

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

Allahabad, this the 14th day of February, 1995

Original Application No. 442 of 1988

DISTRICT: JHANSI

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. T.L. Verma, J.M.

Jawala Prashad,

Jhansi Petitioner

Sri H.P. Chakrawarti

Versus

Divisional Railway Manager,

Central Railway,

Jhansi Respondent

By Sri A.K. Gaur

O R D E R

Hon'ble Mr. S. Das Gupta, A.M.

This O.A. filed under Section 19 of the CAT Act No. XIII of 1985 is directed against the order dated 20-12-85 by which, the Applicant was compulsorily retired from service, the order dated 27-2-86 by which the Applicant's Appeal against the order of compulsory retirement was rejected, and subsequent orders dated 24-3-1987 and 15-10-1987 by which his Revision Petitions were dismissed. It has been prayed that all the aforesaid orders be quashed and the Applicant be re-instated in service with full back wages and promotional benefits.

2. The Applicant was working as Leverman on

23-8-94 at 'D' Cabin in Jhansi yard, when there was a head-on-collision between a Passenger train and a Shunting Engine. An enquiry was held by the Commissioner of Railway Safety and based on his report, the Applicant was served with a charge memo dated 22-10-85 for a major penalty (Annexure-A-1). An Inquiry Officer was appointed by an order dated 24-10-85. The Applicant has stated that while he was awaiting intimation from the Inquiry Officer regarding the date of enquiry, he received on 13-12-85 the impugned order dated 12-12-85 imposing the penalty of compulsory retirement. ^{Annexure to} The order of penalty, a copy of which is Annexure-A-4, is the copy of the finding of the Disciplinary Authority. Although, the opening sentence of this ~~enquiry~~ ^{enquiry} enclosure indicated that the Disciplinary Authority had gone through the findings of the enquiry, the copy of the Inquiry Report was not enclosed to the order of penalty. The Applicant has alleged that in fact, no inquiry was held associating the Applicant. The Applicant thereafter filed an Appeal but the Appellate Authority passed the impugned order dated 27-2-86 (Annexure-A-6) rejecting the Appeal. He thereafter filed a Revision Petition to the Additional Divisional Railway Manager, who rejected it by the impugned order dated 19-2-87 (Annexure-A-8). The Applicant again filed a petition dated 22-4-87 to the Divisional Railway Manager and this representation was also rejected by the impugned order dated 15-10-87 (Annexure-A-8). Thereafter, the Applicant approached this Tribunal through this O.A. for reliefs aforementioned.

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3. The Respondents have filed a written statement in which it has been submitted that in the enquiry held by the Commissioner of Railway Safety after the head-on-collision between the Passenger Train and a Shunting loco, the Applicant was held responsible for his failure to observe the instructions contained in Railway Service Rule 3.52-2 (b) and also for acting against the rules 3(1)(ii) and (iii) of Railway Service (Conduct) Rules, 1966, as during the duty at 'D' Cabin, at the time of the accident two red lights were on and visible from his Cabin towards the shunting engine. It has been further stated that the Inquiry Officer had summoned the Applicant and conducted an enquiry and thereafter submitted his report. The Revisional Authority disagreed with the findings, recorded his dissent and imposed penalty of compulsory retirement. It is further stated that in the same enquiry, the concerned witnesses, namely, Sri N.R. Bhatia, Sri Ghanshyam, Sri Chiman Lal and Shri Yakub Khan and the Applicant himself were examined. The Applicant himself did not ask for any other witnesses for examination. According to the Respondents, the enquiry was conducted in accordance with the rules and there was no infirmity in the same. The Appeal was also properly considered by the Appellate Authority and it was held that the orders passed by the Disciplinary Authority were justified. The Revisional/Reviewing Authority also considered the representation of the Applicant and found no reason for interfering with the order of the Disciplinary Authority. With regard to allegations made by the Applicant that Sri N.R. Bhatia, ^{Who} ASM, was also found responsible by the Commissioner of Railway Safety, was taken back on duty and penalty

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imposed on him was waived, the Respondents have stated that the said official was also responsible and was awarded penalty of reduction to the minimum of 1/4 grade but on Appeal, in view of his good performance, his punishment was waived after 30-8-86. The Applicant has filed Rejoinder Affidavit in which he has reiterated that there was no enquiry associating the Applicant.

5. We have heard Learned Counsel for both the parties and have carefully perused the record. On careful perusal of the pleadings, a few curious facts can be discerned, that The Applicant was charge-sheeted on 20-10-1985. He submitted his reply to the charge sheet on 2-11-1985, whereas the Inquiry Officer was appointed on 24-10-1985 and the order of penalty was passed on 20-12-1985. It would thus appear that the Inquiry Officer was appointed only two days after the date of the charge sheet. Although by Paragraph No.5 of the charge memo dated 22-10-1985, the Applicant was given 10 days time from the date of receipt of the memo for submission of written statement in reply to the charge memo, The Applicant did in fact submit his reply to the charge sheet by his letter dated 2-11-1985, which is within the period specified in the charge memo but without waiting for his written statement, the Respondents would appear to

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have appointed the Inquiry Officer. In this connection
~~we may usefully~~
~~in a profitable reference~~ to the relevant provisions
contained in The Railway Servants(Discipline & Appeal) Rules
1968, ~~and~~ the procedure for imposition of penalty is
~~of the said rules~~ specified Rule 9, (hereinafter referred to as DAR) ~~in brief~~.
The relevant sub-rules reads as follow :-

"(7) 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 shall require the railway servant to submit a written statement of his defence within ten days or such further time as the disciplinary authority may allow.

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(9) (a) (i) On receipt of the written statement of defence, the disciplinary authority shall consider the same and decide whether the inquiry should be proceeded with under this rule.

(ii) Where the disciplinary authority decides to proceed with the inquiry it may itself inquire into such of the articles of charge as are not admitted or appointed under sub-rule (2) a Board of Inquiry or other authority for the purpose."

6. It would be clear from the provisions of the rule quoted above that sequentially a delinquent official has to be given a charge sheet first so that he knows why action is being proposed to be taken against him. He is then given an opportunity to submit the written statement of defence and only after considering such

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written statement, the disciplinary authority is to decide whether it should itself inquire into the matter or should appoint a Board of Inquiry. Thus it is mandatory on the part of the disciplinary authority to apply its mind to the written statement of defence before an Inquiry Officer is appointed to inquire into the charges. In the present case the Inquiry Officer having been appointed even before the expiry of the period statutorily allowed to the Applicant to submit his written statement of defence, There is a clear violation of this statutory provision of the DAR. It may incidentally be stated that to the specific averments in Paragraph Nos.6.7 of the O.A. that the disciplinary authority 'in super-haste' appointed Mr. R. Jacob,T.I.(Main), Jhansi, as an Inquiry Officer vide SF-7 dated 24-10-85", The Respondents stated in their Counter Affidavit in Paragraph No.8 thereof that the contents of Paragraph No.6.7 of the petition call for no comments.

7. The Applicant has made a serious allegation in Paragraph No.6(13) that no inquiry was conducted. To this averment the Respondents have stated that an inquiry was conducted in which the witnesses examined were Sri N.R. Bhatia, Sri Ghanshyam, Chiman Lal and Sro Yakub Khan. We have seen from Annexure-4 to the charge memo that only Sri N.R. Bhatia and Sri Yakub Khan are named as witnesses. The controversy as to whether a ~~confronted~~ inquiry was held or not, would have been settled by enclosing a copy of the inquiry report to the written statement. This, however, has not been done. Nor is a report of the inquiry enclosed to the order passed by the disciplinary

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authority. We therefore, have no way to find out whether a confronted inquiry was ^{actually} ~~rightly~~ held or not and whether the Applicant was given adequate opportunity to defend himself in that inquiry.

The Respondents also did not ^{choose} to produce record of the disciplinary proceedings for our perusal.

8. Coming to ~~the~~ the impugned order of penalty, we find that to this order is enclosed a copy of the findings of the disciplinary authority. From this it would appear that the disciplinary authority has gone through the record of the inquiry conducted by Sri R. Jacob, who did not find it satisfactory as he had failed to go through inquiry report of the CRS (presumably, Commissioner for Railway Safety). This finding of the disciplinary which really is a dissent note refers to the statement made by Sri Bhagwan Das, Sri G.P. Arya, Sri Khuda Bax, Sri Yakub Khan, Sri Ghanshyam and Sri Qureshi. The statements of these persons referred to in the dissent note appear to have been made in the inquiry conducted by the CRS. None of these persons except Sri Yakub Khan has ^{deceased} ~~stated~~ as witness in Annexure-4 to the charge memo. If the statement, made by these persons in the inquiry conducted by the CRS were to be used in establishing the charge of the Applicant the rules of natural justice would warrant that such persons, ^{are} ~~if~~ produced as witness in ^a confronted

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and inquiry, the Applicant be allowed to cross-examine them. In the absence of the inquiry report, it is not clear whether any such opportunity was given to the Applicant. The entire procedure adopted in imposing penalty on the Applicant is, therefore, seriously ~~flawed~~ flawed.

9. A copy of the Memo of Appeal has been filed by the Applicant as Annexure-A-5. In this Appeal he raised several points to challenge the order of the disciplinary authority. This Appeal has been rejected by a totally non-speaking order dated 27-2-1986, which really is a letter conveying the decision of the Appellate Authority. The letter reads as follows :-

"Your appeal dated 10-1-86 was put up to the DSO and he has decided that the punishment given by the AOS to stand good."

10. It would appear from the ~~detailed~~ order that there is no evidence ~~annexed~~ with the various points raised by the Applicant in his Appeal ^{Appeal} ~~considered~~ by the Appellate Authority. Rule 22(2) of the DAR casts a statutory duty on the Appellate Authority to consider certain aspects of the case. These are, whether the procedure laid down in these rules have been complied with and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution of India or in the failure of natural justice; whether the findings of the disciplinary authority are warranted by evidence on record and

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whether the penalty imposed is adequate, inadequate or severe. This aspect was considered in detail by the apex court in the case of Ram Chandra Vs. UOI, reported in AIR 1986SC 1173. The apex court held that unless the Appellate Order indicates ^{that} of the aspects enumerated in Rule 22(2) of DAR ^{are} and properly considered by the Appellate Authority, the Appellate order shall be liable to be quashed. In the case of Ram Chandra, there was atleast a mention in the Appellate order that such aspects had been considered yet the Appellate order was quashed on the ground that there ^{was} ~~is~~ no evidence of application of mind but only a mere recital of the fact that such consideration has been made. In the case before us, the Appellate order does not contain even such a recital. The Appellate order, therefore, is a nullity in the eyes of law. Similarly, subsequent Revisional Courts' review orders passed are also totally non-speaking, disclosing non-application of mind and, therefore, deserve to be quashed.

11. That In view of the foregoing all the impugned orders dated 20-12-85, 27-2-86, 24-3-87 and 15-10-87 deserve to be quashed and are quashed accordingly. It appears from the details of the Petitioner given in the O.A. filed on 9-5-1985 that he was about 50 years old at the time of filing of the Application. In case, he ^{has not already reached the age of superannuation,} ~~is still in service~~, he shall be reinstated in service forthwith with all consequential benefits as if he has never been removed from service. The only exception we make is with regard to back wages. We provide that no back wages will be paid during the

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period from the date of removal from service till the date of his re-instatement as during this period he has been in receipt of terminal benefits. ^{reached the age of superannuation.}
In case he has already ~~retired~~, his retirement benefits shall be recalculated after notional fixation of his pay by granting increments during the period he should have been in service, but for the order of removal. The arrears on account of terminal benefits shall be paid to the Applicant within a period of four months from the date of communication of this order. The Respondents, however, shall be at liberty to proceed afresh if they so desire against the Applicant departmentally in accordance with law from the stage of charge sheet.

12. The parties shall bear their own costs.

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