

(P.S.)

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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

(1) O.A. 355/87

R.K. Sharma

Applicant

versus

Union of India & others

Respondents.

(2) O.A. No. 770/87

R.K. Sharma

Applicant

versus

Union of India & others

Respondents.

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

Hon. Mr. A.B. Gorthi, Adm. Member.

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

The above two applications have been filed by the same person against the enquiry proceedings and resultant order and that is why both are being disposed of together. The applicant R.K. Sharma was Travelling Ticket Examiner, Northern Railway, posted at Moradabad who was charge-sheeted on 15.3.83 regarding an alleged incident of leaving station and travelling in A.C.C. II Tier Coach of 8 Up Punjab Mail on 11/12-2-1983 in a state of intoxication and manhandled the Coach Assistant Shri Ashit Kumar Roy and reported sick from 11.2.1983 and did not deposit his duty pass. The enquiry proceedings started against him on the basis of same complaint. The applicant who has made complaint against his officer Ram Pyare submitted reply to the chargesheet and the enquiry proceeded and the Enquiry Officer finding him guilty, submitted his report to the

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Disciplinary authority on 3.10.85 and the disciplinary authority vide order dated 14.11.85 removed the applicant from service. The applicant filed appeal against the same taking the grounds of malafides against the said Ram Pyare but also the entire enquiry proceedings. The appellate authority allowed the appeal and the case was remanded for de-novo enquiry, Vide order dated 10.2.86. The applicant in C.A. No. 355/87 had challenged the ~~now~~ said enquiry and suspension order. While the first matter ~~now~~ was still pending, the applicant was chargesheeted on 18.3.83. The charge against him was that he abused Shri A.H. Sharma, Chief Ticket Inspector in the state of intoxication. The enquiry officer was appointed and he after holding enquiry, which according to the applicant, was no enquiry at all, without ~~any~~ being any evidence. The removal order was recommended and the disciplinary authority passed the said order. According to the applicant, the authority who decided the matter and passed the removal order, is not disciplinary authority. Although the removal order ~~C.A. 355/87~~ has been challenged on variety of grounds but it is not necessary to enter into the grounds as the enquiry report was not given to the applicant even after making representation and the findings of the enquiry officer, this violates the principles of natural justice, as held by the Supreme Court in the case of Union of India vs. Mohd. Ramzan Khan (AIR 1991 S.C. 471). In that case it has been held that wherefrom an enquiry officer has been appointed and enquiry has been concluded, in case enquiry officer's report is not given to the delinquent employee, the same violates the principles of natural justice and vitiates the enquiry and accordingly, the order dated 12.5.1987 cannot be sustained and the same

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is quashed. However, it is made clear that this will not preclude the disciplinary authority from proceeding with the enquiry beyond the stage of giving the enquiry report and giving him opportunity to make representation. In case it is decided to conduct the enquiry after the representation is received, the disciplinary authority will decide it, taking into consideration the pleas raised by the applicant through a speaking order.

2. So far as the first enquiry is concerned, obviously the appellate authority found flaws with the enquiry proceedings and that is why he allowed the appeal and removal order was quashed. There was no occasion for directing that fresh enquiry may take place in view of the fact that any such order could not have been passed regarding fresh enquiry and the fresh enquiry can take place. In the spirit of Rule 22 of Railway Servants (Discipline & Appeal) Rules, 1968 which confers power on the appellate authority to pass a particular order. Accordingly the order passed by the appellate authority directing that the de-novo enquiry may take place, is quashed. The appellate authority could have passed an order to proceed with the enquiry and allowed the appeal but it appears that so far as the first charge is concerned, the charge has become stale and the evidence on record was not justified in further proceeding in the matter. Accordingly so far as the first charge is concerned, the same are quashed.

Both the applications are disposed of with the above directions. There will be no order as to costs.

S.M.

V.C.

Allahabad Dt. 12.9.91