the inquiry officer, we feel that the appeal filed by the plaintiff should be considered by the appellate authority on merits after condoning the delay and he should carefully examine the evidence produced before the inquiry officer ignoring the evidence produced before

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the trial Court to come to a finding whether there was any evidence before the inquiry officer to sustain the charge against the plaintiff and in case in the opinion of the appellate authority, any further inquiry in the case be found necessary, he will be at liberty to order for such further inquiry from the stage upto which it was reached by the former inquiry officer. But, he will not order a de-novo inquiry.

9. Under the circumstances of the case, the appeal is allowed in part and after setting aside the judgment and decree passed by the trial Court, we direct the appellate authority to decide the appeal of the plaintiff against the order of punishment on merits after condoning the delay in the light of the observations made above within a period of 3 months from the date of the receipt of this order. The parties are, however, directed to bear their own costs.

[Signature]

MEMBER (J)

[Signature]

MEMBER (A)

Dated: Sept. 16, 1988
kkb.