

Open Court.

Central Administrative Tribunal,
Allahabad Bench, Allahabad.

Dated: Allahabad, This The 30th Day of August, 2000

Coram: Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiq Uddin, J.M.

Original Application No. 1776 of 1993.

Changhai son of Sri Langarh,
aged about 56 $\frac{1}{2}$ years
resident of village Baskari,
P.O. Naruiya,
Distt. Allahabad.

. . . Applicant.

Counsel for the Applicant : Sri S.S. Sharma, Adv.

Versus

1. The Union of India, owned and represented by and notice to be served upon the Divisional Railway Manager, Northern Railway, Divl. Railway Manager's Office, Allahabad.
2. The Senior Divisional Railway Engineer-I, Northern Railway, Divl. Railway Manager's Office, Allahabad.
3. The Divisional Engineer, Northern Railway, Chunar.

. . . Respondents.

Counsel for the Respondents: Sri D.C. Saxena, Adv.

Order (Open Court)

(By Hon'ble Mr. S. Dayal, Member (A.))

This application has been filed for setting aside impugned order dated 26.9.92 passed by

Disciplinary Authority and order dated 16.8.93 passed by Appellate Authority. Directions have also been sought to the respondents not to reduce the basic pay of the applicant from Rs.1200/- per month to Rs.950/- per month and refund the amount already recovered from the applicant. The applicant also seeks protection of his pensionary benefits.

2. The facts as stated by the applicant are that he was working as Mate of a gang under P.W.I. site Churk and P.W.I. Section Incharge at Chunar. He was served with a chargesheet and imposed punishment of reduction to the lowest of the pay scale in which he was placed. His appeal was rejected. He has filed this O.A. against the order of punishment as well as the order passed in appeal.

3. We have heard learned counsel for the applicant as well as respondents and perused the record.

4. Learned counsel for the applicant has mentioned that the applicant was issued a standard Form-II for minor penalty and it was mentioned in the allegations that it was found in the inspection of Muster Pay sheet on 14.4.92 that Sri Mahmood Ali who was suspended by S.F.-I dated 14.4.92 was marked present without any orders on the dates mentioned. The applicant was charged with disobeying the orders and thereby violating rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the Conduct Rules. The applicant furnished his reply to S.F.II in which he denied that he had received a copy of the suspension order. He has also mentioned that line inspections were made ^a ~~in~~ number of times

between 14.4.92 and 26.5.92 but this discrepancy was not noticed earlier. He has also mentioned that the Muster Roll did not show 'suspended' against the name of Sri Mahmood Ali which was the function of Permanent Way Inspector or his Assistant. The learned counsel for the applicant has shown the order of punishment dated 26.9.92 in which the disciplinary authority seems to have made the order of punishment on the basis of recommendations of P.W.I. Grade-III Churk and P.W.I. Churk. The learned counsel for the applicant has contended that the recommendations of the P.W.I.s. were obtained behind the back of the applicant. The learned counsel for the applicant has also brought to our attention to Annexure A-3 which informed the Mate that Gangman Sri Mahmood Ali working under him was removed from service and he should not be taken on duty nor his name ^{The applicant complied with this order.} should be written on pay sheet. The learned counsel for the applicant has also brought to our notice the appeal dated 23.12.92 in which he has stated that the order of punishment was not a speaking order and was bad in law. It has also been contended that the applicant was not given reasonable opportunity as he was not made aware of the remarks of the P.W.I. Grade-III Churk and P.W.I. Churk and asked to give his explanation with regard to all these remarks. The appellate authority rejected the appeal on the basis of the remarks of P.W.I. Churk.

5. Another issue raised by learned counsel for the applicant is that penalty imposed upon him

is not a minor penalty because it goes beyond the period of superannuation and would affect his pension and pensionary benefits.

6. The learned counsel for the respondents has contended that the O.A. is not maintainable because of non joinder of necessary party. His contention is that the Union of India has been made a party through D.R.M. Under Section 80 C.P.C. Union of India should have been made a party through General Manager of Northern Railway. We are not impressed with this argument. If Union of India has been made a party through D.R.M. the relief claimed by the applicant can still be allowed because it remains within the purview of the Divisional Authorities and does not go beyond them.

7. The learned counsel for the respondents has also mentioned in para 14 of the counter reply in which they have admitted that the penalty imposed would affect the retirement dues and pensionary benefits ^{of the applicant} who was due to retire on 31.7.95 whereas the penalty was to be operative till 30.11.95. Therefore the disciplinary proceedings case file along with recommendations was being forwarded to the Appellate Authority.

8. Since the Appellate Authority has already passed an order in this case, the Authority would therefore have no jurisdiction to pass any further order.

9. We are of the view that the order of punishment as passed by the ^{Disciplinary Authority and upheld by the} Appellate Authority can not be sustained as it is not minor punishment and proper procedure for imposing major penalty has not been followed in this case. Therefore, the order of the Disciplinary Authority dated 26.9.92 and order of Appellate Authority dated 16.8.93 are set aside. The applicant shall be paid consequential relief. This shall be carried out within a period of three months from the date of communication of this order by the applicant.

There shall be no order as to costs.


Member (J.)


Member (A.)

Nafees.