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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No. 1426 of 1986 (T)

(C.A. No.513 of 1983)

Nand Kishore Plaintiff-Appellant

Versus

Union of India & OthersDefendants-Respondents.

Hon. S.Zaheer Hasan, V.C.

Hon. Ajay Johri, A.M.

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

23/ Appeal No. 513 of 1983 Nand Kishore Versus Union of India & Others has been received on transfer from the Court of District Judge, Allahabad. The appeal is against the judgement and decree passed in Suit No. 167 of 1981 by the Munsif West, Allahabad on 28.4.83. The Plaintiff-Appellant(Appellant) has filed the appeal on the grounds that the judgement is perverse and against the evidence on record. The court below has not considered all the case laws and rules cited which has resulted in miscarriage of justice. The Appellant has, therefore, prayed for setting aside of the judgement and decreeing the suit in his favour.

2. The appellant was an Asstt. Electric Driver on the Allahabad Division of Northern Railway. He was taken up for fraudulently claiming extra hours on his Jt. Train Journal and was reverted as Fireman grade 'B' with effect from 26.2.1981. He has alleged that he was denied reasonable opportunity to defend himself by not being given

copies of the statements of the witnesses relied upon. The Enquiry Officer conducted the enquiry with bias and no opportunity was given him to examine the witnesses. He prayed for issue of a permanent injunction restraining the defendants from reducing him and that he be continued as an Electric Asstt. Driver. On the other hand the defendants have said that full opportunity was given to the appellant and no principles of natural justice have been violated. The appellant never represented against any thing during the enquiry and the suit is frivolous, vexatious and liable to be dismissed.

3. The learned Munsif had dismissed the suit on the ground³⁴ that the appellant having in his own letter admitted that he received all papers, his contention that he has been denied reasonable opportunity, did not hold ground and therefore his reversion was not illegal or against natural justice.

4. We have heard the learned counsel for both parties and have also perused the case file and the documents submitted by both sides. The main contention of the appellant's counsel was that the charges in the memorandum are vague, the appellant's reply of 7.3.1980 has been considered as the reply to the memorandum. While imposing the punishment no other documents or reports have been considered except the letter of 7.3.1980 and thus rules 9 and Rule 10(5) of the Discipline & Appeal Rules have been violated. These have been strongly challenged by the learned counsel for defendants on the short point that only pleas raised in the original suit can now be

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taken up and no new plea can be introduced in the arguments.

5. The trial court had framed proper issues and on an appreciation of the evidence on record dismissed the suit. The main question is whether the appellant was afforded reasonable opportunity or not. The evidence on record is overwhelmingly against the appellant. Though it is a new point, we find no force in his arguments that charges were vague. From the wording of the charges it is clear that the appellant and his crew mate the driver were both involved in falsification of records. The appellant had not made any representation regarding opportunity for cross-examination not having been given to him during the enquiry itself. He had been given the statement of the relied on witnesses as he has himself admitted in his letter to Asstt. Electric Engineer. The fact, however, remains that the appellant participated in the enquiry without murmur and he did not care to make use of the opportunity to appeal against the punishment instead he ran to the shelter of the court of law and now raises a new issue that the punishment order does not indicate that the Disciplinary Authority had gone through the Enquiry Officer's findings. The Enquiry Officer's findings hold the appellant guilty and though a printed form has been made use of in conveying the punishment order, it is hardly likely that after the Disciplinary Authority has appointed the Enquiry Officer and asked him to hold the enquiry, his findings would be only an empty formality. In our opinion this contention

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is not sustainable. It would have had some force if the Enquiry Officer had not held the appellant guilty and the Disciplinary Authority would have held him so.

6. The learned counsel for the appellant has relied on the judgement by the Hon'ble High Court of Judicature at Allahabad in Second Appeal No. 173 of 1974 D.N.Mukerjee Versus Union of India (F.L.R. 1981(42) 166) where it was held that where the order of punishment passed under the Rule 1716 of the Indian Railway Establishment Code Vol.I does not contain reasons it shall have to be bad in law and the necessity exists because without them the appellate authority has no material on which it may determine the reasonability of the punishment. The punishment order in this case says :-

".....following reasons :-

Charges are very grave. Employee deliberately filed wrong JTR to earn more money....."

3/ Here reasons have been given. In terms of the Hon'ble Supreme Court's observations in Union of India Versus K.Rajappa (AIR 1970 SC. 748) the manner in which this is done is immaterial. It is also not required that the evidence be discussed and the order be written as if it is a judicial order.

7. Under Rule 10(5) the disciplinary authority has to make an order imposing the penalty. It is no more necessary to give the delinquent any opportunity to make representation

on the penalty proposed to be imposed. The appellant had the right to appeal against the penalty but he did not make use of it. Remedies available to him were under the Departmental or Civil Rules and Judicial. He chose to seek the shelter of the court of law.

8. The cardinal principles of natural justice demand that a person should have the opportunity to know the allegations against him. The appellant had fully known the case which he had to meet. The SLI's report which has been relied upon is fairly comprehensive. The evidence and record were placed before him for his information. There is nothing to dispute that the procedure was not an orderly one. The principles of natural justice ensure that a sense of satisfaction is created in as much as the points raised have been heard. These principles are not clothed in a strait jacket and depend upon the circumstances of the case. They are not inflexible mathematical enunciations. What is to be seen is whether in the light of facts and circumstances of a particular case and the nature of issues involved, a fair and reasonable opportunity of being heard has been furnished or not. We do not find any lacuna in this regard. The issues raised were denial of reasonable opportunity by the non supply of the statements of the witnesses. These were met. Thus this plea has no force.

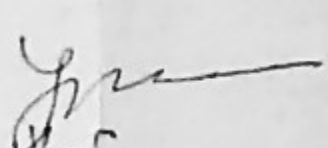
9. Issues not raised in the original petition should not be raised in an appeal. The appellant had only complained against the non supply of the statement of witnesses and the bias of the Enquiry Officer. He has not shown any representation that he made during the

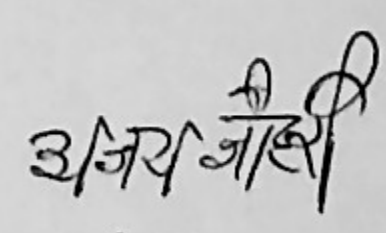
enquiry against these points. The denial of reasonable opportunity is a vague argument. He had nominated his defence counsel and he participated in the enquiry.

10. It is established law that a point which was not raised before the trial court and on which no findings have been given by it cannot be a subject matter in an appeal. This has been also contested by the learned counsel for defendants. If any prejudice was caused to the appellant he should have raised the issue in his plaint. The plea of violation of Rule 10(5) raised now is liable to be ignored.

11. The appellant did not utilize the opportunity of making an appeal against the punishment. We also do not find any indication that alongwith the punishment order the enquiry report was sent to the appellant. We direct that the defendants will now send him a copy of the enquiry report and Disciplinary Authorities findings and if the appellant so desires, he is allowed to file an appeal within 45 days of receipt of the enquiry report & findings. On receipt of the same the defendants will consider the appeal in accordance with the rules and dispose^{of} within a month thereafter.

12. This Civil Appeal No. 513 of 1983 is disposed of accordingly. The judgement and decree of the learned Munsif^{in suit no 167 of 1981} is modified in these terms. Parties will bear their own costs throughout.


J.C.


A.M.

Dated the 15th Jan., 1987

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