

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

Allahabad this the 31st day of March 1995.

Original Application no. 1215 of 1988.

Hon'ble Mr. Justice B.C. Saxena, Vice-Chairman
Hon'ble Mr. S. Dayal, Administrative Member.

Ajai Kumar Saxena, S/o Shri R.D. Saxena, R/o 448/46-Ka
Nagaria Thakarganj, Lucknow.

... Applicant.

C/A Shri A.K. Jaisawal.

Versus

- i. Deputy Chief Mechanical Engineer (Engine), D.L.W.
Varanasi.
- ii. Chief Medical Engineer (Production). D.L.W.
Varanasi.

... Respondents.

C/R Shri Lalji Sinha.

ORDER

Hon'ble Mr. S. Dayal, Member-A.

This is an application under section 19 of the Administrative Tribunal Act, 1985. The relief sought by the applicant are for quashing of the orders of removal dated 19.11.87 passed by the disciplinary authority and of the rejection of appeal and give a direction to reinstate the applicant full back wages, service and other benefits. The grounds on which the relief is sought is that the

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charge sheet is not based on joint complaint, the statements do not support the complaint, the pay slip shows that the applicant was present on 26.02.86 and the applicant was prejudiced in his defence because of non supply^{of} documents asked for.

2. The facts as given by the applicant are that he was served a charge sheet on 11.03.86 alleging that the applicant entered the time office at 1500 hrs on 26.02.86 and enquired about his absence in the second shift, took out his GA card from the rack and tore it off and threatened to beat the staff with an iron rod. The second allegation mentions that the applicant entered the office at 3 p.m. on 26.02.86 heavily intoxicated, abused Shri Mohd. Ali, Chief Time Keeper and Shri U.N. Murti, Time Keeper, misbehaved with Shri Pooran Chandra, Time Keeper holding an iron rod and thereafter he was taken out by Shri R.A. Lal Time keeper. The applicant asked the disciplinary authorities by an application dated 03.03.86 for some copies of documents which were necessary for the applicant to prepare his defence statement. He was supplied only a copy of undated written complaint made by Shri K.M. Moorti, Shri V.K. Verma and Shri Pooran Chandra ~~was supplied to him~~ on 06.05.86. In case of another request by the applicant for supplying copies of remaining documents, he was informed on 29.05.86 that there was no justification for supply of copies of other documents. The applicant submitted three copies of his final written arguments on 24.07.87 and the Enquiry Officer submitted his enquiry report on 06.10.87 holding

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that charges levelled against the applicant were proved. The disciplinary authority awarded the meior penalty of removal from service by its order dated 19.11.87. The applicant preferred an appeal dated 23.12.87. The appeal was rejected by order dated 09.05.88.

3. The case was argued by the Proxy Counsel for Shri A.K. Jaisawal on behalf of the applicant and by Shri Amit Sthalekar on behalf of the respondents. The proxy counsel for the applicant stated that there was no evidence of absence of the applicant from duty. The applicant could not have derived any advantage from tearing the card. He contended that the circumstance showed that the entire episode was improbable. He mentioned that material witnesses were not examined separately but together which prejudiced the applicant's case. He also stated that the appellate order was non speaking. The counsel for the respondent mentioned that the case was not about unauthorised absence from duty. He said that the tribunal could not interfere because it was not the case of the applicant ~~in para~~ ^{of asking for relief} in his grounds, that the statement of the witnesses ~~were~~ ^{was} procured. The enquiry report categorically indicts the applicant. He said that although the appellate order as communicated did not give reasons, but grounds of appeal were considered and reasoned order exists on the file. This is held to be sufficient in ~~Namboddy's~~ ^{Namboddy's} case by the Supreme Court.

4. The first ground of non supply of documents asked for by the applicant is based on the pleadings.

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Annexure 2 of the OA shows that the applicant had asked for (a) report of finding enquiry by any agency establishing a prima-facie case against the applicant, (b) the complaint filed by Shri U.N. Murti, Shri Puran Chandra and Shri V.K. Verma, (c) statements of all the five prosecution witnesses listed in Annexure IV to the rejoinder, (d) any other documents supporting the removal of GA card from the rack and destroying it as well as use of iron rod, (e) the duty roster of the staff of timekeeping organisation and their place of work. Out of these five items listed by the applicant, only a complaint filed by Shri U.N. Murti, Shri Pooran Chandra, and Shri V.K. Verma was supplied, the other documents were not supplied on the ground that they were not relevant as they were not relied upon by the disciplinary authority for proving the case. We do not feel that the ground of denial is proper. If the provisional enquiry had been held and statements of the prosecution witnesses were recorded earlier in that enquiry given a different version of the series of incidents occurring within a short span of time, the applicant's right to use it as the basis of his cross examination was jeopardised. It is not even known whether the other documents asked for by the applicant did physically exist or not. The disciplinary authority should have either mentioned that all or any of these documents did not exist or should have furnished copies of these documents.

5. The applicant has raised the issue that when Enquiry Officer recorded statements of witnesses on

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08.01.87 he has not been appointed as an Enquiry Officer for this particular enquiry but in another enquiry against the applicant. Pursual of Annexure R-2 shows that the draft order was put up for signature by the person who prepared the office copy for disciplinary authority's signature on 13.01.87. The respondents have mentioned in paragraph 14 of their reply that the disciplinary authority had ordered on 20.11.86 on the DARK no. WP/DA/86/152 that the enquiry of both DAR cases no. 152 and 138 against the applicant, will be conducted by Shri H.P. Sharma. The respondents have, however, not produced any copies of such noting and annexure RA-I produced by them shows that the appointment was made on or after 13.01.87 and was communicated later. Therefore, the Enquiry Officer had no jurisdiction to conduct the disciplinary enquiry against the applicant on 08.01.87, when he recorded the statement of witnesses supporting the imputations against the applicant.

6. The counsel for the applicant has raised the issue that the statement of each of the witnesses appearing in support of imputation against the applicant was recorded in the presence of other witnesses in the same room. It appears to be true because annexure 14 to the OA shows that procedure adopted in case of crossexamination of Shri U.N. Murti, Shri Pooran Chandra and Shri V.K. Verma on 11.02.86 was that after the applicant put the questions and the answers were given one by one by these three witnesses who were present at the same

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time to such questions. Annexure 1 also shows that in response to question no. 1 of Enquiry Officer, the applicant had said that because all the witnesses were present when they were cross examined, they had given same/similar replies to these questions and had requested the Enquiry Officer to call only one witness for cross examination at time in the room. The Enquiry Officer had, however, negatived this request and had held that in departmental enquiry all the parties should be present at the same time. This view of the Enquiry Officer is not correct. It was necessary to record the statement of the witnesses separately so that separate points of view of different witnesses could be recorded. Permitting them to appear together was very definitely a lapse. It cannot be said that this lapse did not have any bearing on the opportunity given to the applicant to defend himself. This was all the more necessary as the subject ~~of~~ matter of enquiry was a series of incidents which occurred within a few minutes.

7. We, therefore, set aside the report of the Enquiry Officer from the stage of the proceedings on and after 08.01.37 and the orders of the disciplinary and appellate authorities. We realise that sufficient time has elapsed after the removal of the applicant and the effect of our order will be to treat the applicant on duty from the date of this order. It will be unfair to ask them to give all the consequential benefits before completion of this enquiry. We, therefore, permit the

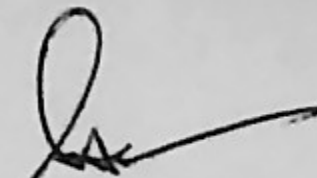
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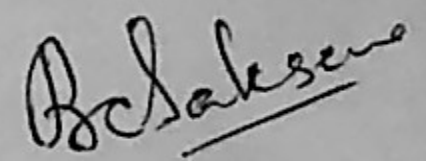
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management to treat the applicant on duty on the post which he was holding the time of removal as soon as this order is conveyed to them. They should proceed with the enquiry and complete the enquiry within a period of six months. We enjoin it on the applicant to cooperate with the enquiry and disciplinary authorities for expeditious disposal of the case. Decision about backwages, promotion and other consequential benefits should be taken in the light of the findings of the enquiry and the decision of the disciplinary authority thereon.

8. There shall be no order as to costs.


Member-A


Vice-Chairman

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