

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Registration (TA)no. 406 of 1987  
Raghunath

Versus  
The Div. Superintendent N.E.Rly.  
and others.

petitioner

Respondents.

Hon'ble D.S.Misra, A.M.

Hon'ble G.S.Sharma, J.M.

(By Hon'ble D.S.Misra)

This is writ petition no.3307 of 1979, which has come on transfer under Section 29 of the A.T. Act XIII of 1985, in which the petitioner had prayed for quashing the orders/directions contained in annexures nos.4,6, and 8 and commanding the respondents to promote the petitioner as Welder forthwith and to treat him as having continued on the post of the Welder and to treat him at his original seniority. It is further prayed to grant him the difference of pay between the pay of Welder and basic Welder which accrue due to him accordingly.

2.The brief facts of the case are that the petitioner while working as Welder in the North Eastern Railway Loco shed Gonda was served with a memo /containing articles of charges as also statement of imputations on the basis of which the articles of charges were framed, and a list of documents. The charge against the petitioner was that on 28th December, 1968, he had disobeyed the legal orders of his senior and misbehaved. After the inquiry was completed, the disciplinary authority served a memo dated 9.9.70 (copy annexure 4) on the petitioner informing him that he agreed with the findings of the inquiry officer that the articles of charges were proved against the petitioner and he proposed to impose the penalty

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of reduction in rank to that of a basic welder on pay Rs.75/-per month in the scale of Rs.75-110. The petitioner was given an opportunity against the action proposed to be taken. Subsequently, the Divisional Mechanical Engineer, in his capacity as disciplinary authority imposed the penalty of reducing permanently to lower grade vide order dated November 17, 1970 (copy annexure 5). The appeal filed by the petitioner against the above mentioned penalty was decided by the Divisional Superintendent(P) vide order dated 4.3.1971. While rejecting the appeal, the appellate authority modified the penalty to reduction as a basic welder for a period of 2 years with loss of seniority. The petitioner filed a writ petition in the High Court of Allahabad (Lucknow Bench) which was decided by an order dated May 10, 1978 directing the appellate authority to rehear the appeal according to law in the light of the observations made in the judgment. The D.R.M.(P) Lucknow vide his order dated 31.8.79 (copy annexure 8) passed a fresh order reducing the punishment passed by the disciplinary authority to one of reduction in pay to Rs.75/-from grade Rs.110-180 to Rs.75-110 for a period of 2 years without loss of seniority. The present petition is against the order dated 31.8.79 passed by the appellate authority as well as against the order dated 27.10.1970 passed by the disciplinary authority. The impugned order has been challenged on various grounds as given below.

(a) The inquiry proceedings are wholly vitiated as there has been a denial of reasonable opportunity within the meaning of the provisions of Art.311 of the Constitution.

(b) The charge against the petitioner was vague, unspecific and lacking in particulars.

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- (c) There has been gross violation of the mandatory provisions of Rule 9(3)(ii)(P) inasmuch as no list of witnesses by whom the articles of charge was to be sustained, was drawn up.
- (d) The inquiry officer was prejudiced as the applicant had instituted criminal proceedings against his immediate superior
- (e) There has been complete denial of reasonable opportunity of defence and cross-examination of prosecution witnesses.
- (f) The appellate authority had failed to discharge the mandatory duty provided under Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968.

3. In the reply filed on behalf of the respondents, the allegations made in the writ petition were denied and giving details of the various stages of inquiry proceedings and the alleged noncooperation of the petitioner in the conduct of inquiry. It was contended that the petitioner was given full opportunity to defend his case and if he failed to avail of the same, he has himself to blame. Regarding the orders passed by the appellate authority, it is stated that the order has been passed after full consideration of the facts and circumstances and the other points raised by the petitioner keeping in view the observations of the High Court and there is no illegality in the order.

4. We have heard learned counsel for the parties and have carefully perused the documents on record. We may first examine the appellate order dated 4.3.71 which was passed in compliance with the order dated May 10-, 1978 passed by the Division Bench of the High Court of Allahabad. The first part of this order reads as follows: having considered all his representations and facts available before me, I am convinced that Sri Raghunath did not obey orders of his superiors and



misbehaved also, thereby committing misconduct. The appellate order was required to be passed under Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968. Sub rule (2) of Rule 22 of the above Rules reads as under:

"22(2): In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider-

- (a) Whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India, or in the failure of justice;
- (b) Whether the findings of the disciplinary authority are warranted by the evidence on the record; and
- (c) Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders-
  - (i) confirming, enhancing, reducing or setting aside the penalty; or
  - (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case"

It appears to us that the order dated ~~March 4, 1979~~ <sup>31-8-1979</sup> passed by the appellate authority does not confirm to the instructions contained in sub rule (2) of Rule 22 of Railway Servants (Discipline and appeal) Rules 1968. The appellate authority has failed to indicate whether the correct procedure has been followed, and whether findings of the disciplinary authority are warranted by the evidence on record. We are of the opinion that this is a serious lacuna in the appellate order which is

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not sustainable in law. Accordingly we quash the appellate order dated 31\_8.79 and direct the appellate authority to pass a fresh order by following the procedure laid down in Rule 22 of the Railway Servants(Discipline and Appeal) Rules, 1968 and after affording an opportunity of personal hearing to the petitioner. *by* We are of the opinion that it is not necessary to go into the merits of the alleged irregularity in the holding of inquiry and imposition of penalty by the disciplinary authority. We hope that the appellate authority would pass orders after taking into consideration the various points raised in this regard in his appeal against the order of punishment.

The petition is disposed of accordingly without any order as to costs.

*Sharma*  
A.M. 10/6/88

*Sharma*  
J.M.

JS./b.6.88