

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

~~Application~~ Application No. 1619 of 1987(T)-

Shri Abdul Qayam Khan Applicant

Versus

Union of India and Others Respondents

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. A.B. Gorthi, A.M.

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant was recruited in service of the then B.N. & W Railway on 15th August 1939 and subsequently the aforesaid B.N. & W Railway company was taken over by the State, he was appointed on behalf of the Government of India, Railway Department Railway Board upon the post of T.T.E.. While working as T.T.E a charge sheet was served upon him that he was travelling on duty as a T.T.E in company with another T.T.E the Railway train was checked by the Railway Magistrate and was found that a number of passengers were allowed to travel without tickets on that train. The applicant was considered to be guilty of misappropriation of government earnings by permitting those travellers without tickets. The departmental enquiry proceedings were passed.

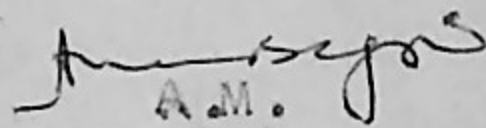
2. The applicant was informed of the date through letter but inspite of his request he was not supplied with the evidence on which the order for enquiry was passed. However he submitted his written statement and reasonable opportunity was not given to him. Thereafter the charge sheet was served and the enquiry proceeded. The enquiry

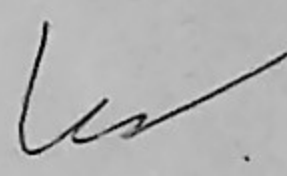
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Officer submitted his report. The disciplinary authority served a show cause notice on the applicant without obtaining explanation or service of notice of proposed penalty, the Railway administration has removed the applicant from the post of T.T.E. The applicant filed an appeal to the Railway Board through the Secretary against the order of removal from service which has also been rejected by the Railway Board on 28.9.72. The impugned order dated 2.12.71 for removing the applicant from service and the order dated 29.8.72 passed by the Chairman Railway Board rejecting the applicant's is illegal and against the Railway Rules because the applicant's appointing authority in the service is the Government of India Railway Department Railway Board and the General Manager was not competent to initiate disciplinary proceedings or to frame any charge to constitute an enquiry committee to issue any notice of proposed penalty and to remove the applicant from service, which is illegal and without jurisdiction. If a person is a Railway servant he is covered by Article 311(1) and such a person if he is a permanent employee holding a substantive post cannot be removed otherwise than complying with the provisions of Article 311(2). If compliance of Article 311(2) has not been made, the removal of the applicant has to be held to be an invalid one. If the removal is illegal the applicant will be deemed to be in service and is entitled to the reliefs claimed.

3. The order passed by the disciplinary authority is a non speaking order and such order is no order in the eyes of law. The very same mistake has been done. Accordingly this application deserves to be allowed. The appellate order dated 29.8.72 is quashed. However

it is open for the disciplinary authority to pass an order on the evidence and other materials on record ^{to why} as ~~the~~ punishment order is quashed in this ground. It is open for the applicant to file a representation against the finding so recorded by the Enquiry officer against him. Let the enquiry be concluded within a period of three months from the date of receipt of this order. In case the enquiry officer's report is passed within the period of three weeks and if no representation is filed thereafter the same shall not be entertained. No order as to the costs.


A.M.


V.C.

Dated: 14th May, 1992

(Uv)