

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

T.A.No. 1807/87(T)

in

C.M. Writ Petition No. 4033/85

Shri Ram Bahadur

Petitioner.

versus

1. Union of India.

2. Divisional Railway Manager, North Eastern Railway,
Izatnagar, Bareilly.

3. Divisional Railway Manager(Personnel), N.E.
Railway Izatnagar, Bareilly.

4. Senior Divisional Mechanical Engineer, North
Eastern Railway, Izatnagar, Bareilly.

5. Shri N.M.L.Mathur, Enquiry Officer(Assistant
Mechanical Engineer) N.E.Railway, Izatnagar,
Bareilly.

Respondents.

Hon. Mr. A.B.Gorthi, Member (A)

Hon. Mr. S.N. Prasad, Member (J)

(Hon. Mr.S.N. Prasad, Member Judicial).

The above Civil Misc. Writ petition No. 4033
of 1985 which was filed in the High Court of Judicature
at Allahabad with the prayer for quashing the charge —

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sheet dated 11.2.82 (Annexure 9 to the writ petition), the enquiry reported dated 11.8.83 (Annexure 25 to this writ petition), order dated 31.5.84/2.7.84 imposing the penalty of removal from service (Annexure 26 to this writ petition) and the order dated 11.9.84 (Annexure 28 to the writ petition), and for directing the respondents to pay the entire arrears of salary and allowances etc. to the petitioner for which the petitioner is entitled. After the advent of the Administrative Tribunals' Act, 1985, the above writ petition has been received in this Tribunal by way of transfer under section 29 of the Administrative Tribunals Act, 1985 and the same has been here numbered as T.A. No. 1007 of 1987.

2. The petitioner (applicant) has filed the above petition with the averment that he was appointed initially and posted as a clerk on 19.7.85 under Chief Mechanical Engineer, Gorakhpur, after having been selected by the Railway Service Commission, and later on the petitioner was posted as Head Clerk in the Loco Shed Kathgodam, and on 3.11.81 he was transferred from Kathgodam to Pilibhit as per order No. 458 dated 3.11.81 and was granted 10 days joining time. Due to circumstances beyond his control, and due to non-issue of emergent duty pass, the petitioner could not join within the time specified

2

in the aforesaid transfer order and eventually, the petitioner joined his duty on 10.10.82 (copy of joining report is Annexure 12 to the writ petition). Non-joining of the petitioner to the transferred place i.e. Pilibhit within the aforesaid specified time and affairs relating thereto culminated into disciplinary proceedings against the petitioner which ultimately resulted into removal of service of the petitioner by the impugned order passed by the disciplinary authority (Senior Divisional Mechanical Engineer? Izatnagar) dated 31.5.84.

3. Against the aforesaid impugned order dated 31.5.84 an appeal was filed by the petitioner to the Additional Divisional Railway Manager, North Eastern Railway, Izatnagar as directed in the aforesaid impugned order dated 31.5.84 and the appeal of the petitioner has been rejected as per order dated 11.9.84.

4. The petitioner has assailed the aforesaid impugned orders on the grounds, interalia, that the enquiry officer committed manifest error of law by rejecting the application of the petitioner in nominating Shri J.K.Saxena to defend the petitioner as his defence counsel on absolutely irrelevant grounds. The enquiry report dated 11.8.83 is without

2

jurisdiction, in as much as the entire enquiry was conducted ~~ex parte~~ against the petitioner and the petitioner was not given opportunity to cross-examine the witnesses and as such there is flagrant violation of Article 311(2) of the Constitution of India as well as the provisions laid down in Railway Servants (D&A) Rules, 1968. The imposition of penalty of removal of the petitioner from service has not been done by the competent authority, as the appointing authority in the case of the petitioner is the Divisional Railway Manager, N.E.Railway, Izatnagar. The ^{Additional} ~~Divisional~~ Railway Manager, Izatnagar was not the proper appellate authority to ^{decide the} ~~appeal~~ as directed vide ^{para 4} ~~appeal~~ of the penalty order dated 31.5.84/2.7.84 under Rule 18 of the R.S. (D.&A.) Rules, 1968. ^{as no} ~~No~~ power was conferred on him to consider appeal in 1984. The impugned order passed by the Senior Divisional Mechanical Engineer imposing the penalty of removal from services of the petitioner relying on the report of the enquiry officer is a non-speaking and non-reasoned order and has been passed in a mechanical fashion without considering the matter on merit. The Senior Divisional Mechanical Engineer, Izatnagar, before passing the impugned order of punishment of removal from service has issued no show cause notice

to the petitioner as provided under the Railway Servants (D&A), Rules, 1968. Thus, in view of the above circumstances, the impugned orders are liable to be set aside.

5. In the counter affidavit filed by the respondents, it has been, inter alia, contended that the petitioner was not inclined to join at Pilibhit, the place where he was transferred and as such he left Kathgodam without leaving any application to leave the station on 4.11.81 and he came back on 14.11.81 and was requested to take charge at Pilibhit and was also asked to take emergent duty pass from Kathgodam for Pilibhit; but the petitioner did not take emergent duty pass and since he did not join his duty to the transferred place within the specified period and absented himself from duty without permission, disciplinary proceedings were proceeded against him. It has further been contended that during the course of enquiry he was afforded reasonable opportunity to defend himself, but deliberately he avoided to participate in the enquiry. Shri J.K.Saxena was Fireman, Loco Shed, Bareilly City and he was dismissed from service and as such the railway did not treat him as an employee and as such the said Shri J.K.Saxena was not the proper person to assist the petitioner. It has further

been contended that Shri B.K.Kochar and Shri Ram Autar Mahoti both persons appeared before the enquiry officer but the petitioner did not cross-examine them. It has further been contended that the impugned orders were passed by the competent authority i.e. the disciplinary authority as well as the competent authority, appellate authority properly and legally and the impugned orders are speaking and reasoned orders and as such the petitioner's petition should be dismissed.

6. We have heard the learned counsel for the parties at length and have thoroughly gone through the records of the case.

7. The learned counsel for the petitioner (applicant) while drawing our attention to the papers annexed to the petition has argued that since the petitioner was not afforded reasonable opportunity as such there has been violation of principles of natural justice and by not providing assistance of Shri J.K.Saxena to defend the petitioner, the entire disciplinary proceedings against the petitioner are ex parte, without notice or without information to the petitioner of the date fixed in the disciplinary proceedings and since the petitioner was deprived of cross-examining the witnesses, examined by the enquiry officer, and since the appointing authority

Of the petitioner is Divisional Railway Manager and since the impugned order imposing penalty on the petitioner was passed not by the competent authority and since the impugned appellate order was also not passed by the competent authority, the entire above impugned orders are not the valid and proper orders in the eye, of law and as such the impugned orders stand vitiated. He has further argued that the impugned orders imposing the penalty of removal and the appellate order whereby the appeal of the petitioner has been rejected, are not speaking and reasoned orders and on this ground also the impugned orders should be quashed, and in support of his argument has placed reliance on the judgement passed by the High Court of Madhya Pradesh, Jabalpur, Bench, Gwalior in M.P. No. 154 of 1983 dated 5.9.1985 in case of Ashok Kumar Sinha(petitioner) Vs. Union of India and others(^{Photostat} ~~aforesaid~~ copy whereof has been filed).

8. The learned counsel for the respondents while drawing our attention to the contents of the petition, counter-affidavit and papers annexed thereto and the papers on record has argued that the aforesaid impugned orders were passed by the competent authority ^{concerned} legally and validaly and there has been no violation of any rule, regulation and there has been no violation of principle of natural justice. The petitioner was afforded reasonable opportunity for defending himself, but the petitioner deliberately and wilfully did not participate in the discipline proceeding and has further argued that the judgement of the M.P. High Court, as referred to above ^{petition} does not in any way help the petitioner and as such the (application) of the

:: 8 ::

petitioner should be dismissed.

9. We have perused the above judgement of the High Court of M.P. dated 5.9.1985 which shows that the petitioner in that case was initially appointed as a clerk and later on was promoted as senior clerk and the appointing authority of class III staff to which the petitioner of that case belonged, was Divisional Railway Manager (in short D.R.M.) and the impugned order imposing penalty of removal from service was passed by the Senior D.M.E./P who was an officer subordinate in rank to D.R.M. under whose order he (petitioner) was promoted and as such the impugned order whereby the services of the petitioner were removed, was set aside and the petition of the petitioner was allowed on ground of jurisdictional error. We find that the facts of the present case are found to be identical with the facts of the aforesaid case Ashok Kumar Sinha Vs. U.C.I. and others of the High Court of the M.P. as in the instant case also, keeping in view the provisions contained under rules 6,7 and schedule II of the Railway Servant Discipline & Appeal Rule 1968, the D.R.M. is found to be the Disciplinary Authority and competent authority for imposing the penalty of removal from service on the petitioner but the impugned order dated 31.5.84 (annexure 26) was passed by the Senior Divisional Mechanical Engineer Izat Nagar who is below the rank of the D.R.M. Izat Nagar, and not by the D.R.M. or by the authority higher in rank of the D.R.M.

10. This fact should not be lost sight of that despite ample opportunity having been afforded to the respondents, they did not file any supplementary reply for the reasons best known to them as would be obvious from the perusal of the order sheets dated 27.3.89 and onwards ^{of} ~~dates~~.

11. This is also important to point out that a perusal of annexure 24 which is copy of the order dated 30.1.84, whereby the petitioner Ram Bahadur whose name

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:: 9 ::

finds place at serial No.12 was confirmed in the post of Head Clerk since 31.8.82, also shows that the D.R.M., Izat-Nagar was only the competent authority at the relevant time to impose the penalty of removal from service on the petitioner. This is also noteworthy that the impugned order dated 31.5.84 imposing penalty of removal from service was passed by the senior Divisional Engineer Izat-Nagar, after the confirmation of the petitioner in the post of Head Clerk, passed by the D.R.M. Izat-Nagar. Thus, from the scrutiny of the entire material on record and keeping in view the provision contained under rule 7 read together with schedule-2 of the Railway Servants Discipline & Appeal Rule 1968, it is fully established that the D.R.M. was the competent authority for imposing penalty of removal from service on the petitioner; but the impugned order imposing penalty of removal from service on the petitioner was passed by Senior Mechanical Engineer Izat Nagar who is below in rank of D.R.M. and thus, this being so, we find that above argument of the learned counsel for the applicant finds much support also from the above judgement of the High Court of M.P. dated 5.9.85 and as such we find that the impugned order dated 31.5.84 whereby the petitioner has been removed from service, is illegal and invalid.

12. Annexure 28 (copy of the impugned order dated 11.9.84 passed by Additional D.R.M.) Izat Nagar as an appellate authority shows that the appeal which was preferred by the petitioner against the aforesaid impugned order dt. 31.5.84 was decided not by the D.R.M. Izat Nagar himself but by some other officer "for and on behalf of D.R.M., Izat Nagar", though as per provision contained under rule 18 and keeping in view the provisions contained under Rule 19 of the Railway Servants Discipline & Appeal Rules, 1968, the appellate authority connotes the authority to

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which the authority making the order is immediately subordinate. Thus, this being so the scrutiny of the records reveals that in this present case the appellate order dated 11.9.84 whereby the appeal of the petitioner has been dismissed and the impugned order dated 31.5.84 (whereby the petitioner has been removed from service) has been affirmed, was passed not by the authority higher than the competent authority/disciplinary authority, but by the officer for and on behalf of D.R.M. who is even below the rank of competent authority viz. D.R.M. Thus, we find that the appellate order dated 11.9.84, as referred to above, is also invalid and illegal order, besides its being based on the aforesaid illegal order dated 31.5.84.

13. Consequently, we allow the above petition of the petitioner and quash the impugned orders dated 31.5.1984 and 11.9.84, as referred to above and the petitioner is re-instated in service with immediate effect with all the consequential benefits, as per rules. It is made clear that it shall be open to the respondents to proceed with the disciplinary proceedings against the petitioner in accordance with law. The respondents are directed to make payments of all the arrears, for which the petitioner is found to be entitled by way of consequential benefits, to the petitioner within three months from the date of the receipt of the copy of this judgement and we order accordingly. The parties to bear their own costs.

transcript
Member (A)

Allahabad dated 7th March, 1992.
(RKA)

transcript
Member (J)

17.3.92