

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.DATED : ALLAHABAD THIS THE 11th DAY OF January 1996.QUORUM : Hon'ble Mr. T. L. Verma, Member-J
Hon'ble Mr. D. S. Baweja, Member-A.

Original Application No. 431 of 1993.

Chhotey Lal son of Sri Banshi Lal,
Ex. Helper Khallasi under Concrete Sleeper
Plant, Subedarganj, Northern Railway,
Allahabad.....Applicant.
(BY ADVOCATE SHRI P.K.KASHYAP)

VERSUS

1. Union of India, through the Chief Engineer, Northern Railway, Baroda House, New Delhi.
2. Senior Engineer, Concrete Sleeper Plant, Northern Railway, Allahabad.
3. Dy. Chief Engineer, Concrete Sleeper, Plant, Northern Railway, Allahabad.

.....Respondents.

O R D E R (By Hon. Mr. T. L. Verma, J. M)

This application under Section 19 of the Administrative Tribunals Act, 1985 has been filed for quashing order dated 6.5.1990 removing the applicant from service and order dated 10.6.1992 and order dated 14.11.1992 passed by the Appellate Authority and Reviewing Authority respectively affirming the punishment of removal from service imposed on the applicant by the Disciplinary Authority.

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2. The applicant while working as Khalasi Helper CSP/N.R/Subedarganj, Allahabad was subjected to disciplinary proceeding on the allegation that he provoked the workmen from going to work for repairing of tracing jacks which were out of order. Sri S. D. Roy AEN/D-1/CSP was appointed as Inquiry Officer. The Inquiry Officer submitted his report on 8.2.1992 in which the charges levelled against the applicant were held to be established. The disciplinary authority agreeing with the finding recorded by the Inquiry Officer ~~had~~ passed impugned order dated 10.6.92 whereby the punishment of removal from service has been imposed on the applicant. The aforesaid punishment imposed by the disciplinary authority has been upheld by the appellate as well as the reviewing authority by orders dated 10.6.1992 and 14.11.1992 respectively. The orders passed by the appellate authority and disciplinary authority have been challenged on the ground that they are ~~non-speaking~~ based on no evidence and have been passed without considering the pleas raised by the applicant in his appeal and revision application. It has also been alleged that the applicant was given adequate opportunity to defend himself at any stage.

3. The respondents have filed written statement in which it has been stated that the applicant was given full opportunity to defend himself in the disciplinary proceeding therefore, the order of disciplinary authority was properly passed on the basis of the inquiry report. Similarly the appellate authority and the Reviewing Authority passed the impugned orders after carefully examining the material in the inquiry proceeding. As no procedural irregularity as may have resulted in causing prejudice to the applicant in defending his

case, has been pointed out, it is stated, that the impugned orders are beyond the scope of judicial review by this Tribunal.

4. We have heard the learned counsels for the parties and perused the record. From the Inquiry Report it would appear that four witness were examined by the prosecution in support of the charges framed against the delinquent employee and after the close of the prosecution evidence 30.10.1991 was fixed for submitting defence statement by the applicant. The inquiry report further reveals that the applicant had had the opportunity to cross examine the witnesses. It further appears that the delinquent employee had submitted a representation on 15.1.1992 for change of the Inquiry Officer. As the order passed on the representation submitted by the applicant was not communicated to the Inquiry Officer and as he was under orders of transfer, he recorded his finding on the basis of the evidence already on record and submitted the report. The disciplinary authority, it appears had acted on the aforesaid Inquiry report and passed the impugned punishment orders based thereon. From the inquiry report, we are satisfied that there was evidence to support the conclusions arrived at by the Inquiry Officer. We have carefully considered various pleas raised by the applicant assailing the findings of the disciplinary authority but, we find no merit in these pleas.

5. Now coming to the question whether the appellate order passed by the appellate authority is in conformity with the provisions of rule 22(2) of the Railway Servants (Discipline & Appeal) Rules. Rule 22

of the Railway Servants (Discipline & Appeal) Rules enjoins upon the appellate authority to marshal the evidence on record to decide ~~whether~~ about the sustainability of the finding recorded by the disciplinary authority. Learned counsel for the applicant submitted that none of the issues raised by the applicant in regard with the ~~assessment~~ of evidence and illegalities committed by the inquiry Officer have been taken into account by the Appellate Authority. The appellate order is being extracted below for convenience of reference :-

"The undersigned has gone through the DAR case file of Shri Chhotey Lal, Semi-Skilled Fitter and his appeal dated 23.5.1992 including remarks of Disciplinary authority carefully. Nothing new has been brought out in the appeal by which it is possible to set-aside/reduce the penalty imposed by Disciplinary authority. It is proved beyond doubt that on 26.3.1991 Shri Chhotey Lal stopped the workmen from going on work of repair of stressing jacks which were out of order and it was personally seen by Shri B. S. Jaitly, AEN/Plant and Shri Ajay Goyal, SEN/SFC as the officers were asking Mechanical Fitters to go for repair of stressing jacks. Every thing contained in the appeal has been considered by disciplinary authority before imposing the penalty of removal from service. The appeal is hereby rejected. Shri Chhotey Lal should be informed immediately."

From the order of the appellate authority, extracted above, it is apparent that the appellate authority has not applied its mind as to whether the act of misconduct, the applicant was charged for together with attending circumstances and the finding recorded are such that he should be visited with extreme of removal

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from service. There is no mention of the legal plea raised by the applicant in the order passed by the Appellate Authority.

6. Non compliance with the provisions of Rule 22(1) of Rule 22 of the Railway Servants (Discipline & Appeal) Rules will vitiate the proceedings as has been held by the Supreme Court in Ram Chandra Vs. Union of India and others, reported in A.I.R.1986 S.C. page 1173. In view of the principle of law, laid down by the Hon'ble Supreme Court in Ram Chandra's case (Supra), and having regard to the fact that the appellate authority has passed order in appeal without complying with the requirement of rule 22 of the Railway Servants (Discipline and Appeal) Rules, we find that the order of appellate authority is illegal and void. That being so the order passed in the review also can not be sustained. The learned counsel for the applicant also submitted that the punishment imposed was disproportionate to the mis-
^{also} conduct alleged and for that reason the impugned orders were not sustainable. The law relating to the jurisdiction of the Tribunal and the Courts in determining the adequacy of punishment has been settled by the apex Court in State Bank of India vs. Samrendra Kumar Endow & another, reported in 1994(27) A.T.C. page 149. In the said case, it has been laid down that it is not within the domain of the Tribunal to adjudicate upon the quantum of punishment imposed by the disciplinary authority. We ~~xxx~~, therefore, do not consider it appropriate to express any ^{opinion as} ~~mind~~ to the adequacy or otherwise of the quantum of punishment.

7. In view of the foregoing we quash the order dated ~~xx~~ 10.6.1992 passed by the appellate authority and order dated 14.11.1992 passed by the reviewing

authority and remit the case back to the appellate authority with a direction that the appeal of the applicant be re-considered and be disposed of by the appellate authority in accordance with law within a period of 3 months from the date of communication of this order. The appellate authority will also consider the adequacy of the punishment with reference to the ~~fact~~ conduct complained of and other circumstances of the case.

S. Bhagat
Member-(A)

T. V. Verma
Member-(J).

Pandey/-