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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL - ALLAHABAD BENCH
ALLAHABAD.

O.A.No. 1070 of 1988.

Sri A.K. Chatterjee..... Applicant.

Versus

Union of India and others..... Opp. Parties.

Hon'ble Mr. Justice U.C. Srivastava-V.C.
Hon'ble Mr. A.B. Gorthi - A.M.

(By Hon'ble A.B. Gorthi-A.M.)

1. In this application under Section 19 of the Administrative Tribunals Act 1985, the challenge is to the disciplinary penalty of the compulsory retirement imposed upon the applicant by the order of the General Manager, Diesel Locomotive Workshop Varanasi.

2. Sri A.K. Chatarjee the applicant joined as Diesel Locomotive Workshop (D.L.W.) Varanasi on 5.7.65 and in due course of time was promoted as Electrician Grade-I. On 23.4.86 he was served with a charge memo, the accusation against him being that he impersonated as Gazetted officer and stayed in the Officer's Rest house Eastern Railway Hawrah and in the Retiring Room at Patna, producing a forged Card Pass. Sri S.C. Gupta the Inquiry Officer conducted the inquiry without furnishing copies of all documents demanded by the applicant, without giving due opportunity to cross-examine witnesses or ^{to} produce witnesses in his defence and in a partisan manner. The most important witness P.K. Shah was examined behind his back. Venue of the inquiry was shifted to Calcutta to harass him. Hand Writing Expert's opinion was not shown to him. The applicant further urged that there was not an iota of evidence against him and that the entire case was falsely hoisted upon him as he made criminal complaints against the General Manager, the Chief Personnel Officer and others for their complicity in the case of his daughter's death.

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3. The learned counsel for the applicant Sri G.C. - Bhattacharya raised a number of issues before us which are discussed in the succeeding paragraphs.
4. Alleging that the applicant was a victim of circumstances and that the authorities concerned were hostile to him because of the criminal case lodged by him against the General Manager and some other senior officials, the applicant's counsel contended that an old issue pertaining to the ^{year} ~~order~~ 1981-82 was revived in 1986 by means of the charge memo dated 23.4.86. The daughter of the applicant who worked in the Railway Hospital as a Staff Nurse died under suspicious circumstances. Criminal proceedings initiated at the behest of the applicant, were pending in the court. The applicant's contention that under the circumstances, Sri S.S. Avasthi the disciplinary authority was biased against him. Although he was cited by name as respondent, he did not bother to file a reply affidavit. On ^{the} question of bias and malafide, we find that nothing specific has been established against the disciplinary authority, Sri S.S. Avasthi. The delay in serving charge memo was due to the fact that the matter was under inquiry by the C.B.I. for a long period and it was not that an old case was raked ^{up} ~~up~~ merely to harass the applicant.
5. As regards the applicant's contention that the charges were vague, we find that ^{they do} ~~they do~~ disclose ⁱⁿ ~~that~~ considerable ^{detail} ~~act for~~ the accusation against the applicant.
6. It has been stressed by applicant's counsel that important and essential documents demanded by the applicant were not supplied to him and that he was denied ^{due} ~~an~~ opportunity to ^{prepare} ~~prepare~~ his defence. In Annexure III to the charge memo, besides the Rest House Register for the relevant period, four leave applications of the applicant, ^a report of the Asstt. ^{Government} ~~Traffic~~ Examiner of questioned documents and the written statement of

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Sri P.K. Shah of the Rest House at Hawrah were cited as the documents relied upon by the prosecution. The record shows that the applicant was allowed to inspect the documents and take ^{notes} ~~notice~~ thereof. As regards the non-furnishing of the Hand writing Experts' report etc., the applicant had filed ^{an} ~~the~~ application in the Tribunal and got the necessary relief. We therefore find that no injustice was done to him in this regard and that he was not prejudiced in his defence. The applicant's complaint that he was not provided with a suitable ^{Assistant} ~~Defence~~ ~~as it~~ was rejected by the Tribunal on the ground that the applicant had no right to demand the services of a Railway employee retired more than three years ago.

7. On the question whether the evidence justified the conviction or not, there is sufficient evidence and we find that this ^{is} ~~is~~ not a case of no evidence at all. There is thus no need to enter into a detailed analysis of the evidence in the inquiry proceedings.

8. As regards the shifting of the venue of inquiry to Calcutta, the respondents explained that it was done with a view to record the evidence of P.K. Shah who expressed his apprehension that his life would be in danger, if he came to Varansi to depose against the applicant. The evidence of P.K. Shah as record ^{and} was shown to the applicant and later on he was allowed to cross-examine him. A number of technical and legal issues were also raised by the applicants ^{Counsel.} At the out-set it was contended that ^{the} Workshop Electrical Engineer ^L who acted as the disciplinary authority was not ^{the} his appointing authority and had no power to issue the charge memo or to impose the penalty of dismissal. Learned counsel for the respondents, Sri Lalji Sinha clarified that a senior scale officer was the appointing authority as well as disciplinary authority in respect of electrician Grade-I and that the Workshop Electrical Engineer is a senior scale officer. ^{They} ~~There~~ ^{are} does not, therefore, seem to be ^{any} irregularity, much less

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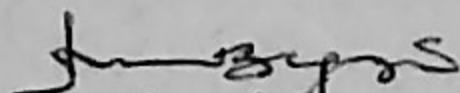
illegality in this regard.

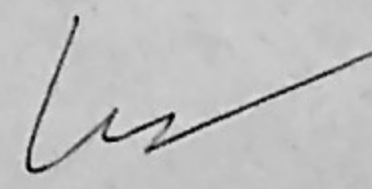
9. It ^{is} ~~seems~~ that on appeal, the punishment of dismissal was initially mitigated to removal. Further on a revision the General Manager reduced it to the penalty of compulsory retirement.

10. Learned counsel for the applicant raised the question of law that, as was held by the Hon'ble Supreme Court in Union of India Versus Ramjan Khan A.I.R. 1991 Supreme Court 471, there ~~were~~ ^{was} a violation of the Principle of natural justice, in that, the applicant was not furnished with a copy of the inquiry Officer's report before the disciplinary authority imposed the penalty. From the record of the disciplinary proceedings it is apparent that a copy of the inquiry Officer's report was not given to the applicant. Under the circumstances, as has been held in Ramjan Khan's case (Supra), the disciplinary award of dismissal stands vitiated and has to be quashed.

Consequently the orders of the appellate authority as well as the revisional authority are also hereby set-aside, besides the punishment order passed by the disciplinary authority. The applicant shall be deemed to be continuous^{-ing} in service and will be eligible ^{to all consequential benefits} in accordance with the applicable rules. We however make it clear that it ~~may~~ ^{will} be open to the competent authority to go ahead with the disciplinary proceedings from the stage of giving a copy of the inquiry Officer's report to the applicant.

11. The application is disposed of in the above terms without any order as to costs.


Member (A).


Vice Chairman.

Dt: 18 Jul 1992

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Original Application No. 1070/1988

HON'BLE MR JUSTICE R.K.VARMA V.C.
HON'BLE MISS USHA SEN, A.M.

(By Hon'ble Miss Usha Sen, A.M.)

This is an application questioning the findings of the Inquiry Officer, in the disciplinary proceedings against the applicant and the punishment imposed as a consequence thereof.

2. The applicant, Shri A.K.Chatterjee, Electrician, Grade-I in the Diesel Locomotive Workshop, Varanasi, was charged with impersonation as a Gazetted Officer and staying in the Officers' Rest House at Howrah and in the Retiring Room at Patna vide the charge-memo dated 23-04-1986. He was alleged to have stayed in the Officers' Rest House on 02-11-1981, 08-12-81, 06-02-82, 17-08-82 and 02-10-82 and in the Retiring Room in Patna on 14-2-82. After the proceedings of the departmental enquiry were concluded the Inquiry Officer submitted his report to the Disciplinary Authority on 18-12-1987. Based on the findings of the Enquiry Officer, the Disciplinary Authority imposed the punishment of dismissal from service. On an appeal against the punishment the appellate authority reduced the punishment to "Removal from Service" on ^{humanitarian} ~~termination~~ grounds although he found that the findings of the disciplinary authority were warranted by the records. On a revision application the punishment was further

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reduced to that of compulsory retirement vide an order dated 01-08-88 (Annexure -33 of the O.A.). The reduction was again on humanitarian grounds although the competent authority (General Manager) had found after going through the entire case that the findings of the Inquiry Officers were based on evidence on record and the penalty imposed by the appellate authority was adequate.

3. In this case a judgment had been passed by this Bench of the Central Administrative Tribunal on 18-12-1992 by which the relevant orders imposing the punishment of "dismissal" or "removal" or "compulsory retirement" were set aside on the ground that the Enquiry Officers' report had not been supplied to the accused official before the disciplinary authority imposed the penalty. This was based on the decision of the Hon'ble Supreme Court in Union of India versus Ramzan Khan (A.I.R. - 1991 - S.C. - 471). The judgment of the tribunal directed that the applicant would be deemed to be continuing in service but it would be open to the competent authority to go ahead with the disciplinary proceedings from the stage of giving a copy of the Enquiry Officers' report to the applicant. The respondents filed a S.L.P. against the judgment in the Supreme Court and the Hon'ble Supreme Court have ordered on 19-10-92 that the application of the decision given in the said ^{Case of} Union of India versus Ramzan Khan could be only from a prospective date and would not cover orders of punishment passed prior to the date of the judgment in that case. As in this case the order of dismissal was passed prior to the said decision the impugned decision of the Tribunal was set aside ^{by the Hon'ble Supreme Court} and the matter was remanded

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to the Tribunal for decision on merits on other points.

4. The matter had earlier been examined by the Tribunal on all other points as well as would be evident from the said judgment dated 18-12-1988 and the Tribunal had found no substance in the various objections raised by the applicant. However that matter has been reexamined after the decision dated 19-10-1992 of the Hon'ble S.C. in the said S.L.P. and the under mentioned observations are made:

As per the charge memo dated 23-4-1986 the Disciplinary Authority had relied upon the entries in the register at the DRH, Howrah, and the Retiring Room, Patna, various leave applications, a medical certificate of the applicant, the evidence of Shri P.K. Saha Janitor of the DRH at Howrah and the report of the Assistant Govt. Examiner of Questioned Documents, Calcutta, dated 4-4-83, for proving their charge. On examining the case including the report of the Enquiry Office submitted on 18-12-1987 it is seen that Shri P.K. Saha had stated in his evidence that he did not recognise the applicant and had also made some inconsistent statements as recorded in the Enquiry Officer's report. Thus the only evidence left to prove the charge was the report of Shri D.D. Goel (Asstt. Govt. Examiner of Questioned documents, Central Forensic Institutes, Bureau of Police Research & Development [MHA] Govt. of India, Calcutta), in which it had been affirmed that the questioned handwriting and the standard writing ^B ~~questions written~~ are by the same person (Refer Annexure-8 in rejoinder-cross examination of Shri D.D. Goyal on 15-4-87).

The Enquiry Officer's findings show that this report has been the only evidence on which the charge has been established by him. He had dismissed the report produced by the applicant

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from another "Handwriting Expert, Shri C-Alexander of Allahabad" as "not methodical and ^{convincing}". In this report Shri C.Alexander had opined that the handwriting in the questioned documents and the normal and admitted writing are dissimilar and not written by the same person. The objection of the applicant that it was not possible for him to perform duty at DLW, Varanasi ^(Diesel Loco Workshop) on 14-1-1982 and also stay in the retiring room at Patna on that date ~~has been~~ ^{was} over-ruled by the Enquiry Officer by stating that the applicant reached at Patna at 22 45 hours which is possible even after duty hours on that date. The other evidence produced by the applicant regarding his presence at Varanasi on 02-11-81, 08-12-81, 06-02-82 & 02-10-82 viz , "purchasing some articles or medical treatment etc", ~~has been~~ ^{brushed} ~~been set~~ aside by the Enquiry Officer as "Carrying no weight". It would be seen that the reports of the two hand-writings Experts as aforesaid are opposite in their conclusions. ^{whereas} The report of Shri O.D.Goel has been relied upon by the Enquiry Officer in his findings, ^{and} the other one of Shri C-Alexander being rejected as "not methodical and convincing". The Enquiry Officer has not stated as to why he has considered the report of Shri C-Alexander as such. We feel that prima facie it is not possible for a lay-man to opine that this report is "not methodical and convincing". It is felt that only another handwriting Expert (which presumeable the Enquiry Officer was not) could appropriately comment on the correctness or otherwise of either of the two reports. Since no other arguments had been advanced

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by the Enquiry Officer as to why the report of Shri C-Alexander should not be relied upon except that it ^{was} not methodical and convincing, we are unable to agree with the logic of the Enquiry Officer. Incidentally it is also seen that neither the department nor their counsel have replied to another objection raised by the applicant, viz, that he had performed ~~the~~ duty at D.L.W., Varanasi, on 01-10-82 and 03-10-82 upto 4 P.M. and it was not possible for him to go to Howrah and stay in the Officers' Rest House there during the period intervening between 4 P.M. on 01-10-82 and presumably opening hours of duty of DLW, Varanasi, on 03-10-82. Also, the department have not replied to the objection of the applicant that the defence witnesses were not examined. In the light of our examination and the observations made above we feel that the Enquiry needs to be continued further to have the reports of the two handwriting Experts examined by a third Expert who could either be one acceptable to both the parties, i.e., the applicant and the respondents, and in the absence of one such acceptable to both sides, it could be an official higher in rank to Shri D.D.Goel in the department of the Central Government dealing with the examination of Handwritings. Replies should be also given by the department to the two objections mentioned above which have not been replied to and if witnesses are produced by the applicant in this resumed enquiry they may also be examined. Based on the outcome of this further enquiry which may include any other evidence or fresh arguments ^{if any} ~~to be~~ advanced by the parties or by the Enquiry Officer himself, the report should be submitted by the Enquiry Officer, if necessary

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a cross examination of the said third handwriting Expert by the prosecution and the defence may also be arranged in the enquiry. The decision of the disciplinary authority may be based on this fresh report to be submitted ^{by} to the Enquiry Officer. Until the enquiry is concluded as

aforesaid the applicant may be allowed to perform his duties and ^{the order of punishment is set aside.}
~~if he has not already been compulsorily retired.~~ The department are directed to comply with the requirements mentioned above. With this direction the application is disposed of. No order as to the cost.

Uthu Sen
MEMBER-Administrative

R.K. V.
Vice Chairman

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DATED: ~~December~~ 18th, 1993.
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