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Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A No.1576 of 1986(Original Suit No.38 of 1984)

Surendra Singh Naviyal ... Applicant

Vs.

The Union of India and 2 others ... Respondents.

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

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

This transferred application is the original suit and has been received by transfer from the Court of Munsif City Bareilly under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The applicant (hereinafter referred to as the plaintiff) is a member of Scheduled Tribe and had joined the service of N.E.Railway on 28.10.1979 as A-2 Signaller and was promoted as Assistant Station Master in April, 1981. While posted as ASM at Kathgodam, the plaintiff was served with a charge sheet dated 1.5.1982 for having failed to observe safety device on 20.4.1982 resulting in an accident of the part-load 11-up and 102 Dn. trains in Block Sections between Kathgodam and Haldwani. In the disciplinary proceedings held against him, he was found guilty of the charge and he was removed from service vide order dated 11.5.1983 passed by the Divisional Safety Officer-respondent no.2. The appeal preferred by the plaintiff was dismissed by the Divisional Railway Manager Izatnagar on 16.8.1983. The plaintiff has challenged the validity of the said orders in this case and it has been pleaded that no fact finding inquiry was made before charge sheeting him and the statements of the witnesses were not supplied to him despite repeated requests. The charge levelled against him was unfounded and he was not found guilty

by the inquiry officer and the disciplinary authority without any legal evidence, illegally held him guilty of the charge against the principles of natural justice. He was not given an opportunity to cross-examine the witnesses and before punishing the plaintiff, the disciplinary authority did not afford him any opportunity to clarify the points on which he disagreed with the view taken by the inquiry officer. The plaintiff had observed all the available safety devices and the unfortunate accident could not be avoided despite best efforts. The plaintiff is not responsible for any lapse. His appeal was rejected by the appellate authority by passing a cryptic order in mechanical manner. It has also been pleaded that the plaintiff was wrongly suspended during the disciplinary proceedings and all the proceedings taken thereafter are illegal, null and void.

3. The respondents (hereinafter referred to as the defendants) have contested the suit and in the written statement filed on their behalf, it has been stated that the plaintiff was served with a charge sheet for major penalty for gross negligence of duty and failure to ensure security of the six Coaches on line no.1 which resulted in their rolling down and collision in the Block Section of Kathgodam-Haldwani causing casualties and derailment. The plaintiff had violated the operating instructions prescribed in this connection. Since the charge sheet was not based on any preliminary inquiry and the statements of witnesses were not recorded before charge sheeting the plaintiff, there was no question of supplying copies of statements of witnesses to him. The witnesses were examined in the presence of the defence counsel of the plaintiff but he did not cross-examine them though the case was adjourned on several occasions to enable the plaintiff to defend himself properly. The disciplinary authority did issue

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a show cause notice to the plaintiff on 11.5.1983 before removing him from service on 23.5.1983. The charge levelled against the plaintiff stood fully proved by the evidence produced before the inquiry officer and the disciplinary authority rightly disagreed with the report of the inquiry officer. The appeal of the plaintiff was rejected by the appellate authority after hearing the plaintiff on merits and his allegations to the contrary are not correct. There was no irregularity in conducting the inquiry against the plaintiff; there was no violation of any rules or principles of natural justice and he was rightly found guilty and punished for the negligence and lapses committed by him.

4. In the replication filed by the plaintiff he reiterated the pleas taken by him in his plaint and further pleaded that his defence counsel was unable to cross-examine the witnesses in the absence of the plaintiff and the request of the defence counsel for adjournment was wrongly refused by the inquiry officer and the plaintiff was not given reasonable opportunity to defend himself.

5. The learned counsel for the plaintiff, while placing his reliance on the allegations made in para 1 of the plaint, contended before us that the allegations of this para have been admitted by the defendants in para 1 of their written statement and according to para 1 of the plaint, as the plaintiff was appointed by the General Manager, N.E. Railway he could not be removed from service by any lower authority and the entire disciplinary proceedings initiated by the Divisional Safety Officer and the order of removal passed by him are, therefore, without jurisdiction and there is no need

to consider any other point to grant relief to the plaintiff.
We will like to reproduce below para 1 of the plaint :-

" That the plaintiff was appointed as A-2 Signaller vide General Manager Personnel, N.E. Railway Gorakhpur's letter no.E/227/4/3-1 dated 17.10.1978 and from 28.10.79 he joined his services as A-2 Signaller."

On the basis of the allegations made in this para, it was contended on behalf of the plaintiff that we should hold that he was appointed as A-2 Signaller by the General Manager Personnel. The contention of the defendants is that there is no allegation in this para that the appointment of the plaintiff was made by the General Manager (P), instead, the allegation is that the plaintiff was appointed vide letter no.E/227/4/3-1 dated 17.10.1978 of General Manager (P) and he joined the service from 28.10.1979. The letter dated 17.10.78 quoted by the plaintiff in this para has not been produced before us. We find a difference of more than one ^{the date of} year between this letter of the General Manager (P) and the date of joining the service by the plaintiff. Had the plaintiff been appointed vide letter dated 17.10.1978, there could not be a delay of about 1 year in joining the service by the plaintiff. We are, therefore, unable to accept the contention of the plaintiff and in our view,, the plaintiff was appointed only in terms of the letter dated 17.10.1978 issued by the General Manager (P) by some other competent authority. Our this view finds support from the own conduct of the plaintiff. It is evident from the remaining paragraphs of the plaint that the plaintiff nowhere took a specific plea that the respondent no.2 was not his appointing authority or was not competent to initiate the disciplinary proceedings against him. This plea was also not raised by the plaintiff during the disciplinary proceedings or in appeal against the order of removal. Thus without a specific plea, for the first time the plaintiff raised this plea of lack of jurisdiction on the part of the disciplinary authority at the time of arguments

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which is not tenable and we do not find any force in this contention.

6. On merits, it was contended that the plaintiff was not supplied copies of statements of witnesses and without a preliminary inquiry, he could not be served with a charge sheet for this accident. It appears from the report of the inquiry officer as well as from the own allegations of the plaintiff that in fact no preliminary inquiry was held before holding the disciplinary inquiry against the plaintiff. If no inquiry was held and the statements of the witnesses were not recorded, the plaintiff could not be supplied with the copies of their statements. The stand taken by the plaintiff from the very beginning was wholly misconceived and ill advised. We have not been shown any provision barring a disciplinary inquiry against a railway employee in connection with an accident without holding a preliminary inquiry first. We, therefore, do not find any force even in this contention of the plaintiff.

7. It has been further contended that the plaintiff was not allowed to cross examine the prosecution witnesses. The enquiry officer has mentioned in his report that on several dates, the inquiry was postponed at the instance of the plaintiff or his defence counsel. On the sixth sitting, the statements of the prosecution witnesses were recorded in the absence of the plaintiff but in the presence of the defence counsel with his consent. If the defence counsel did not cross examine the witnesses, the inquiry officer or the defendants cannot be blamed for that act. What we find is that in the view of the defence counsel and the inquiry officer, the prosecution witnesses had said nothing against the plaintiff and as such, the defence counsel did not like to cross-examine them. It appears from the proceedings dated 28.11.1982 of the enquiry officer that the two witnesses, namely, Guard and the Driver of the concerned

train examined in the enquiry were cross-examined by the inquiry officer himself and the defence counsel refused to cross-examine them on the plea that it was not possible to cross-examine them in the absence of the delinquent as well as in the absence of the copies of their previous statements. The previous statements as already made clear, were never recorded and as such, insistence of the defence counsel for the same was wrong and the same could not be supplied. As the witnesses were examined with the consent of the defence counsel, it was merely an excuse for not cross-examining the witnesses in the absence of the plaintiff. It appears to us that the plaintiff had not even filed the written statement of his defence and he was not clear in his mind as to what defence could be taken by him in this case.

8. It is, therefore, not correct to say that he was not given adequate opportunity to cross-examine the prosecution witnesses.

9. Under the rules, the plaintiff was not entitled to any opportunity of hearing before the disciplinary authority but in fact, an opportunity was given in this case. The disciplinary authority has given his detailed reasons for not agreeing with the report of the inquiry officer and for holding the plaintiff guilty of the charges levelled against him. We have examined the reasonings given by the disciplinary authority in finding the charges established against the plaintiff and we find no perversity or any other thing to call for any interference by us. The appellate order itself shows that before rejecting the appeal of the plaintiff the appellate authority had given him a personal hearing. This shows the application of the mind of the appellate authority and the order of the appellate authority cannot be said to be invalid merely because detailed reasons have not been given therein. We are, therefore, satisfied that

the enquiry against the plaintiff was conducted in accordance with rules and there has been no violation of the principles of natural justice or the provisions of Art.311 of the Constitution.

10. Regarding the punishment awarded to the plaintiff, it appears from the proviso to rule 6 of the Railway Servants (Discipline and Appeal) Rules, 1968 that ordinarily either the penalty of removal or dismissal from service has to be awarded in case a railway servant is found guilty of any act or omission which resulted in collision of railway train and though the plaintiff has been awarded the lesser penalty of removal from service for the negligence committed by him, we feel that this punishment too appears to be little harsh considering his young age. He was removed from service at the young age of 25 years as appears from the age given in the plaint. It further appears from the order of the disciplinary authority and the report of the inquiry officer that the plaintiff did take some precaution to avert the collision of the nature with which he was charged and the unfortunate collision had taken place as fool-proof precautions and steps were not taken. The proviso gives a discretion to the appointing authority to award a lesser penalty in suitable cases. We will, therefore, like to take a compassionate view in this case.

11. The suit is accordingly decreed in part. We set aside the order of removal of the plaintiff from service as well as the order of dismissal of his appeal and instead of the penalty of removal from service, he is reduced in rank as A-2 Signaller. In case no such post is now in existence in N.E. Railway, he be given any other appointment on equivalent post other than in the operating section. For the period of his absence from

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duty he shall not be entitled to claim any salary, allowances, or other benefits, whatsoever including seniority and for the period of suspension, he shall not be allowed to get anything more than the subsistence allowance permissible under the rules. He shall not be considered for further promotion for 3 years. The parties shall bear their own costs.

[Signature]
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MEMBER (A)

[Signature]
26/10/87
MEMBER(J)

Dated: Oct. 26, 1987
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