

~~(A2)~~ (D)
Court No.2

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A.No.829 of 1987

R.N. Ram Applicant

Versus

Union of India & Others Respondents

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

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

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

By means of this application under Section 19 of the Administrative Tribunals Act, 1985 Shri Ram Naresh Ram prays for the quashing of the order of punishment by which he was removed from service on 17.5.1985 and for the grant of consequential reliefs.

2. The applicant was a Switchman, at Mohammadganj Station West Cabin on the night of 5/6.8.84. The Goods Train No. MP 476 DN comprising ~~with~~ Engine, 38 empty box-wagons and a Brake Van left Haidarnagar Station on 5.8.84 at about 2235 hours. Before it reached Kosiara Station, the last nine wagons and the Brake van got separated. The Goods Train was ~~halted~~ and the Asstt. Driver joined both the portions of the Goods Train, though in a slip shoddy manner. The Goods Train arrived at Kosiara Station at about 2345 hours and although it ~~halted~~ there for 15 minutes no worthwhile remedial action was taken either by the Driver or by any of the responsible officers. When the Goods Train left Kosiara and before it could reach Mohammadganj Station, the same difficulty developed once again and last nine wagons and Brake van got separated.

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Consequently, a portion of the Goods Train only reached Mohammadganj Railway Station at about 00/22 hours on 6.8.84, while the remainder portion of the Goods Train was stranded between Kosiara and Mohammadganj. The applicant who was the Switchman on duty on the relevant time saw a red light from the last wagon of the Goods Train and thus presumed that the entire Goods Train passed through. Accordingly, he closed the line, obtained clearance from Kosiara for another Train, 47 UP Express which was waiting at Mohammadganj Station to proceed to Kosiara. The said train which was a passenger train left Mohammadganj at about 00/27 hours and collided against the stranded portion of the Goods Train at about 00/32 hours on 6.8.84.

3. Immediately after the accident, four Senior subordinates were ordered to hold an enquiry which was done and the joint note was submitted to the Divisional Railway Manager, the same day. Later on, ~~the~~ a fact finding enquiry was held by four Senior Scale Officers between 9.8.84 and 22.8.84. Thereafter an Inquiry Officer was appointed and a departmental disciplinary enquiry was held. The applicant submitted his defence note on 28.3.85 and the Inquiry Officer forwarded his findings to the disciplinary authority on 5.4.84. The Disciplinary Authority, after taking into consideration the enquiry report, passed the penalty of removal from service vide Annexure-1 dated 17.5.85.

4. We have heard the learned counsel for both the parties at considerable length. The learned counsel for the applicant has challenged the legality of the

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- 3 -

impugned order on several grounds. He contended that the applicant was made to give his statement in defence on the conclusion of the recording of the statements of four prosecution witnesses and thereafter five additional prosecution witnesses were examined. By following this ~~ir~~ ^{ir} regular procedure ~~an~~ ^{an} enquiry was conducted in a manner which was highly prejudicial to the defence of the applicant. The next issue raised on behalf of the applicant was that neither the joint notes submitted on 6.8.84 nor the ^{report of} ~~fact finding~~ enquiry held by four Senior Scale Officers, who examined as many as 10 witnesses, was supplied to the applicant although he had made a written demand requesting for the production of the said documents. It was further brought to our notice that some essential witnesses including R.B.Saran who was A.S.M. at Mohammadganj at the relevant time ^{was} not produced ~~at the time of~~ ^{for} cross-examination by the applicant. Lastly, it was contended that the defence note submitted by the applicant was not forwarded by the Inquiry Officer alongwith his report to the Disciplinary Authority.

5. Shri G.P.Agarwal, the learned counsel for the respondents stated that the enquiry report would disclose that the applicant was given sufficient opportunity to cross-examine each and ^{any} ~~other~~ prosecution witness ~~which~~ the applicant, in fact, did. The mere examination of the applicant somewhere in the middle of the enquiry would not by itself vitiate the enquiry proceedings. As regards the two enquiries held prior to the departmental enquiry, he contended that the applicant was given an opportunity to inspect the said documents but he did not do so. The ^{departmental} enquiry was held in an exhaustive manner and there was no question of any prejudice to the applicant by the non-

(10)

examination of ^a few witnesses.

6. We have given our anxious consideration to the issues raised by the learned counsel for both the parties. There can be, no doubt, that a delinquent in a departmental enquiry would be prejudiced in his defence if he is made to depose somewhere in the middle of the enquiry and not after all the prosecution witnesses have been examined. Apart from this irregularity, it is apparent that some essential and important documents which were demanded by the applicant were not supplied to him. Both the joint notes prepared on 6.8.84 and the fact finding report which contained statements of 18 witnesses are essential for the defence of the applicant. In a departmental enquiry the delinquent official/s must have full opportunity to effectively cross-examine the witnesses and this he can do only when he is equipped with all the previous written statements made by the ~~said~~ ¹ witnesses. Departmental disciplinary proceedings are, no doubt, ^{quasi-} ² judicial in nature and denial of due opportunity to the delinquent official to put across his defence in an effective manner vitiates the proceedings. In the case of Kashinath Dixita Vs. Union of India AIR 1986 SC 2118 their Lordships of the Supreme Court held that refusal to supply copies of statements of witnesses examined during the preliminary enquiry proceedings would be violative of Article 311(2) of the Constitution of India, as the employee was denied his due opportunity to defend ³ himself. As the application can be allowed on this ground, ^{alone}, it is not necessary for us to delve into all other issues raised by the learned counsel for the applicant.

2

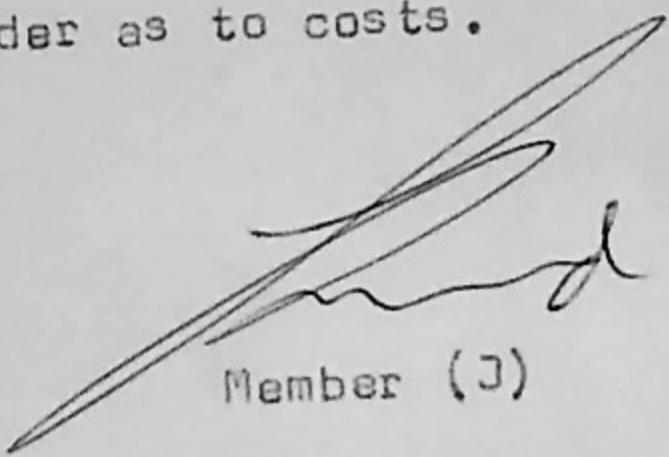
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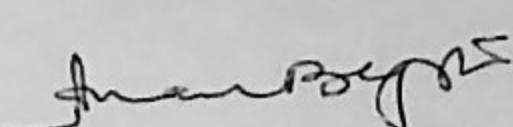
- 5 -

7. In the result the application is allowed and the impugned order dated 17.5.85, Annexure-I is quashed. The applicant shall be deemed to have continued in service and he shall ~~also~~ be reinstated in service within three months from the date of communication of this order. The respondents are, however, at liberty to hold a fresh enquiry into the matter in accordance with the rules if they still so desire.

8. In the circumstances of the case, there shall be no order as to costs.



Member (J)



Member (A)

Dated the 28th October, 1991.

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