(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

O.A. No.1230/92

CORAM: Hon'ble Mr.S.K.Agrawal, Member (J)
Hon'ble Mr.G.Ramakrishnan, Member(A)

Shri R.L.Yadav, S/o. Late Sri Tulsi, resident of Dhobahiya, Post Gaur, District Basti.

.....Applicant

(By Shri Shesh Kumar, Advocate)

Versus

1. Union of India, through Secretary, Ministry of Railways, New Delhi.

2. Senior Divisional Engineer, North Eastern Railway, Lucknow.

3. Divisional Railway Manager (Engineering), North Eastern Railway, Lucknow.

4. Additional Divisional Railway Manager, North Eastern Railway, Lucknow.

.....Respondents

(By Shri V.K.Goel, Advocate)

O R D E R

(By Hon'ble Mr. S.K.Agrawal, Member[J])

In this Original Application the applicant makes following prayer :-

(i) to quash the order dated 6-3-90 (annexure-1) and order dated 31-1-92 (annexure-2) ;

(ii) to direct the respondents to treat the applicant continuous in service ;

(iii) to pay salary and allowances as permissible to the applicant.

contd....2/p

2. In brief facts of the case as stated by the applicant are that applicant was falsely implicated in a criminal case in the year 1985. He was suspended and a charge-sheet was given to him, but on enquiry he was exonerated from all the charges vide order dated 24-5-88 but the applicant was again suspended on the same day and by an order dated 21-6-88 de novo enquiry was initiated against the applicant on the ground that two independent witnesses have not been examined. It is stated by the applicant that the action of the respondents to initiate de novo enquiry was wholly arbitrary, illegal and against the principles of natural justice. It is stated that after enquiry the disciplinary authority passed the order of punishment without providing any opportunity to show cause to the applicant. Even after examination of 2 witnesses there was no basis to hold the applicant guilty of the charges and enquiry report was prompted with malice and malafide intention of the respondents. It is further stated that the applicant made a request to change the enquiry officer, but no order was passed on his application, therefore enquiry conducted by the Enquiry Officer suffers from bias and no punishment could be imposed on such enquiry. Applicant made an appeal to Addl. Divisional Railway Manager, Lucknow on 18-4-90, but it was decided after a long time on 31-1-92 with a non speaking order. No opportunity of personal hearing was given to the applicant before the disposal of appeal in this way. Applicant by this O.A. sought the relief as mentioned above.

3. Counter was filed. It is stated in the counter that the applicant was cought red-handed accepting the bribe, therefore, he was placed under suspension and after issuing charge-sheet enquiry was conducted. It is stated that Enquiry Officer did not examine 2 main witnesses, therefore revising authority passed an order to de novo enquiry who was well within his jurisdiction to order. It is also stated that at that time it was not incumbent upon

contd.....3/p

2. In brief facts of the case as stated by the applicant are that applicant was falsely implicated in a criminal case in the year 1985. He was suspended and a charge-sheet was given to him, but on enquiry he was exonerated from all the charges vide order dated 24-5-88 but the applicant was again suspended on the same day and by an order dated 21-6-88 de novo enquiry was initiated against the applicant on the ground that two independent witnesses have not been examined. It is stated by the applicant that the action of the respondents to initiate de novo enquiry was wholly arbitrary, illegal and against the principles of natural justice. It is stated that after enquiry the disciplinary authority passed the order of punishment without providing any opportunity to show cause to the applicant. Even after examination of 2 witnesses there was no basis to hold the applicant guilty of the charges and enquiry report was prompted with malice and malafide intention of the respondents. It is further stated that the applicant made a request to change the enquiry officer, but no order was passed on his application, therefore enquiry conducted by the Enquiry Officer suffers from bias and no punishment could be imposed on such enquiry. Applicant made an appeal to Addl. Divisional Railway Manager, Lucknow on 18-4-90, but it was decided after a long time on 31-1-92 with a non speaking order. No opportunity of personal hearing was given to the applicant before the disposal of appeal in this way. Applicant by this O.A. sought the relief as mentioned above.

3. Counter was filed. It is stated in the counter that the applicant was cought red-handed accepting the bribe, therefore, he was placed under suspension and after issuing charge-sheet enquiry was conducted. It is stated that Enquiry Officer did not examine 2 main witnesses, therefore revising authority passed an order to de novo enquiry who was well within his jurisdiction to order. It is also stated that at that time it was not incumbent upon

contd.....3/p

the disciplinary authority to give any show cause notice to the applicant before passing the order of punishment. It is stated that after the examination of those two witnesses the Enquiry Officer was bound to alter the finding, therfore the disciplinary authority rightly imposed the punishment of termination of the applicant from the service. It is stated that applicant made a request to change the Enquiry Officer at very late stage when the Enquiry proceedings were almost complete and this application was filed malafide with a view to delay the enquiry proceedings. It is also stated in the counter that the personal hearing is not necessary before the appeal is disposed off and the appallete authority has considered all the grounds of appeal in detail and passed an order dated 31-1-92. Therefore the order of removal is not in any way illegal. It is further stated that in view of the order of removal the applicant is not entitled to leave encashment. In this way by the averments made in the counter respondents have requested to dismiss this O.A. with cost.

4. Rejoinder was also filed reiterating the facts stated in the O.A.

5. It is submitted by the learned lawyer for the applicant during the course of arguements that :-

(i) order of de novo enquiry against the applicant is improper.

(ii) Order of termination of the applicant issued by disciplinary authority without supplying the copy of Enquiry Report and Show Cause is without jurisdiction.

(iii) No order on the application of the applicant was passed regarding the change of Enquiry Officer.

contd.....4/p

(iv) Punishment imposed upon the applicant was disproportionate to the gravity of the charge and the order was passed without considering the unblemissed record of the applicant.

(v) Order of appallete authority dated 31-1-92 is non speaking order, therefore bad in law and liable to be quashed.

6. In support of his contention the learned lawyer for the applicant has referred -

(i) AIR 1971 Supreme Court 1447.
(ii) AIR 1975 Supreme Court 1277.
(iii) 1993 UPLBEC (2) 865.
(iv) AIR 1991 Supreme Court 1067.
(v) 1995 UPLBEC 82.

7. On the other hand learned lawyer for respondents while opposing all the arguements submitted that competent authority can order to examine certain material witnesses in an enquiry after an enquiry already completed and in view of the decision of Ramjan Khan's case on 20-11-90 supply of copy of Enquiry Report was not necessary in those cases in which order of punishment was passed before this decision. He has also submitted that full opportunity was given to the applicant at the time of conducting the enquiry. He further submitted that as the applicant was caught red-handed by accepting bribe of Rs.50/- punishment of removal is not said to be disproportionate.

8. Heard the arguements of both the sides and we have given thoughtful consideration to the rival contentions of both the parties and also perused the whole record.

9. As regards point (i), raised by the learned lawyer for the applicant it has been made very clear

contd.....5/p

in the counter that competent revising/reviewing authority noticed that 2 independent witnesses were not examined therefore de novo enquiry was ordered and the enquiry officer after recording the statement of those witnesses submitted the report.

In AIR 1971 Supreme Court 1447 it was held by the Supreme Court -

> "If in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence."

In Sushila Devi Vs. State of Andhra Pradesh UP No. 35274/97 decided on 29-7-96 Hon'ble Andhra Pradesh High Court was of the view that if there are weighty or substantial good ground not to accept the Enquiry Report submitted by the Enquiry Authority and to hold de novo enquiry there should have been an office order issued by the Disciplinary Authority cancelling the earlier enquiry and not accepting Enquiry Report submitted by Enquiry Officer. In the instant case order dated 20-6-88 (annexure 7) is abandontly clear to hold de novo enquiry, therefore enquiry conducted in pursuance of the order dated 20-6-88 cannot be held illegal/improper or abuse of the process of law.

As regards (ii) point, it has been held by the Supreme Court in Union of India Vs. Mohd.Ramjan Khan (1991) S.C.C. Supreme Court cases 588 that ~~simple~~ furnishing the copy to the deliquent was not necessary. This judgement is applicable prospectively, i.e. it is made applicable in the cases in which order of punishment is passed after this judgement. Admitedly the case of the applicant was decided much earlier before this judgement, which was delivered on 20-11-90, as such in view of this judgement the applicant was not entitled to. The copy of the Enquiry Report or any show cause notice before the

contd.... 6/p

order of termination was issued against the applicant the same view gaves support in Managing Director E.C.I.L. Versus B.Karunakar(1994) 4 SCC 727.

As regards (iii) point is concerned, the applicant failed to mention the fact of any bias because of not changing the Inquiry Officer upon his request. Therefore merely that applicant has submitted for the change of Inquiry Officer and the Competent Authority did not pass any order does not entitled to the applicant to treat the enquiry proceedings as vitiated because element of bias is absent in the instant case.

As regards (iv) & (v)th points, the appallate authority passed the following order on 31-1-1992 :-

> "Your appeal dated 17-4-90 and supplementary appeal dated nil-11-90 has been considered by the undersigned and the following orders have been passed :-
>
> "It is a proved case of corruption hence punishment is justified." "

Learned lawyer for the applicant submitted that the order dated 31-1-92 was non-speaking order and was passed without application of mind. It is also submitted that no points raised by the deliquent in his appeal were considered and discussed in the order of appeal, therefore the impugned order of appeal dated 31-1-92 is bad in law and liable to be set aside. Admitedly the order dated 31-1-92 passed by the appallete authority is not a detailed order. The applicant has filed a detailed appeal, but no point raised by the appallent in his appeal was discussed while passing the impugned order of appeal. The appallete authority failed to mention the fact that there has been complete compliance of the rules and procedure and there has not been any voilation of the

contd....7/p

principles of natural justice. There is also no indication in the order that findings of the disciplinary authority were inconsonance of the evidence on record and whether the quantum of punishment was disproportionate to the gravity of the charge. The appallete authority was required to pass reasoned and speaking order discussing all the objections raised by the appallent in his appeal including quantum of punishment imposed by the Disciplinary Authority upon the appallent. Whenever an authority decides a matter which entails consequences. It must pass a speaking order giving reasons. Therefore we hold that the order of the appallent authority dated 31-1-1992 rejecting the appeal was not passed in accordance with the law. The impugned order of appallete authority was also challenged on the ground that the appallent was not given personal hearing before the impugned order was passed. The impugned order passed by the appallent authority was also challenged on the ground that the appallent was not given personal hearing before the impugned order was passed. Admitedly the personal hearing was not given to the appallent. It is boundent duty of the appallent authority to give complete and effective decision in a judicious manner and upon proper application of mind giving an opportunity of hearing rather than assistance to the authority itself without causing any prejudice to the other side. The deliquent has a right to ask for the hearing at the appallete stage which right accrues to him from the principles of natural justice and non-adherance to the rule of Audi Alteram Partem where it is demanded by the deliquent.

10. In view of the above discussion, we are of the opinion that order dated 31-1-1992 passed by the Appallate Authority is not a speaking order and therefore not sustainable in law.

As regards the quantum of punishment is concerned this point may be agitated before the

contd....8/p

appallete authority who will consider the same while disposing the appeal.

11. We, therefore, allow this Original Application in part and quash the order dated 31-1-1992 passed by the Appallete Authority and direct the Appallete Authority to dispose off the appeal by a reasoned and speaking order after affording an opportunity of personal hearing to the appallent if he so submits for the same, within 3 months from the date of receipt of copy of the order.

No order as to cost.

MEMBER(A) MEMBER(J)

|Satya|23.2.99.