

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No. 580 of 1988

(8)

D. D. Singh Applicants.

Versus

Chief Commercial
Superintendent
N.E.Rly, Gorakhpur
& ors. Respondents

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

Hon'ble Mr. Maharaj Din, J.M.

(By Hon'ble Mr. K. Obayya, A.M.)

1. The applicant who is a Traffic Inspector (transit) N.E.Rly at Gorakhpur has in this application challenged the order dated 11.4.1988 by which recovery of Rs. 1000/- per month is being made from his salary and prayed that the respondents be restrained from making recovery and that he be paid interest at the rate of 18 per cent on the amount disbursed.

2. The applicant was served with a charge sheet on 26.8.1983 for alleged sale of tickets and misappropriation of the proceeds amounting Rs. 14,761-70, while working as ASM Soharatgarh during the year 1978-79. The applicant requested inspection/supply of documents relied upon to establish the charge to offer his explanation. In the intervening period he was promoted as Wagon Movement Inspector and transferred to Sonpur division and came back to Gorakhpur to the present post of Traffic Inspector(transit) where upon he was reminded on 3.3.1986 to give reply for the charge memo: The applicant pointed

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out, besides himself some others, whom he has named were also working at the station in question and they and not he is responsible for what all happened and the amount involved in loss or misappropriation should be recovered from them. The enquiry proceeded and according to the applicant the enquiry officer held that the charge is not established against him. Notwithstanding this the disciplinary authority passed punishment order dated 11.4.1988 for recovery of Rs.1000/- per month from the salary of the applicant.

The applicant has preferred appeal against the recovery order, but that was not decided.

3. The respondents have opposed the case and in their return pleaded that the enquiry was held in accordance with rules and every opportunity was afforded to the applicant to place his defense. Documents relied upon were supplied. The disciplinary authority considered the enquiry report, with which he was not in agreement, he gave detailed reasoning for doing so and passed the punishment order of recovery. The respondents justify the punishment as the charge is established against the applicant. The respondents have also pointed out that the applicant has not availed statutory remedy of appeal, since he has approached the Tribunal, even before his appeal could be decided, hence the application is not maintainable.

4. We have heard counsels of parties. We have also carefully perused the record.

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for the applicant
5. The learned counsel pointed out that in this case the disciplinary authority has disagreed with the findings of the enquiry officer, but the applicant was not given any opportunity to make a representation nor he was given the opportunity of personal hearing. On behalf of the respondents it was contended that the disciplinary authority has given detailed reasons as to why he was disagreeing with the enquiry officer. But the applicant was not apprised as to the basis of disagreement. Reference may be made to the case of Narayan Mishra Vs. State of Orissa (1969 SLR Volume. III, Page 657) wherein it was held that where the punishing authority differed from the findings of the enquiry officer notice or opportunity should be given to the ^{delinquent} ~~present~~ official to make a representation. Admittedly in the instant case opportunity was ^{not} given to the applicant. Consequently punishment order is liable to be set aside and the same is set aside. The punishment order dated 11.4.1988 is quashed. Disciplinary authority may proceed with the case after furnishing a notice to the applicant stating the reasons for his disagreement with enquiry report and give personal hearing and also opportunity to make a representation to the applicant and decide the case on merits thereafter. Let this be done within a period of three months from the date of communication of this judgement. The applicant is allowed ~~rupees~~ as above parties to make their cost.

J.M.

A.M.

Allahabad Dated: 16/2/1993.

(jlu)