

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 19th day of April 2001.

Original Application no. 638 of 1993.

Hon'ble Mr. SKI Naqvi, Member-J

Hon'ble Mr. S. Biswas, Member-A

Bhim Sen, S/o Sri Chander Sen,  
N. Rly., Moradabad Division Loco Shed,  
Moradabad. At present, C/o Station  
Master, Lodipur Bisenpur, N. Rly., Station,  
MORADABAD.

... Applicant

C/A Shri AK Sinha

Versus

1. Union of India through the Divisional Railway Manager, N. Rly., Moradabad.
2. Sr. Divisional Mechanical Engineer, N. Rly., Moradabad.
3. Assistant Mechanical Engineer-I, Northern Railway, Moradabad.
4. Enquiry Officers Under RSD & A Rules, 1968 (Sri Jhanjhan Lal, APO-3 and Shri V.P. Bhathnagar, AEN-G) in the office of the D.R.M., N. Rly., Moradabad.

... Respondents

C/Rs Sri A.K. Gaur

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O R D E R (Oral)

Hon'ble Mr. SKI Naqvi, Member-J.

The applicant Shri Bhim Sen, has come up by means of this OA under section 19 of the AT Act 1985 seeking following reliefs :-

- a. Call for original records of the case from the respondents and quash the charge sheet dated 24.1.1991 (A-2), suspension order dated 16.4.1991 (A-3); removal order dated 31.5.92 (A-9) and the appellate order dated 13.11.92 (A-11) with all consequential benefits to the applicant ;
- b. Grant interest @ 14% on the arrears to the applicant throughout till the date of actual payment.

2. As per applicants' case, he was initially appointed as casual gangman under respondent no. 1 on 20.9.78 on daily rate of pay and worked intermittently due to artificial breaks upto 21.2.86, for a total period of 179 days. The applicant was also subjected to screening and regularisation as Group 'D' staff. For having full-filled all the requirements to the post of substitute loco cleaner, the applicant responded to the vacancies, notified for the post, and filed his application on 4.11.87. After due process the applicant was appointed as Loco cleaner. It was in April 1991 that a suspension order dated 16.4.91 was served upon him and he was subjected to disciplinary proceedings which resulted into punishment order through which he has been removed from service. The applicant preferred an appeal to that, with no success. After having exhausted all the departmental remedies he has come up before

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the Tribunal.

3. Respondents have contested the case and filed counter affidavit.

4. Heard Shri A.K. Sinha for the applicant and Shri M.K. Sharma for the respondents and perused the records.

5. Learned counsel for the applicant has opened his arguments by taking us through the order passed by the appellate authority, which is dated 13.11.92 and its copy has been filed as annexure A-11, assailing the same mainly on two grounds, first, ~~is~~ that inspite of specific request by the applicant he was not given any opportunity of oral hearing before the appeal was decided and secondly on the ground that the order passed by appellate authority is non speaking and no findings has been given on the facts as advanced by the applicant in his memo of appeal.

6. Learned counsel for the respondents mentions ~~there is~~ that no provisions for preappeal hearing and it has been mentioned in para 30 of the counter affidavit that inspite of applicant's having requested for oral hearing he was not allowed because there is no provision for the same. On second point Shri MK Sharma, mentions that ~~since the applica~~ <sup>repealed</sup> ~~has been allowed and the appellate~~ <sup>punishment</sup> ~~order~~ <sup>The punishment order</sup> order has been upheld, ~~there was on requirement or~~ obligatory on the part of appellate authority to go

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into unnecessary details.

7. We have considered the pleadings and arguments placed from either side.

8. So far as the oral hearing at appellate stage is concern, <sup>ho</sup> doubt there is no such provision under the rule in this regard, but it violates the principle of natural justice and <sup>where</sup> ~~there~~ there is <sup>no</sup> violation of principle of natural justice, <sup>ho</sup> ~~nothing~~ mention <sup>in</sup> of the provision in the relevant rule will not come to the help of disciplinary or appellate authority. <sup>Moreover on</sup> ~~But~~ <sup>on</sup> perusal of impugned appellate order, we find it has been passed in very mechanical way without mentioning therein the reasons for which the appeal has been rejected.

9. Under the circumstances, we are not in a position to sustain the appellate order and the same is quashed accordingly. However, the appellate authority is not precluded to pass a fresh detailed, reasoned and speaking order covering all the grounds taken in the memo of appeal and after allowing the applicant ~~for~~ a personal hearing. The OA is decided accordingly.  
No order as to costs.

*g. B. S.*  
Member-A

*Sec. Anagn.*  
Member-J

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