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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No. 293 of 1986

Kalika Prasad Plaintiff

Versus

General Manager, E.Rly.
Calcutta & Others. Defendants

Hon.S.Zaheer Hasan, V.C.
Hon. Ajay Johri, A.M.

(By Hon.Ajay Johri, A.M.)

Suit No. 516 of 1983 has been received
on transfer from the Court of Hawali Munsif Varanasi
under Section 29 of the Administrative Tribunals Act
XIII of 1985.

2. The plaintiff Kalika Prasad was posted
as Safaiwala under Carriage Foreman Gaya. On
19.1.1978 he made a complaint against the CFO and
AME(C&W) before the Divisional Mechanical Engineer.
The plaintiff alleges that both these officers got
annoyed and as a result on 14.12.79 he was suspended
on some false allegations. He was served with a
major penalty chargesheet on 21.12.79 to which he
replied. Head Train Examiner Gaya was appointed
as Inquiry Officer. According to the plaintiff
he represented against the appointment of the
Enquiry Officer and though he was not informed about
the Inquiry etc. an Inquiry Report was submitted
to the Disciplinary Authority. Thus no opportunity

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was afforded to him. The AME(C&W) thereafter removed him from service on 1.8.81. The plaintiff alleges that this is a non speaking order. He preferred an appeal but no reply has been received. He has therefore prayed that the impugned order dated 1.8.81 be declared void and he be continued in service and the cost of suit be awarded to him.

3. The defendants' case is that the plaintiff was put under suspension on 15.12.79 for unsatisfactory work and misbehaviour. The disciplinary proceedings have been held in accordance with the rules and reasonable facilities were provided to the delinquent to prove his innocence. The plaintiff was asked to nominate his defence counsel and attend enquiry on 12.3.80 and again on 5.6.80 but he chose not to attend the enquiry. The plaintiff also did not make any appeal against the punishment order within the time limit. According to the defendants the removal order is legal, perfect and clear. The plaintiff filed the appeal on 2.6.82. The appeal was to be preferred within 45 days of issue of the punishment order. Thus the appeal was time barred. No other appeals were received by the defendants. The Inquiry Officer was not biased or prejudiced against the plaintiff.

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4. We have heard the learned counsel for both parties. According to the learned counsel for the petitioner the charge against the plaintiff was a

complaint of misbehaviour against the Carriage Foreman. The Inquiry Officer was Head Train Examiner who was subordinate to the complainant hence his case was prejudiced as a subordinate cannot give a finding against his senior. The learned counsel further contended that the action was taken *ex parte*. The learned counsel for defendants maintained that the enquiry proceedings were in order and the appeal being time barred has not been acted upon. No other point was pressed before us.

5. From the reply to the chargesheet that is placed as Paper 23-Ga it is evident that one of the charges against the plaintiff was misbehaviour with the Carriage Foreman. The plaintiff has contended that the Inquiry Officer was the Head Train Examiner who is subordinate to the Carriage Foreman and therefore he could be influenced. The function of the Inquiry Officer is that of a judge dealing with a case. ^{It is to be seen that} Such an officer should not be personally interested in the matter. He has to be a person having an open mind, a mind which is not biased against the charged officer. The question arises as to whether an Inquiry Officer who is subordinate to the complainant can do justice to the accused. In Bhagat Ram Versus Union of India (AIR 1968 Delhi 269) and R.Naresh Lal Versus State of U.P. (AIR 1967 All. 384) it has been held that the mere fact that enquiry officer is subordinate to the disciplinary authority is no indication of the

fact that he could not form his own independent judgement and was under the influence of his superior. The same ratio would apply to this case. As long as the Enquiry Officer is not directly subordinate to the complainant there should be nothing wrong in appointing such a person as Enquiry Officer. It is not the case that he was directly subordinate. An enquiry officer is not a prosecutor. It is neither his duty to somehow prove the case. The plaintiff has not brought out any evidence to prove that the Enquiry Officer had acted in a manner to indicate any influence from the Carriage Foreman or failed to adjudicate on the charges impartially and without bias. The Enquiry Officer is nominated by the disciplinary authority, but in discharging his duties he is supposed to be independent and not subordinate to the superior officers.

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6. In Sridharan Motor Service Versus Industrial Tribunal (1959) I LLJ 380 the Madras High Court had held that "though the punishing authority can appoint any person either from within or out of the establishment to hold the enquiry, if such person is sought to be appointed from within the establishment then enquiry should be held by someone who is placed above the employee and not by a person holding the same or lower rank." The Enquiry Officer in this case was Head Train Examiner who was not lower in rank to the plaintiff.

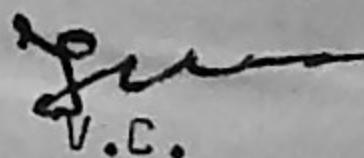
7. In A.S. Rizvi Versus Divisional Engineer (AIR 1964 Gujrat 140) it was held that where an enquiry was made by an officer subordinate to one against whom certain allegations were made it was held that the rules of natural justice were violated. The enquiry was not against the Carriage Foreman. The enquiry was against the plaintiff on a complaint having been made by the Carriage Foreman and therefore in view of what we have observed in paras supra we do not think justice has been allowed to suffer.

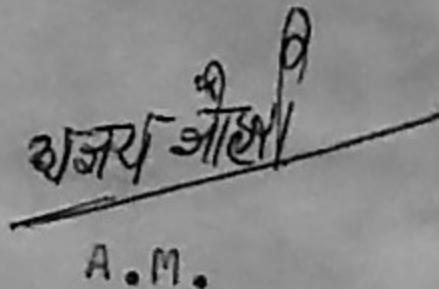
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8. On ex parte order having been issued, the defendants have said that notices were issued to the plaintiff to nominate his defence counsel and attend enquiry but he did not react. The fact of the plaintiff making an appeal after expiry of the time limit indicates that he had been taking things lightly and it has not been proved that he did not get the notices. There was thus no alternative for the Enquiry Officer but to finalize the enquiry ex parte.

9. In this case we find that the appeal preferred by the plaintiff has not been disposed of on account of it being time-barred. We direct the appellate authority to condone the delay in the filing of the appeal and hear the plaintiff and then decide it in

terms of rules and law. The appellate authority will also examine the various issues raised by the plaintiff while deciding the appeal, which may be done within two months from the date of issue of this order.

10. The petition (Suit No. 516 of 1983) is disposed of accordingly. Parties will bear their own costs.


V.C.


A.M.

Dated the 24th April, 1987

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