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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.842 of 1987

V.K.Upadhyaya ..... Applicant

Versus

D.P.Pande, Sr.O.O.S. Moradabad  
and Others. ..... Respondents.

Hon.Ajay Johri, A.M.

The applicant in this application is a Section Controller working on the Northern Railway at Moradabad. He has challenged the order dated 17.11.86 passed by respondent No.1 withholding his three sets of passes and the appellate order dismissing his appeal against this punishment. The applicant's case is that when he was working as Section Controller on 6.9.86 he was on 1800 to 2400 hours shift. He was to be relieved at 2400 hours but the reliever did not turn up till 0100 hours and the Deputy Chief Controller on duty did not make any alternative arrangement to relieve him ~~because~~ <sup>or this</sup> he was made to perform extra duty beyond his rostered hours. According to him the the Section of which he was Incharge was a tedious, bussy and tiresome Section, so when nobody came to relieve him till 1 O'clock in the morning he became physically and mentally fully tired, totally exhausted and unable to work any more. He made this

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endorsement on the Control Chart and informed the Deputy Chief Controller about his inability to work any more. The Incharge (Deputy Chief Controller) put another person to relieve the applicant and he made over charge at 0115 hours. According to him the Divisional Operating Superintendent i.e. respondent No.1 was biased ~~against~~ <sup>3/</sup> ~~with~~ him. As on certain previous occasions also he had taken discriminatory action against him for certain incidents. The applicant had reported to the respondent No.1 but he took no action against another colleague Shri S.K. Gupta who was in the habit of reporting late and who was usually relieving him from duty. On 24.10.86 <sup>alleging</sup> a memorandum was issued by respondent No.1/that the applicant had committed serious irregularity inasmuch as he left duty on his own at 1 O'clock on 7.9.86 closing the Control Board without relief. On receipt of the memorandum the applicant vide his application dated 24.10.86 requested for inspection of the Control Chart and other relevant records for preparation of his defence. However, respondent No.1 arbitrarily awarded punishment of withholding of three sets of privilege passes. In the punishment order it was mentioned that the punishment was imposed for closing of Board without taking recourse to approaching <sup>which</sup> all channels/is not permissible whereas according to

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the statement of imputations the charges were that he left duty on his own at 1 O'clock on 7.9.86 closing the Control Board without relief. According to the applicant he had not violated any rule or regulation and the reasons mentioned in the punishment order were because of the bias of the respondent No.1.

The applicant submitted an appeal to the Divisional Railway Manager but his appeal was also turned down. According to him the appellate order was only conveyed to him through a letter signed by the D.P.O. and it was not an order signed by the appellate authority. He has therefore prayed that the punishment order dated 17.11.86 as confirmed by the order on 15.5.87 may be declared as illegal and inoperative and the fare of three sets of passes, <sup>return journey,</sup> in favour of three adults, in between two longest distance stations of the Indian Railways be ordered to be recovered from the salary of respondent No.1 and paid to the applicant and that the Tribunal may pass a stricture against respondent No.1 for his Hitlerian way of working and not showing fairness and impartiality.

2. In reply to the application the respondents have said that the applicant grossly failed to comply with the extant orders on the subject of working hours of intensive workers which is the classification given to Section Controllers. According to them excessive

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hours of work can be taken in exceptional cases and the applicant left his important duty on his own closing the Control Board and thereby causing serious disruption to the train operations as well as the thousands of passengers travelling in various trains on that important section. The applicant was not supposed to leave the Control Board without being relieved properly. The respondents have denied that there was any bias and have said that the applicant wants to emphasise that he is not <sup>31</sup> the only person responsible for the irregularities but there are other control staff too who are responsible *According to the respondents* for irregularities. ~~and~~ <sup>31</sup> these staff are also being taken up by the competent authority without any bias. They have said that the incidents mentioned by the applicant in his application have no connection with the present case. The applicant had made an endorsement on the Control Chart " relief not turn up. Fully exhausted. Unable to work. Board closed." According to the respondents the applicant correctly deserved the penalty for such a serious irregularity. They have said that the charges were well defined and self explanatory and the applicant was given the opportunity of personal hearing by the disciplinary authority before awarding punishment. They have further said that the applicant has confessed of the guilt in para 6(v) of his representation and the endorsement

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made by him on the Control Chart support that he committed the irregularity. In regard to the orders passed by the appellate authority on the appeal the respondents have said that they are according to the rules and they were communicated to the applicant. According to the respondents he stopped to work at 1 O'clock and ~~make~~ <sup>w did not</sup> over charge at 0115 hours. When he stopped to work at 1 O'clock he left his duties closing the Control Board without making over charge to any one. Therefore, he has violated the provisions of Rule 3(i)(iii) of the Railway Servants Conduct Rules, 1966.

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3. In his rejoinder the applicant has reiterated what he has said in the application. He has further said that during the period the Control Board remained closed, no train suffered any detention nor any mishap with any passenger took place and he had to perform extra duty beyond the prescribed statutory limit because of the failure of the authorities to provide relief. He has brought out various other factors in regard to working of the other persons in the Control room in his rejoinder to support his case about uncongenial working conditions resulting in unnecessary fatigue. According to him the remarks made by him on the Control Chart were as per rules.

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4. I have heard Shri A.K. Gaur for the respondents. No body was present on behalf of the applicant. I have also gone through the case file.

5. Rule 6 of the Railway Servants (Discipline & Appeal) Rules, 1968 lays down the minor penalty which can be imposed for good and sufficient reason on railway servants. Rule 6(iii)(a) is the penalty of withholding of privilege passes and PTOS or both. This is a minor penalty. The procedure for imposing a minor penalty is that the delinquent has to be informed in writing of the proposal to take action against him and of the imputations of misconduct on which it is proposed to be taken and giving him a reasonable opportunity of making such representations as he may wish to make against the proposal. In the case of the applicant a chargesheet was issued to him indicating imputations of misconduct. Before replying to the chargesheet the applicant had asked for certain documents. According to him he was not allowed to <sup>3/</sup>inspect those documents and he had also not submitted any explanation to the memorandum but a punishment was imposed on him by respondent No.1 without waiting for his explanation. In their reply the respondents have said that they had given personal hearing to the applicant before imposing the penalty. The applicant in para 7 of his rejoinder has denied the same. He has said that he was not granted any personal

hearing and that his request for inspection of the documents was not granted. It is also clear that he had not replied to the chargesheet before the punishment was imposed on him. Therefore, there is no doubt that there was ~~any~~ <sup>any</sup> violation of the instructions in respect of the procedure for imposing minor penalties which could not be imposed without giving reasonable opportunity of making a representation as the delinquent may wish to make against the proposal. On this short point alone the ~~appeal~~ <sup>31</sup> ~~order~~ <sup>order</sup> will stand to be ~~admitted~~ <sup>32</sup> ~~admitted~~ <sup>admitted</sup> ~~admitted~~.

6. As far as the appellate order is concerned, in his appeal the applicant had raised various issues regarding the procedure etc. The appellate order as conveyed to him on 6.4.87 reads as follows :-

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" D.R.M. has very carefully considered your appeal referred to above. Since there is no reason to confirm the punishment awarded vide NIPs referred to above, the same is confirmed."

This order is placed as Annexure-15 of the application. He was conveyed another order dated 15.5.87 which reads as follows :-

" Procedure laid down in the D&AR has been followed correctly. Findings of the disciplinary authority are warranted by evidence on record. Penalty imposed is adequate. The

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staff has correctly been awarded SOP 3 sets of passes each. I see no reason to reduce the punishment and the same is confirmed.

This cancels the previous order dated 6.4.87".

A correction was also issued on 30.6.87 regarding the letter conveying the appellate order of 6.4.87 where the word 'confirmed' was said to have been wrongly used instead of the word 'reduce' and it was said that no other meaning should be given to it. It was a clerical error and the same is regretted. The order dated 6.4.87 had been subsequently withdrawn and modified by the order dated 15.5.87. The way the appeal has been processed by the respondents will go to indicate that there was an attempt to dispose of the appeal somehow or the other. The appellate order does not indicate that the various points raised by the applicant in an appeal have been duly considered.

7. On the above considerations I allow the appeal to the extent that the punishment order as well as the appellate order are quashed. As far as the prayer for the relief of payment of equivalent amount in lieu of the punishment imposed on the applicant by recovering it from the salary of the respondent No.1 is concerned, it will not be correct to give any equivalence of the value of

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the privilege passes and PTOs in terms of money and no recovery can be allowed from the pay of respondent No.1 who has discharged his duties in the official capacity. This prayer is therefore rejected. This order will not bar the respondents from taking de novo proceedings against the applicant according to rules and law if they so desire. I make no order as to costs.

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Member (A)

Dated the 16<sup>th</sup> Sept., 1988.

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