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CENTRAL ADMINISTRATIVE TRIBUNAL, ALIABAD BENCH,
A LIAHABAD.

Dated : Allahabad this the 31st day of October 1995.

Original Application No. 880 of 1993.

QUORUM :- Hon. Mr. T. L. Verma, J.M.
Hon. Mr. D. S. Bawaria, J.M.

S. N. Prasad, Retired Asstt. Station Master,
Subedarganj, Allahabad Now R/o. Sohbatia Bach,
Allahabad. applicant.
(By Advocate Sri G.S. Srivastava & Sri A. K. Banerji)
Versus

1. Union of India through General Manager,
Northern Railway, New Delhi.
2. Divisional Railway Manager,
Northern Railway, Allahabad.
3. Divisional Safety Officer,
Northern Railway, Allahabad.
4. Senior Divisional Safety Officer,
Northern Railway, Allahabad.
..... Respondents.

(By Advocate Sri Jagannath Singh)

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(By Hon'ble Mr. T. L. Verma, Member-J)

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The applicant was Assistant Station Master
Subedarganj, in the District Allahabad at the relevant
time. He was put under suspension with effect from
22.10.1987 vide Annexure-A-1 in contemplation of a
disciplinary proceeding. He was served with memorandum
dated 30.11.1987 alongwith articles of charges and
statement of imputation. The charge framed against him

is as under :-

"that the said S.N. Prasad while working as Assistant Station Master, Subedarganj failed to ensure clearance of reception line No.2 before giving permission to take off home signal for Line No.2 which was blocked by 8 wagons and breakvan. He violated G.R.3.4C, GQ 3.38 and provisions of para 6.2.1, 6.2.3 and 6.4.1 of the working rules."

2. The applicant denied the charges by filing his written statement of defence. The Inquiry Officer was thereafter appointed for holding inquiry. Enquiry Report was submitted on 9.1.1988, holding the applicant guilty of the charges framed against him. The disciplinary authority agreeing with the finding of the inquiry officer held the applicant guilty and imposed the penalty of removal from service by order dated 14.1.1988. The appellate authority while up-holding the findings recorded by the disciplinary authority moderated the penalty of removal from service to reduction to the lower grade Assistant Station Master and fixed his pay at Rs.1500/- in the scale of Rs. 1200-2040. He thereafter submitted a memorial representation to the General Manager, Northern Railway, which was returned to him by letter dated 10.6.1992 with the remark that no second review is permissible.

3. This application has been filed for quashing the ~~suspension~~ ^{impugned} order dated 13.1.1988 passed by the disciplinary authority removing the applicant from service and the order dated 4.10.1988 passed by the appellate authority, rejecting the appeal preferred

against the order of disciplinary authority.

4. The respondents have contested the case of the applicant, *inter-alia*, on the ground that this application is barred by limitation and that the applicant was given sufficient opportunity to defend himself and that there has been no procedural lapse in conducting the inquiry hence, the impugned orders are beyond the scope of judicial review.

5. The impugned orders have been challenged on the following grounds of :-

- (i) Double jeopardy
- (ii) That the disciplinary authority was not competent to pass the impugned order of punishment.
- (iii) No reasonable opportunity was given to the applicant to defend himself and that
- (iv) the copy of the inquiry report was not served on the applicant before passing the impugned order of punishment.

6. We have heard the learned counsels for the parties and perused the record. The applicant was in the pay scale of Rs.1400-2300. By the impugned order, he has been reduced to the grade of Rs.1200-2040 and his pay has been fixed at Rs.1500/-. Learned counsel for the applicant submits that the applicant was entitled to draw pay at the stage at which he would have been drawing pay in the pay-scale Rs.1200-2040 had he not been promoted to the scale Rs. 1400-2300. The appellate authority by fixing his pay at Rs.1500/- has imposed second penalty which is against the principle

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of natural justice and Rules. As In view of the divergent view expressed by Principal Bench and the Madras Bench of this Tribunal on ^{the} issue, reference was made to the larger bench to settle the ^{the} issue. The controversy has since been set at rest by the decision of the Principal Bench in Y.D.Parwana vs. UOI & others; reported in 1993(2) S.L.R. Page 79. The full bench has held that :-

"Statutory provisions make it clear that when a penalty is imposed, reducing the Railway servant from a higher to a lower post or time scale, the authority imposing the penalty has competence to fix the pay at any stage of pay of the lower post subject to the condition that it shall not exceed the maximum. Thus, it follows that when a penalty is imposed, under Rule-6, reducing the Railway Servant to a lower post, carrying a lower scale, of pay, the disciplinary authority has also the competence to fix the pay on such reduction at any stage of the scale of pay attached to the lower post. He is duly empowered to fix the pay at the bottom of the scale to which the Railway servant stands reverted by way of penalty. The Hyderabad Bench of the Tribunal with respect having rendered its decision without considering the relevant provisions of paragraphs 1322 and 1323 of IREM cannot, therefore, be regarded as laying down good law. In the circumstances, we over-rule the decision of the Hyderabad Bench in Devanand's (supra) case."

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The ratio of the decision of the Full Bench extracted above, is complete answer to the arguments

of the learned counsel for the applicant. In that view of the matter, we find that there is no merit in the argument of the learned counsel for the applicant.

7. It was next argued that the report submitted by the Inquiry Officer was not served on the applicant before the impugned order imposing penalty of removal from service was passed. The copy of the report of the Inquiry Officer was sent to the applicant alongwith the removal order dated 13.1.88. The omission on the part of the respondents to serve the copy of the inquiry report, it was submitted, is contrary to the decision of the Supreme Court in Union of India vs. Mohd. Ramzan Khan ; reported in 1990 Judgements Today (4) S.C. page 456. The decision in Mohd. Ramzan Khan was rendered on 21.11.90. The Supreme Court in S. P. Viswanathan vs. Union of India & others, reported in 1991 (9) (II) S.C.C. Page 269 has held that the decision of the Supreme Court in Mohd. Ramzan Khan's case has to be given effect to prospectively. Hence any order passed before the 20.11.1990 can not be quashed by the tribunal on the ground that the Inquiry Officer's report was not furnished. In the instant case, the impugned order imposing the penalty of removal from service was passed on 13.1.1988 hence, ~~the decision in Ramzan Khan's case~~ We find no merit in the argument of the learned counsel for the applicant.

8. It was next contended that no reasonable opportunity was given to the applicant to defend himself in the disciplinary proceedings. It was pointed out that the name of the Inquiry Officer was neither mentioned in the

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charge-memo nor intimated to the applicant to enable him to take measure to protect his interest against bias, if any, of the Inquiry Officer, before inquiry was initiated. There is no material on record to show that the Inquiry Officer had any bias against the applicant which may have necessitated taking of safety measures.

We, therefore, find no fault in not communicating the name of the Inquiry Officer to the delinquent Officer. That apart no rule was brought to our notice making it obligatory on the part of the disciplinary authority to disclose the name of the Inquiry Officer before issuing the charge-memo or alongwith the charge-memo. Appointment of Inquiry Officer become necessary only after the delinquent Officer denies the charges served on him. There was thus, no occasion to communicate the name of the Inquiry Officer alongwith charge-memo. We, therefore, find no merit in the argument of the learned counsel for the applicant, that the name of the Inquiry Officer should have been disclosed in the memorandum forwarding the articles of charges. Since no procedural lapse has been brought to our notice we find that disciplinary proceeding has been concluded according to rule.

9. The legality of the impugned orders has also been questioned on the ground that the disciplinary authority who imposed penalty was not competent to pass the impugned orders.

10. The competent authority, according to the applicant, was Divisional Operating Superintendent, ~~xxxx~~ whereas the punishment has been imposed by Divisional

Safety Officer. We have perused the averments made in the application and also the rejoinder-affidavit. We find that this plea has not been taken either in the application or in the rejoinder-affidavit. There is no material before us to show that the Divisional Operating Superintendent is the disciplinary authority of Assistant Station Masters, Senior Operating Superintendent is the appellate authority. Only a bald statement was made in the argument without quoting any rule or any administrative order showing that the Divisional Operating Officer is head of the office of the Assistant Station Masters, According to schedule II, appended to the Discipline and Appeal Rules provides that the appointing authority or the authority of equivalent rank or any higher authority can pass the order of removal from service. In absence of material to show that the authority, who has passed the impugned order, is not the appointing authority of the applicant or an authority of equivalent rank. We find no force in the argument of the learned counsel for the applicant.

11. In view of the discussions made above, we find no merit in this application and accordingly dismiss the same leaving the parties to bear their own costs.

Shankar
A.M.

J. M.
J.M.