

Open Court

Central Administrative Tribunal,
Allahabad Bench, Allahabad.

Dated: Allahabad, This The 11th Day of May, 2000.

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

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

Original Application No. 708 of 1993.

R.B. Pandey,
son of Sri Kapil Dev Pandey,
working as T.C. at Chhapra,
under N.E. Railway,
Varanasi Division,
N.E. Railway, Gorakhpur.

. . . Applicant.

Counsel for the applicant: Sri Bashisht Tiwari, Adv.

Versus

1. Senior Commercial Superintendent, N.E. Railway
Varanasi.

2. Additional Divisional Railway Manager,
N.E. Railway Varanasi.

3. Divisional Railway Manager (Commercial)
N.E. Railway, Varanasi.

4. Union of India through the General Manager,
Gorakhpur.

. . . Respondents.

Counsel for the respondents: Sri Lalji Sinha, Adv.

Order (OpenCourt)

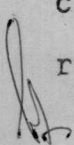
(By Hon'ble Mr. S. Dayal, Member (A.))

This application has been filed for setting
aside of orders of disciplinary authority dated
29.10.91, Appellate Authority dated 19.5.92 and
revisional authority dated 22.2.93 and grant
consequential benefits to the applicant.

2. The case of the applicant is that a chargesheet dated 26.7.89 was issued under rule 9 of Railway Servants Discipline and Appeal Rules. The applicant was not given copies of relied upon documents at the time of issuance of chargesheet or appointment of enquiry officer or appointment of representing officer. In particular, the applicant has mentioned that he has not given a copy of F.I.R. dated 1.11.98 and copy of reservation chart dated 29.3.85. The enquiry officer by order dated 17.3.90 and 16.4.90 directed that the documents relied upon by the respondents must be supplied to the applicant. One of the main witness against the applicant was Mr. R.L. Thakur. It is contended that his cross-examination could not be done by the applicant. It is also contended that even though the prosecution failed to establish its case. The applicant was subjected to punishment on account of ill-will of superior officers.

3. The arguments of Sri Bashisht Tiwari for the applicant and Sri Lalji Sinha for the respondents have been heard. The pleadings have been considered.

4. The main contention of learned counsel for the applicant of non supply of documents is borne out by the pleadings on record as well as by the original file of disciplinary proceedings of the case which we had ^{an} ~~occasional~~ ^l to see during the hearing as it was available with the learned counsel for the respondents. Learned counsel for the respondents has drawn due attention to the reply



of the respondents in which it has been stated that the applicant had inspected the entire record mentioning the chargesheet. The reservation chart had not been shown to him because it was not relied upon document. We find that the certificate of the applicant regarding inspection of documents is dated 27.9.89 while the directions given by the enquiry officer for supply of copies of documents is 17.3.90 and 16.4.90 which were not supplied to him. Therefore he could not give his defence in response to the memorandum to show cause. The learned counsel for the applicant has drawn attention to Railway Board's letter dated 29.3.85 addressed to G.Ms. of various zones in which the General Managers were asked to give photo state or typed copies of listed relied upon documents along with the charge of memorandum. It was clarified that the charged employee could inspect the originals of the listed documents if he so desires. The learned counsel for the respondents stated that the documents were not voluminous and since the applicant had been allowed the opportunity to inspect them, he could make a synopsis for using in his defence statement and in the departmental enquiry. The learned counsel for the applicant in this respect relied upon the judgment of the Apex Court in Trilok Nath Vs. Union of India and others reported in 1967 S.L.R. page 759. The Apex Court had in this case observed as follows:

" It is for this reason that it is obligatory upon the enquiry officer not only to furnish the Public Servant concerned with a copy of the charges levelled against him, the grounds on which those charges are based and the circumstances on which it is proposed to take action against him. Further, if the public servant so requires for his defence, he has to be furnished with copies of all the relevant documents, that is documents sought to be relied

on by the Inquiry Officer or required by the public servant for his defence."

He has also relied upon the judgment of the Apex Court in State of Punjab Versus Bhagat Ram 1975 Supreme Court Cases (L & S) page 18. The following excerpts from the judgment are relevant:-

" The trial court found that copies of the statements of the witnesses as recorded by the Vigilance Department during the preliminary enquiry were not supplied to the respondents but only the synopsis was given. The trial Court therefore, held that no reasonable opportunity was given to the respondent."

This finding of the trial court was upheld by the Apex Court:-

" The object of supplying statements is that the Government Servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the Government servant he will not be able to have an effective and useful cross examination."

The learned counsel for the applicant cited the judgment of the Apex Court in K.N. Dikshita Vs. Union of India 1986 A.T.R. Volume 2 page 186. This judgment of the Apex Court relies upon the case of Trilok Nath Vs. Union of India (Supra) and State of Punjab Vs. Bhagat Ram (Supra). It is clear in the light of the law relating to supply of documents that copies of relied upon documents were not furnished to the applicant. It is also clear that copy of reservation chart was not shown to the applicant as it was not considered relevant by the respondents.

5. The learned counsel for the respondents has mentioned that the contentions made by the


applicant were considered by the appellate as well as revisional authorities. The appellate authority reduced the punishment of compulsory retirement and changed it to demotion to grade 950-1500 at the bottom of the grade for a period of three years. The revisional authority further considered the punishment and reduced it to two years.

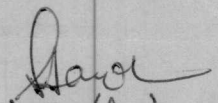
6. As regards the contention of learned counsel for the applicant that the enquiry officer had acted in a partisan manner by putting questions to the witnesses for the prosecution, ^{We find} that Sri O.P. Singh was put two questions by the Enquiry Officer which were not such as would discredit the witness. Hence although the respondents have admitted that the Enquiry Officer had conducted cross examination of the witness, we do not find that the questions put to Sri O.P. Singh were more than for clarificatory purpose and affected outcome in the enquiry in any manner.

7. We, however, find one material witness Sri R.L. Thakur was cross examined by the defence on 27.11.90 but the cross examination was incomplete and the proceedings of the departmental enquiry were postponed to 29.11.90. Sri R.L. Thakur whose cross examination was incomplete did not remain present and the defence pointed out to the Enquiry Officer that the witness was trying to avoid cross examination by his absence. Sri R.L. Thakur again remained absent on the next date which was 27.12.90. Sri R.L. Thakur remained present on 15.1.91 but the charged official and his defence assistant were not present and the next date

was fixed on 18.2.91 when Sri R.L. Thakur did not remain present. Again on 19.2.91 Sri R.L. Thakur was not present. On another date which was 13.3.91 Sri R.L. Thakur did not remain present. Sri R.L. Thakur again did not remain present on 1.4.91 and therefore the evidence of the prosecution was closed and the applicant was asked to furnish his defence. It is clear from these facts that the applicant was deprived of reasonable opportunity to defend himself due to absence of Sri R.L. Thakur for further cross-examination.

8. We, therefore, set aside the orders of the disciplinary, appellate and revisional authority against the applicant. The respondents may furnish the documents which have been considered by us as relevant in this case to the applicant and then proceed against him from the stage of asking him to appoint his defence assistant and examination of witness should they consider it necessary to do so. They shall take a decision regarding further proceedings against the applicant within the period of ~~two~~³ three months from the date of supply of a copy of this order. There shall be no order as to costs.


Member (J.)


Member (A.)