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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Registration No.(OA) 658 of 1987

R.P.Singh applicant.

Versus

Union of India and others Respondents.

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

Hon'ble G.S.Sharma, JM.

(Delivered by Hon'ble DSMisra)

In this application under Section 19 of the A.T.Act XIII of 1985, the applicant has challenged the order of punishment dated 17th October, 1985 and the appellate order dated 29th May, 1987 upholding the order of removal of the applicant from the service of the respondents after holding a departmental inquiry. The order of removal from service has been challenged on several grounds, some of which are as follows:

- i) The order of removal has been passed by the authority subordinate to the General Manager, who is the appointing authority of the petitioner.
- ii) The order of removal has been passed without giving him any opportunity as required by rules and laws applicable to the case of the petitioner.
- iii) The inquiry was held ex parte and the findings are violative of principles of natural justice and fair play.

2. In the reply filed on behalf of the Union of India, it is stated that the DAR inquiry was conducted and full opportunity was accorded to the petitioner and on the report of the Inquiry Officer, the

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the disciplinary authority ordered for removal of the applicant; that the appeal was rejected after due consideration and there was no illegality in the order passed by a competent authority, who had impartial approach.

3. In the rejoinder affidavit filed by the applicant, it is stated that the counter reply has been filed only on behalf of the four respondents and no reply has been filed on behalf of the three other respondents against whom certain allegations were made by the applicant in the claim petition. Therefore, the allegations made by the applicant should be deemed to be correct and established.

4. We have heard the arguments of the learned counsel for the parties. It would be relevant to mention that the applicant, who was working as a permanent Way Inspector at Etawah under Northern Railway was charge-sheeted for his failure to maintain absolute devotion to duty and sustained attention to tract maintenance inasmuch as he did not maintain the expansion arrangements of CNR 1 KM 1125/17 as per the standard laid down in NWR Manual leading to detailment of IUP at SHW on 3983 and thus violated the rules as mentioned in the departmental instructions and also violated para 3(i) and (ii) and 3(ii) of Railway Servant (Conduct) Rules. A file containing the original DAR inquiry has also been filed by the respondents. The inquiry was conducted by the Senior Engineer H.Q., N.R., Kanpur at Kanpur on 30.4.1985, 7.5.85, 8.5.85 and 14.5.85. The applicant did not attend the inquiry on any of the dates.

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The Inquiry Officer submitted his report and held that the charges against the applicant were proved. From a perusal of the report, it appears that the applicant did not attend the inquiry on any of the dates and also failed to nominate his defence counsel. The Divisional Railway Manager, N.R., Allahabad in his capacity as Disciplinary Authority passed the order dated 17.10.1985 imposing the penalty of removal from service. The applicant's appeal against the order of removal was rejected by the Chief Track Engineer, N.R. vide order dated July 4, 1985.

5. Learned counsel for the applicant contends that the appointing authority of the applicant was the General Manager, Northern Railway and not the Divisional Railway Manager, Allahabad and therefore, the order of removal from service of the applicant is null and void under Art. 311 of the Constitution of India. The respondents have not admitted this contention of the applicant, neither specifically denied nor produced any document in support of their contention that the D.R.M. Allahabad was the competent disciplinary authority of the applicant. The applicant has contended that ever since his recruitment as apprentice Assistant Permanent Way Inspector in the year 1963, his appointment was made by the General Manager, N.R., and not by an officer of the rank of the D.R.M. (copy annexure RA-3). He has been working as PWI in the grade Rs. 700-900 since the year 1980 and his selection as well as appointment was made by the General Manager (copy annexure RA 1). These assertions have not been denied by the respondents.

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We are refraining from giving any finding on this aspect

of the matter in view of our finding on the second contention of the applicant, which is dealt hereafter.

6. The second contention of the applicant is that the order of removal was passed without supplying him a copy of the inquiry report and giving him the opportunity to explain his conduct. The following case law has been cited in support of the contention of the applicant.

1. V. Shanmungam Vs. The Union of India and others decided by the Madras Bench of the CAT in TA no. 198 of 1985 decided on 4th March, 1986.

2. Sri Prem Nath K. Sharma Vs. Union of India and others published in 1988(6)ATC 904.

The second case law is a full bench decision of the New Bombay CAT, in which there is reference of case law no. 1. It is a very comprehensive judgment dealing with the conduct of departmental inquiry under Railway Servants (Discipline and Appeal) Rules, 1968 and the relevant provision of Art. 311 of the Constitution of India. The issue before the full bench was "whether the finding of the disciplinary authority is bad in law because the applicant was not given a copy of the report of the inquiry officer and was not heard before arriving at the finding." The above mentioned question was answered in affirmative. We are of the opinion that the facts and circumstances of the instant case are fully covered by the above mentioned case law. From a perusal of the record, we find that a copy of the inquiry report was not supplied to the applicant before imposing the penalty of removal/^{from} service. Accordingly, we hold that the

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order imposing the penalty of removal from service and the appellate order upholding the punishment order must be quashed.

The application is allowed without any order as to costs. The respondents are free to supply a copy of the inquiry report to the applicant and give him an opportunity to make his representation and proceed to complete the disciplinary proceedings from that stage. If the respondents chose to continue the disciplinary proceedings and complete the same, the manner as to how the period spent in the proceeding should be treated, would depend upon the ultimate result.

Signature
J.M.

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