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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No. 21 of 1986

Munna Khan Applicant

Versus

Sr. D.C.S. Central Railway Jhansi
and Others. Respondents.

Present: 1. Hon.S.Zaheer Hasan, V.C.(J)
 2. Hon.Ajay Johri, Member (A)

Judgement delivered by Hon. Ajay Johri, Member (A)

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The petitioner Munna Khan was working as a first class Coach Attendant at the Jhansi Railway Station. He was chargesheeted for absence from duty on 15/16.10.1983. The charges also included tampering with railway records and misbehaving with Shri R.D. Pandey T.T.E. Jhansi. An inquiry was held against the charges and he was reverted from the post of First Class Coach Attendant to that of goods porter by an order passed on 12.3.85. He appealed against the punishment and his appeal was also rejected. He has sought relief that the impugned order of 12.3.85 and rejection of his appeal on 29.5.85 may be quashed and he may be allowed to draw his normal salary as First class Coach Attendant. The petitioner had filed a suit No. 442 of 1985 in the Court of the Munsif I Jhansi where he had sought interim relief of stay of operation of the impugned orders but this was rejected by the Munsif on technical grounds. He thereafter applied for withdrawal of that case and submitted the above application under Section 19 of the Administrative Tribunals Act XIII of 1985.

2. The petitioner's case is that on 16.10.83

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he had given an application for casual leave ^{at} for 15.10.83 and 16.10.83 as he had urgent domestic work (wife serious). In support of this contention he produced the Doctor's certificate dated 15.10.83 which he has filed as Annexure-III of his paper book. The memorandum of charges was issued to him on 9.11.83. It was based on a report dated 17.10.83 from Shri R.D.Pandey T.T.E. Jhansi and a report dated 24.10.83 from Shri B.L.Khurana C.T.I. Jhansi. The petitioner has said that the inquiry was conducted in a haphazard manner. The witnesses relied upon were not produced except two persons M/s H.M.Pathak and R.D.Pandey. The Inquiry Officer relied upon certain statements irrespective of the fact that the statements were not proved. Statement of one Shri D.M.West which was taken in the fact finding inquiry has been relied on in the departmental inquiry by the Inquiry Officer and some persons on whose statements the Inquiry Officer relied were not produced during the course of the inquiry. The production of one Shri P.C. Arora who was not in the list of witnesses to be examined was not warranted. The Inquiry Officer was vindictive, biased and prejudiced. The petitioner was not allowed to submit his defence statement. Under the circumstances the order of the disciplinary authority was not correct and similarly the appellate authority's decision was not a speaking order and was mechanical made without the application of his mind.

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3. The respondents case is that the petitioner gave an undated application for casual leave for the 15th and 16th of October, 1983 to the Conductor of the train on which he was supposed to work on 16.10.83.

According to the respondents the petitioner did not give any leave application or medical certificate in the Chief Ticket Inspector's office Jhansi. However, with his application dated 21.10.83 one undated leave application for 15/16.10.83 (2 days) and a photo copy of a medical certificate of his wife's sickness was produced by the petitioner during the course of the inquiry. No original certificate was submitted by him. The inquiry was conducted in accordance with the D.A.R. Rules and necessary witnesses were produced and reasonable opportunity was given to the petitioner to cross examine the prosecution witness and to produce defence witnesses. Shri Arora was produced as a witness as he was referred to by the petitioner himself. Shri D.M. West conductor Jhansi had retired from service w.e.f. 1.4.84 and significance has not been given to the report made by Shri D.M. West. Shri P.C. Arora had recommended the undated leave application produced by the petitioner on 21.10.83.

4. The learned counsel for the petitioner has argued that the petitioner has been given a punishment of permanent reversion. The punishment awarded to him is too severe. He has emphasized that the petitioner was not given the right to cross examine. During the course of inquiry the register which has been claimed to have been tampered with was not produced and neither was Shri R.D. Pandey produced as witness and permitted to be cross examined. The inquiry was done in a hoch poch manner which vitiated the inquiry. Reliance has been placed on reports which have been submitted by the Supervisors and not entirely on the proceedings of the inquiry. The appellate authority

has not applied his mind and has not given a speaking order. The order given is only a one line order. Therefore the whole inquiry is vitiated and is liable to be set aside.

5. The main arguments which have been put forward by the learned counsel for the petitioner revolve round the fact that the inquiry has not been done properly and that the findings are based on extraneous materials which did not form a part of the inquiry proceedings. Perusal of the findings of the inquiry given by the Inquiry Officer indicates that the Inquiry Officer has relied for arriving at his conclusions, on matters which did not form a part of the inquiry proceedings. In regard to tearing of pages of the Lobby Register, the register was never produced during the course of inquiry and the Inquiry Officer's report says that he has based his findings on certain observations made by Shri R.D. Pandey, T.T.I. in regard to tearing of the register. *There is thus no legal evidence to the misconduct for which he has* He has also relied on the written report made by Shri Pathak in regard to tampering with the entries in the Lobby Register. He has relied on the evidence given by the staff who were present in the office of Shri Khurana in regard to incorrect entries made by Munna Khan and subsequent tampering of the record by him. The Inquiry Officer has further gone to say that the concerned employees were called in the D.R.M's office and inquiry was made from them and they have corroborated the correctness of the charges. He had called the defence witnesses cited by Shri Munna Khan during the course of his examination and relied on the answers given by them. In his

* been charged.

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report the Inquiry Officer has said that he has examined all the evidences and records and the connected employees and obtained their clarifications and also cross examined the petitioner and Shri R.D. Pandey and other staff and come to conclusion that all the three charges have been proved.

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6. A fact findings inquiry cannot substitute a departmental inquiry. The preliminary inquiry may be necessary in order to enable framing of charges. It can be ex parte and even the delinquent may be interrogated during the course of it. But the evidence heard at the preliminary inquiry has got to be presented in the inquiry proper if it is to be relied upon. The failure to supply the preliminary inquiry reports to enable the delinquent to cross examine the witnesses will tantamount to denial of reasonable opportunity. Statement of witnesses which are taken at an inquiry where the delinquent is not present or did not participate can only be relied ^{at} ^{upon} if during the regular inquiry the delinquent is given these statements and he is allowed to cross examine those witnesses. If this is not done it violates natural justice. An inquiry has to be fair and reasonable and conclusion should be based on evidences and matters of record. The report of the Inquiry Officer submitted on 27.2.85 is not based on these principles.

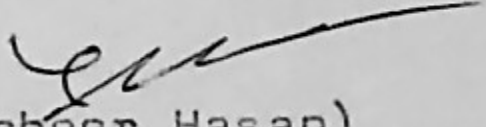
7. When a delinquent makes an appeal against a particular punishment the whole thing is open and has to be examined keeping in view the fact that one does

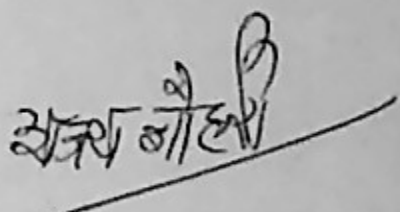
not proceed on the assumption that the appellant is guilty. The whole matter to be examined with an open mind. The order of the appellate authority does not indicate such an application of mind.

8. In the result we find that the inquiry findings have been based by the Inquiry Officer on extraneous materials. He has relied on statements taken outside the enquiry and at the back of the accused. He has carried out fact finding exercises and relied on them. An enquiry officer cannot look into unspecified documents behind the back of the delinquent and not tell him of the documents he has looked into. It is a quasi-judicial function. A conclusion so arrived at and any order based on such deliberations is liable to be quashed. Such enquiry findings are void ab initio.

and quash the order of 12.3.85.

We accordingly allow the petition. The appellate order which was based on these quashed enquiry findings does not exist. There are no orders as to costs.


(S. Zaheer Hasan)
Vice Chairman(J)


(Ajay Johri)
Member(A)

RKM

Dated the 19th Sept., 1986.