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CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Registration O.A. 238 of 1988

S.N. Shukla ... .. Applicant.

Versus

Divisional Railway Manager,  
North Eastern Railway,  
Lucknow and others. ... .. Respondents.

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

Hon'ble Mr. K. Obayya, Member (A)

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

The applicant was appointed as Assistant Clerk Booking on 29.5.1968 in the North Eastern Railway Lucknow. While working as Booking Clerk Basti in Shift on 11./12.5.1985, an inspection was made and thereafter a case of excess charging of passengers and <sup>not</sup> making refund to them was registered against him. He was placed under suspension. A departmental enquiry started and enquiry officer was appointed. The applicant denied the charges and number of witnesses were examined by the enquiry officer and thereafter, the enquiry officer submitted his report. The disciplinary authority accepted the report and accepted the report and imposed the punishment <sup>of</sup> removal from service, vide order dated 17.11.1986. The applicant preferred a departmental appeal against the same. The appellate authority also observed that the evidence collected on the spot by the Reporting Officer at Basti indicate that excess charging was done and money was <sup>not</sup> refunded. But during the course of enquiry, the witnesses

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have given different versions about the presence of witnesses and confrontation of passengers with the Booking Clerk. The following observation was made. The main lacuna in this case is the non-inclusion of passengers and the Reporting Officer in the list of witnesses. However, the Reporting Officer was called during the enquiry for examination by the enquiry officer, though his name was not included in the list of witnesses. In view of the different versions of the witnesses during the DAR enquiry, attendance of the passengers also was of much significance. I have taken a note of this technical lacuna. Taking into consideration these technical insufficiencies and lacuna in this case, I am inclined to set aside the punishment of removal from service. But keeping in view the seriousness of the charges and evidence available on record, the appellant is reduced in the same time scale of pay Rs. 975-1540 fixing his pay at Rs. 975/- for a period of five years with cumulative effect. The applicant filed a review application. The reviewing authority has observed that ample opportunity to cross examine certain witnesses was not given and non-examination of passengers under reference. And as regards introduction of fresh witness, I do not take it <sup>as</sup> unjustified act on the part of the enquiry officer because during the enquiry stage any fresh witness can be examined. It may be, both these authorities did not take into consideration that it was no longer possible to get the passenger. But any how, certain other lacunas were noted, including that a fresh witness was examined and the only course which was open was to set aside the enquiry proceedings and order for fresh enquiry. Accordingly, all the three orders are quashed and the disciplinary authority is directed to hold the fresh enquiry in the matter after

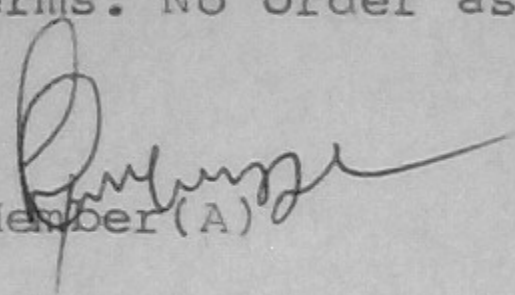
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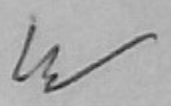


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~~after~~ giving an opportunity of hearing to the applicant, and it is for the disciplinary authority to decide that what evidence is to be taken and what evidence is not to be taken. The applicant shall ~~be~~ fully cooperate with the enquiry in case the applicant will not fully cooperate with the enquiry, it will be open for the disciplinary authority to hold an enquiry in his absence after giving him a notice ~~of~~ the same. Let the fresh enquiry be concluded within a period of 6 months from the date of communication of this order. The application is disposed of with the above terms. No order as to costs.

  
Member (A)

  
Vice-Chairman

Dated: 2.9.1992.

(n.u.)