

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH

Pronounced on 02.9.94.

Original Application No. 1088 of 1992

Prakash Chandra :::::: Applicant  
( By Sri R.S. Mishra )

Versus

Union of India & Ors. :::::: Respondents  
( By Sri G.P. Agrawal )

Hon'ble Mr. T.L. Verma, Member 'J'  
Hon'ble Mr. K. Muthukumar, Member 'A'

( By Hon'ble Mr. K. Muthukumar, Member 'A' )

The applicant was a Safaiwala in Allahabad Division of Northern Railway and was posted at Fatehpur station, when disciplinary action was initiated against him for his habitual absence from duty in the year 1988, 1989 and 1990, and on the basis of enquiry officer's report, the penalty of removal from service was imposed on the applicant. His appeals to the appellate and revisionary authorities failed. Aggrieved by this order of removal and decision of appellate and revisionary authorities, the applicant has filed <sup>this application</sup> praying for quashing of the aforesaid orders.

2. In the application, the applicant has averred;

- (i) That his superior officer acted prejudicially and his leave application was not kept on record and he was marked absent.



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(ii) That he had 17 years of service during which he had earned leave, leave with half-pay, and the period of his absence could have been treated as leave without pay.

The severe punishment of removal was excessive and was nothing but, victimisation.

(iii) That the punishment order was passed in violation of Article 311(2) of constitution and he was not provided opportunity to defend himself. The copy of enquiry officer report was also not furnished to him.

(iv) That he was orally heard, against the questions of enquiry officer who had himself recorded his findings without affording opportunity to defend his case and even the disciplinary authority and the appellate authority merely went by the enquiry officer's report and his representations were not duly considered by them.

3. In resisting the application, the respondents have averred that the applicant had been charged due to his habitual absence from duty for several days in the past year as listed in the charge sheet and after due enquiry, the punishment was imposed on him. A copy of the enquiry officer's report was also submitted to the applicant but he did not make any defence, the administration had never refused any opportunity for his defence and all his allegations were baseless and were after thought and had no substance. The respondents had further averred that all reasonable facility and

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opportunity were provided during the course of enquiry and all the charges framed against him were proved by the enquiry officer and after careful consideration of all the papers, facts and records/<sup>statement of</sup> witness (written/oral) available on record, the punishment was imposed on him and the applicant was removed from the service.

4. The learned counsel for the applicant has argued before us that the applicant was not given second show cause notice at the time of imposing the penalty of removal from service as envisaged under Article 311(2) and thereafter, the disciplinary proceeding were initiated and that the punishment was also excessive and disproportionate to the charges and also cited the case of Premnath Sharma Vs. Union of India decided by Bombay Bench of the Tribunal and another case Hari Ram Vs. Delhi Administration 1993 ATC 25(FB)697. The learned counsel for the respondents argued that the enquiry was not at all vitiated in any manner and there was no requirement of serving second show cause notice under Article 311(2) after the amendment of the proviso and reasonable opportunity has been given at every stage to the applicant during the enquiry and the charges were duly proved and considering the fact that the applicant was habitually absent from duty from time to time, the punishment could not be called in question and the appeals were also duly considered by the appropriate authority and were rejected on merit.

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5. We have heard the learned counsel for the parties and perused the record.

6. It is seen from the record that that the enquiry report was duly furnished to the applicant, the receipt of which was also acknowledged by him. There is nothing in the record to doubt that the reasonable opportunity was not given to the applicant during the enquiry. The enquiry officer, after going through the replies of the applicant with oral and written questions and after examining the witnesses etc. had held that the charges were duly proved and thereafter the punishment was imposed by the disciplinary authorities. There is also no ground to hold that the disciplinary and appellate authority had not applied their mind on the findings of the enquiry officer and on the appeals filed by the applicant. From the records it is seen that the disciplinary proceedings have been conducted in accordance with rule and procedure. Regarding the question of giving second show cause notice, we find that as per amended provisions of Art.311(2), there was no requirement for such second show cause notice before the imposing the penalty. Even, in the case cited by learned counsel for the applicant, the Bombay Bench of the Tribunal has held that Art.311(2) envisages giving an opportunity during the course of enquiry into the charges, even though a second show cause notice is no longer required to be given qua the penalty proposed to be imposed. The reference of learned .....pg.5/-

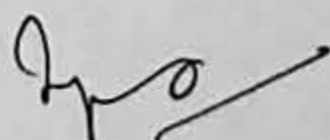
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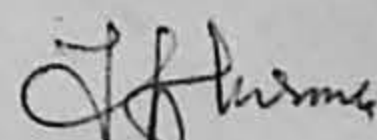
counsel for the applicant, to the other case of ~~Hari~~ Hari Ram Vs. Railway Administration and Others also does not help in this case and there is nothing to suggest that there was no application of mind on the part of disciplinary authorities before imposing the extreme penalty of removal from service. Infact, it was clearly recorded that the employee was habitual absentee and did not perform his duty regularly and sincerely. There is no ground to hold that there was no application of mind by disciplinary as well as appellate authority in this case.

7. In disciplinary proceedings, the role of judicial review is that <sup>"</sup>it is not an appeal from a decision but, it is the review of the manner on which the decision is made<sup>"</sup>. The Hon'ble Supreme Court has observed in H.B. Gandhi, Excise Taxation officer cum Assessing Authority Vs. Gopinath & Sons and others 1992 Suppl(2) SCG 312 that "it will be erroneous to think that Court sits in judgement not only on the correctness of decision making process, but also on the correctness of the decision itself". In the light of above discussions and also in view of the fact, that disciplinary proceedings were not vitiated in any manner, there are no grounds to interfere with the order of disciplinary authority and appellate authority in this case.

8. The O.A. is accordingly dismissed on merit and there will be no order as to costs.



Member (A)



Member (J)

Allahabad, Dated 2<sup>nd</sup> Sept 1994  
/M.M./