

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Allahabad this the 5th day of September 2000

Original Application no. 135 of 1992.

Hon'ble Mr. Justice R.R.K. Trivedi, VC
Hon'ble Mr. M.P. Singh, Member-A

Udai Veer Singh,
S/o Bishambhar Singh,
Ex- D.C.L. Gangman,
R/o C/o Sri Ram Dayal Soraf,
Vill. and Post Chalahwali, Agra at
present residing at 89, New Lahore,
Shastri Nagar, Delhi.

... Applicant

C/A Shri M.K. Updhayaya

Versus

1. Union of India,
through General Manager,
N. Rly., Baroda House,
New Delhi.
2. The Divisional Engineer (II),
Northern Railway Moradabad.
3. The Assistant Engineer,
(Disciplinary Authority) N. Rly., Hardoi.
4. The Permanent Way Inspector,
Saudila, N. Rly., Hardoi.
5. The Divisional Railway Manager,
N. Rly., Moradabad.

.. Respondents

C/Rs Shri G.P. Agarwal

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O R D E R
Hon'ble Mr. Justice R.R.K. Trivedi, VC

This OA under section 19 of the Administrative Tribunals Act, 1985, has been filed challenging order dated 30.07.85 passed by respondent no. 3 (Assistant Engineer, N. Rly., Hardoi) by which the applicant was removed from the post of Gangman and order dated 24.11.91 (communicated by letter dated 11.12.91) passed by respondent no. 5 (D.R.M. N. Rly., Moradabad), dismissing appeal of applicant.

2. The facts giving rise to OA are that the applicant U.V. Singh was serving as Gangman in railways. On 19.05.84 an accident took place, it is alleged that the applicant was required to work at the accident site but he refused to work and instigated other labours also not to work. The applicant was served the memo of charge dated 29.06.84, which contained four charges to the following effect :-

- i. Udai Veer Singh without permission left the site of accident at 116 Kms. between Sandila Rahismabad on 19.08.84.
- ii. Udai Veer Singh instigated the workers at site and did not return to duty despite he was called by Sri Kuber Nath, Permanent Way Mate, Kakori who was at the work site.
- iii. Udai Veer Singh returned at work site after pursuasion by PW1/III, Malihabad and he was asked to discharge duty but he refused and instigated other workers, he misbehaved with PW1/III Malihabad and started crying loudly.

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iv. Udai Veer Singh, when sent before the DEN-II, Moradabad, started speaking in high tone and used uncivilised words.

3. It appears that the applicant submitted his explanation on 15.2.85 and denied all the charges. The inquiry officer submitted his report and on the basis of the same respondent no. 3 passed the order of removal dated 30.07.85. Copy of which has been filed as annexure A-10 to the OA. Aggrieved by this order the applicant filed appeal which was rejected by respondent no.5 on 24.11.91 (Annexure A-2). Aggrieved by the aforesaid orders the applicant approached this Tribunal.

4. We have heard Shri M.K. Updhayaya learned counsel for the applicant and Shri G.P. Agarwal learned counsel for the respondents and perused the record.

5. Learned counsel for the applicant has assailed the order of punishment on the ground that the orders passed are cryptic. Evidence adduced during the inquiry has not been discussed and such orders cannot be sustained. It has also been submitted that during inquiry a serious illegality was committed as even before the evidence in support of the alleged charges could be given, Inquiry Officer cross examined the applicant and recorded his statement on 25.2.85. Copy of which has been filed as annexure A-8 to the OA. Learned counsel for the applicant has placed reliance on a judgment of

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a Division Bench of this Tribunal in the case of D.B. Pradhan Versus Union of India and others (1991) Vol 1 AISLJ 356. Learned counsel has submitted that on account of this illegality the impugned orders cannot be sustained. Learned counsel has further submitted that in charges the names of those workers who were allegedly instigated by the applicant were not disclosed. The names of two such workers were disclosed for the first time at the stage of evidence. It is submitted that it was also contrary to the procedure provided in rules. The applicant had not been supplied material which was likely to be referred during inquiry in support of the charges. Learned counsel ^{submitted that appellate authority has} failed to examine analytically the material on record, as to whether the charges against the applicant were proved or not. It was also submitted that the copy of the inquiry report was not served on the applicant and he could not know about its contents.

6. Shri G.P. Agarwal learned counsel for the respondents on the other hand submitted that the orders passed by disciplinary authority and appellate authority do not suffer from any illegality. Learned counsel has submitted that witnesses were examined in support of ~~the~~ charges and they were cross examined by the applicant. The charges were fully proved. The disciplinary authority accepted the report of the inquiry officer and passed order of punishment of removal. Appellate authority in its turn has examined the whole matter and passed

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detailed order. It has also been submitted that even this Tribunal can look into the evidence and ascertain whether the charges have been proved or not. Learned counsel has placed reliance on the judgment of Hon'ble Supreme Court in the case of D.I.G. Police Vs. K.S. Swaminathan, 1997 (75) FLR 2 and United Planters Association of Southern India Vs. K.G. Sangameswaran & Others AIR 1997 SC 1300. Shri Agarwal has placed before us the statement of the witnesses.

7. We have carefully considered the submission of the learned counsel for the parties and also perused the record, impugned orders and the charges framed and the evidence adduced. We have no hesitation in saying that the disciplinary authority and the appellate authority in the present case miserably failed to discharge their legal obligation provided in the Railway servant (D & A) Rules, 1968. It is expected from the disciplinary authority that before passing the order of punishment he shall examine the evidence adduced in support of the charges. Even while approving the report of the inquiry officer, a general agreement with the reasons recording the evidence adduced in support of charges is required to be mentioned in the order. But in the present case disciplinary authority has not recorded any kind of findings. He has only referred the report of the inquiry officer and reproduced the charges in the order and, thereafter, has passed order of removal.

It is not disputed that the report of the inquiry officer was not served on the applicant and he could not know anything from the order of the disciplinary authority as to what prevailed against him for passing order of removal.

8. Right of appeal is provided under law as a step of corrective measure that all the mistakes committed by the lower authority shall be corrected by the appellate authority and the grievances of the applicant against the order impugned in appeal shall be removed. But in the present case appellate authority also failed to examine the evidence adduced in support of the charges analytically and by showing a general agreement confirmed the order of punishment. The appellate authority has observed that it has perused the findings recorded by the appellate authority. But we do not find any finding recorded which could be perused by the appellate authority. It clearly shows non application of mind. Even the procedure adopted at the stage of inquiry officer was illegal as the applicant was examined even before any evidence could be adduced in support of charges. This fact has not been denied in the counter affidavit. In our opinion this case is squarely covered by the judgment of Division Bench of this Tribunal in the case of D.B. Pradhan (supra) and the orders cannot be sustained.

9. On the request of Shri G.P. Agarwal, learned counsel for the respondents, we also perused the

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statement of the witnesses. It is not disputed that the charges levelled against the applicant were silent about the names of the workers who were allegedly instigated by the applicant. Witness Kuber Nath was put a question to name the workers who were instigated. In his reply he stated that all workers present were instigated. He further stated that he cannot say whether they accepted the advice of the applicant or not. The witness kept silence so far as mis-behaviour of the applicant with the officers was concerned. In our opinion on the basis of such evidence it cannot be said that the charges levelled against the applicant were proved. The punishment awarded does not appear to be justified.

10. Looking to the charges even accepting for the sake of argument that charges were proved, the punishment awarded appears to be highly ~~excessive~~ and arbitrary. Some times workers under pressure of work misbehave with the employer such misbehaviour is ~~seen~~ even in disciplined forces, but extreme penalty of removal for such single laps cannot be justified. It is not the case of the respondents that the applicant was habitual of committing such behaviour with his superior authorities. Normally in such a case, matter should have been remanded to the disciplinary authority for passing a fresh order, but considering the delay involved as the incident is of 1985 and after looking to the evidence on record and the charges framed, we do not think it necessary. In our opinion the applicant is

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entitled for relief.

11. For the reasons stated above, this OA is allowed. Orders dated 30.07.85 and 24.11.91 are quashed. The applicant shall be reinstated on the job with all consequential benefits. However, he will not be entitled for the back wages.

12. There will be no order as to costs.

Member-A


Vice-Chairman

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