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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

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Registration O.A. No. 969 of 1987

Brij Bhan Sharma

... ..

Applicant.

Versus

Union of India and Others ... ..

Respondents.

Hon'ble Mr. Justice K.Nath, V.C.

Hon'ble Mr. K.Obayya, A.M.

( By Hon'ble Mr. Justice K.Nath, V.C)

This application under Section 19 of the Administrative Tribunal Act, 1985 has been filed for quashing the order dt. 19.2.1987 by which he was removed from service and the appellate order dated 10.8.1987 confirming the order dt. 19.2.1987. The applicant was working as "Booking Clerk" at Aligarh Railway Station in July, 1981 when he was alleged to have issued one EFT No. 230869 dt 29.7.1981 for Rs.30/- for four adults from Aligarh Junction to Faridabad. It is alleged that in the Counter-foils of the ticket prepared by a different carbon process, he had shown to have prepared the E.F.T. for 45 paise only on 27.9.1981 and thus appropriated a sum of Rs. 29.55/-. Annexure-1 is a charge-sheet, on that basis. The applicant having denied the transaction, the EFT was referred to the Director of Central Forensic and Scientific Laboratory, New Delhi, with the applicant's sample writing for opinion. Sri M.K.Jain, the Expert of the Central Forensic and Scientific Laboratory made the report dt. 24.1.1984 that the E.F.T. was in the handwriting of the applicant.

2. Witnesses were examined but Sri M.K.Jain was not. The applicant got the EFT examined by a private handwriting expert, Sri V.V.David, who gave the opinion that the EFT was not in the handwriting of the applicant. The applicant examined Sri V.V.David in defence.

3. The enquiry officer accepted the department's case and <sup>held</sup> the applicant guilty and passed the imputed

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order of removal from service .

4. The applicant preferred an appeal on 8.3.1987. By an order dt. 10.6.1987, the appellate authority rejected the appeal and recorded that he found no reason to modify the order of dismissal.

5. Counter and Rejoinder have been exchanged. We have heard the learned counsel for the applicant and have gone through the material on record. Besides the ground of alleged competence of the authority who passed the punishment order, the learned counsel for the applicant has urged that this is "no evidence case". It is pointed out that there is no eye-witness of the applicant having issued the E.F.T. or having received the money.

The only evidence was the opinion of the handwriting expert, M.K. Jain, in his report dt. 24.1.1984. It is specific case at page Nos. 5 & 6 of the O.A. in para-6 that 16 dates were fixed for the examination of Sri M.K. Jain before the enquiry officer, but Sri Jain did not turn up and could not be examined. The case in the counter (para 10) is that, even so, the opinion of the handwriting expert Mr. David could not be given any weight in face of the authoritative conclusion of Mr. M.K. Jain of the Central Forensic and Scientific Laboratory, New Delhi. We find no basis for that submission.

6. The best evidence of a fact is the direct evidence of the eye-witness. If the direct evidence of the eye-witness is not available, as in the present case, the next best evidence is of an expert. There is a distinction between the opinion of an expert and the evidence of an expert. The opinion is an <sup>opinion</sup> and has its own infirmities. It is to resolve these infirmities that the oral examination of an expert has always been considered to be essential, so that he can be put to the test of cross-examination. As already stated, Sri M.K. Jain was called by the enquiry officer and although 16 dates

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were fixed for him, he did not turn <sup>up</sup> ~~out~~. It may be mentioned that in the list of documents in support of the charge-sheet, the report of Mr. M.K. Jain is mentioned, and in the list of witnesses, Annexure-1C he is ~~also~~ also mentioned as a witness. That being the situation, the oral evidence of Mr. M.K. Jain was indispensable.

7. On the contrary, the applicant not only produced the opinion of the private handwriting expert Mr. David (Annexure-6) but also examined him as a witness before the enquiry officer. The statement of David is Annexure-4. In unmistakable terms David has given his opinion and has deposed that the EFT in question was not in the handwriting of the applicant.

8. We may mention here that in para-11 of the written statement, it is stated by the respondents that though the applicant "has admitted that he has prepared EFT No. 230869, it was rather surprising that he was denying it." In para 9 of the rejoinder, it has been stated that the statement contained in para II of the written statement is incorrect and was emphatically denied.

9. We held therefore that there was no evidence before the enquiry officer to substantiate the charge that the applicant had prepared E.F.T. in question and had pocketed the money.

10. We may also mention that the appellate order contained in Annexure-II A (as also Annexure-II) is wholly non-speaking order. According to Annexure-II A the appellate authority ~~had~~ had passed the following order;

" I find no reason to modify the order of dismissal. Appeal Rejected."

11. Times without number, the courts have stated that the appellate authority must record reasons for the orders which they pass, but it is unfortunate that not

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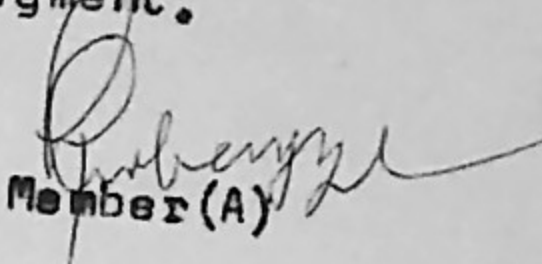
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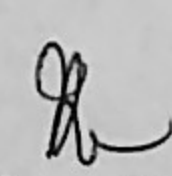


only the appellate authority in this case but also in a large number of matters which have been figuring before this Tribunal, Railway Authorities have repeatedly disregarded the requirement of recording the reasons. We do not know when the Railway Administration will be able to persuade its officers to decide appeals in accordance with the requirements of law. The rationale for requiring the reasons to be recorded is that only in that situation the appellate authorities would be able to apply their mind to the particular facts of a case. In the present case, the disciplinary authority had passed an order of "removal", but the appellate authority mentions it to be the order of "dismissal", which indicates that the Appellate Authority did not apply its mind even to the punishment order, much less to the record of the case.

12. For reasons recorded above, the application is allowed and the order dated 19.2.1987 of the applicant's removal from service and the appellate order dt. 10.6.1987 are quashed. The applicant shall be deemed to have continued in service from the due date and the respondent's shall pay all his arrears from such date and shall put him on job without delay. We also direct the respondents that <sup>they</sup> in shall pay the costs of this case which we assess at Rs. 500/-. The respondents shall pay the salary arrears, and costs within 3 months from the date of receipt of copy of this Judgment.

A copy of this Judgment may be sent to Chairman, Railway Board for information with reference to para 10 and 11 of this Judgment.

  
Member (A)

  
Vice-Chairman

Dated: 19.7.1991

Allahabad