

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD

O.A. No. 1131 1987
T.A. No.

DATE OF DECISION June 29, 1988

Dwarka Prasad Upadhyay Petitioner

Sri Amarendra Pandey Advocate for the Petitioner(s)
Versus

U.O.I. & others Respondent

Sri A. K. Datta Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Ajay Joshi, A.M.

The Hon'ble Mr. L. S. Sharma, J.M.

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?

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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 1131 of 1987.

Dwarka Prasad Upadhyay	Applicant.
Versus		
Union of India & others	Respondents.

Hon'ble Ajay Johri, A.M.
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. G.S. Sharma, J.M.)

By this application the applicant, Dwarka Prasad Upadhyay who is working as a Health Inspector in the Northern Railway at Allahabad, has challenged a punishment order dated 9.2.1987 passed by the Divisional Medical Officer (DMO), Northern Railway, Allahabad, imposing the penalty of withholding of increments for two years postponing future increments, for making a complaint against Railway officials through his wife.

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2. Briefly the facts are that a charge-sheet was issued to the applicant on 4.6.1982 containing allegations etc. He replied to the charge-sheet on 15.6.1982 denying the charges. He also requested for some documents. These were denied to him. An enquiry officer was nominated and enquiry conducted. Certain statements of witnesses were recorded and as alleged by the applicant in one case the witness was made to sign the statement of another witness. The applicant had also filed his written ^{by defence} ~~arguments~~. Thereafter in 1986 further enquiry was held. The enquiry officer furnished his findings, and ultimately the impugned order was passed. This order was amended by an order passed by another officer on 18.2.1987. The appeal of the applicant dated 19.3.1987 has not been disposed of.

3. The order has been challenged by the applicant on the grounds that the orders are non-speaking, the copies of the documents relied upon have not been supplied.

4. The application has been opposed by the respondents on the grounds that the applicant was asked to take extracts of relied upon documents and the same were taken by him. He also gave his defence without any objections. The disciplinary authority passed the order without any influence and under his own powers. The appeal of the applicant has been sent to the Senior Divisional Personnel Officer (Sr.DPO) for disposal as he did not want it to be dealt with by respondent no.2.

5. We have heard the learned counsel for the parties. The contentions raised by the learned counsel for the applicant were that the copies of the relied on document was not given. The disciplinary authority's order does not show that he had considered the enquiry report. He has not discussed the enquiry report at all and the appeal cannot be disposed of by Sr.DPO as he is a subordinate authority to the Additional Chief Medical Officer (ACMO). Also the alleged letter for which he has been taken up has not been supplied. The submissions of the learned counsel for the respondents were that the appeal has not yet been decided because the findings are under challenge and since the applicant had taken the extracts of relied on documents there was adequate compliance in this regard. Nothing else was pressed before us. We have also gone through the application and the relevant papers.

6. In the procedure for imposing penalties it is laid down in para 9(7) of the Railway Servants (Discipline & Appeal) Rules, 1968 that the disciplinary authority shall deliver or cause to be delivered to the railway servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and if the copies of the documents have not been delivered to the employee along with the articles of charge and if he desires to inspect the same for the preparation of his defence, he may be allowed to do so and if the employee applies in writing for the supply of copies of the statements of witnesses mentioned in the list, the disciplinary authority shall furnish him with a copy

each of such statement as early as possible. The Railway Board had further issued instructions in March, 1985 under their letter No. E(D&A)83 RG6-14, dated 29.3.1985 that to avoid delays at the stage of obtaining the reply to the charge memorandum the Board had decided that photostat or typed copies of all the listed relied upon documents should be furnished along with the charge memorandum.

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7. After the conclusion of the enquiry a detailed report is required to be prepared which shall contain the articles of charges and the statement of imputation of misconduct or misbehaviour and the defence of the railway servant in respect of each of the charge. The Enquiry Officer has also to give an assessment of the evidence in respect of each article of charge and the findings on each article of charge and the reasons there of. The disciplinary authority thereafter, if he is competent to impose the penalty, having regard to the findings on all or any of the articles of the charges, if it comes to the conclusion that any of the penalties specified in Rule 6 should be imposed ³⁹ ~~Ras~~ to make an order imposing such penalty. We find that in their letter dated 5.11.1982, which is placed as Annexure 'C' to the paper book, the respondents had written to the applicant that his wife had herself addressed a representation dated 10.8.1981 direct to the General Manager, Northern Railway. The matter was investigated through the General Manager's own agency and it was found that the representations made in the said representation against Sr.DCS, Station Superintendent and Confidential Clerk were false, baseless and malicious. It has also been said that it was not in public interest to disclose the agency which was employed by the General Manager for investigation. This letter goes on to say that the list of documents have already been mentioned in Annexure III to the memorandum issued on 4.6.1982 and if the applicant desired he could take extracts from the documents. The applicant had been representing that since the documents were voluminous he wanted to have copies as it was difficult for him to prepare his defence on the basis of extracts but the copies were not given to him. ⁴⁰ ~~Decide~~ ^{This}, we feel, was

violation of the principles of natural justice inasmuch as the applicant stood denied of adequate opportunity to defend himself.

8. The orders imposing the penalty under Rule 6(iv) of the Railway Servants (Discipline & Appeal) Rules, 1968 (D&A Rules), which is placed at page 43, Annexure 'V', to the paper book, reads as follows :-

"I have carefully considered your representation dated 15.6.82 in reply to the memorandum of charge sheet No.170-E/DPU, dated 4.6.82. I do not find your representation to be satisfactory due to the following reasons:-

Complaint made by you through your wife against Rly. officials has been found false. I, therefore, hold you and guilty of the charge(s) viz. false complaint made by you through your wife against Rly. officials levelled against you and have decided to impose upon you the penalty of withholding of increment. Your increment raising your pay from Rs.515/- to Rs.530/- in the grade Rs.330-560 normally due on WHEN DUE is, therefore, withheld for a period of two years with/without postponing your future increment."

32 ✓ This penalty was further modified on 18.2.1987 by deleting the word 'without' appearing in the 15th line of the punishment notice. A reading of this order leaves, therefore, no doubt that the disciplinary authority had only considered the representation dated 15.6.1982 in reply to the memorandum of 4.6.1982. It has not applied its mind to the findings of the enquiry officer. It is also evident from the records of the case and the averments made by the applicant and the respondents that the representation submitted by the wife of the applicant was not shown at any stage to the applicant who has been challenging its veracity on the grounds that the representation was not written by his wife and he was challenging the signatures on the same. We notice that the respondents had failed to give any satisfactory explanation on the fact whether they had found the representations submitted by the wife of the applicant genuine or not. What they had enquired into ^{it was} ~~was~~ only the complaints made in the representation. Thus, not only the order of the disciplinary

authority is not based on the enquiry findings and the other relevant papers but again the documents on which the charge-sheet was issued was never given to the applicant for verification whether it was signed by his wife or not. It has not been also said in the reply to the application that the respondents had found that the representation was actually submitted by the wife of the applicant.

9. The applicant had filed an appeal against the punishment imposed on him on 19.3.1987. He had requested for a personal hearing along with his defence counsel and that the appeal may be decided by any other officer except the then ACMO, Allahabad and had further prayed for the penalty to be set aside. This appeal was admitted by the respondents, [✓] has ~~so~~ not yet been decided and we find that in a latest communication sent to the applicant on 30.3.1988 the Medical Superintendent, Allahabad had enclosed a copy of the findings of D&A enquiry against the applicant and he was directed to attend ACMO's office at 10-00 hours on 20.4.1988 with his representation to appear before ACMO for personal hearing. The applicant, however, had on the grounds that he had already filed an application in this Tribunal replied to this notice on 20.4.1988 and the matter is at present [✓] ~~pending~~ ^{resting} there.

10. Para 22 of D&A Rules under Rule 19 lays down the procedure for consideration of appeals. Para 24 further lays down that in the case of non-gazetted railway servants the appellate authority may, at its discretion, give the non-gazetted railway servant a personal hearing before disposing of the appeal. At this personal hearing, the railway servant may be accompanied, if he so chooses, by another railway servant employed on the same Railway Administration. Though no time limit has been prescribed in the rules for disposal of an appeal the appeals are to be disposed of expeditiously by suitable adjustment on work load. *However it has been under consideration for more than a year.* [✓]

11. In view of the various defects, which have come to

our notice in respect of the enquiry and the punishment order ~~pending~~ [✓]

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imposing the penalty, we quash the punishment order dated 9.2.1987 and the amendment to the same dated 18.2.1987. The application is allowed with no order as to costs.

S. Sharma

MEMBER (J).

Dated: June 29th, 1988.

PG.

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MEMBER (A).