

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,  
ALLAHABAD.

....

Original Application No. 123 of 1994.

this the 17th day of July'2001.

HON'BLE MR. RAFIQ UDDIN, MEMBER (J)

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER(A)

Ashok Kumar Srivastava, S/o Sri J.P. Srivastava, R/o  
near Ashok Tent House, C/o Ashok Sahgal, Indra Nagar,  
Bareilly.

Applicant.

By Advocate : Sri A.S. Diwekar.

Versus.

1. Union of India through General Manager, North  
Eastern Railway, Izatnagar District Bareilly.
2. Add. Divisional Railway Manager, N.E.R.,  
Izatnagar, District Bareilly.
3. Chief Personnel Officer, N.E.R., Gorakhpur.
4. General Manager, (Administration), N.E.R.,  
Gorakhpur.

Respondents.

By Advocate : Sri Amit Sthalekar.

O R D E R (ORAL)

RAFIQ UDDIN, MEMBER (J)

The applicant while holding the post of  
Senior Clerk in the office of D.R.M. (P), North Eastern  
Railway, Izatnagar, was served with a memorandum of charges  
dated 16.3.1990 for major penalty. A Departmental inquiry  
was conducted against him and he was dismissed from  
service vide punishment order dated 8.2.91 passed by the  
disciplinary authority on the basis of the findings

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of the Enquiry Officer (E.O. in brief) submitted vide report dated 14.11.90. The applicant submitted an appeal before the appellate authority on 20.3.91. The appellate authority after considering his reply reduced the punishment by allowing him re-appointment vide order dated 16.7.91 as Junior Clerk at the initial stage. The applicant, by means of this O.A., has challenged the validity of the punishment order dated 8.2.91 (Annexure- IV) as well as the order dated 16.7.91 (Annexure VI) passed by the appellate authority.

2. It appears that the applicant while working as Senior Clerk in the Union Section of the Division, was issued two letters dated 30.1.90 and 9.2.90 by his administration authority for maintaining records of daily work done by him and was further advised that he could leave office after showing his daily performance to Asstt. Personnel Officer (III). It is alleged that the applicant disregarded these orders and the performance was not shown by him upto 26.2.90. The applicant was also charged that he was normally not seen on his seat and during surprise check of his seat on 23.2.90, 153 letters were found in his drawer of the table, undisposed of. It is also alleged that he had not done the work allotted to him.

3. According to the respondents that during the course of enquiry, the applicant had admitted his mis-conduct vide his answer in reply to the question no.7 on 26.2.90.

4. We have heard the learned counsel for the parties and have perused the pleadings on record.

5. The learned counsel for the applicant has fairly conceded that there was no irregularity or illegality in conducting the departmental enquiry against the applicant. He has, however, raised three points before us and contended that the punishment awarded to the applicant is not justified. It is pointed-out that during the course of inquiry, it was found

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that only 12 letters out of 153 letters were found having not been attended by the applicant. Therefore, this charge is not fully established. We find that admittedly 12 letters were found not dealt with by the applicant within time and remaining 141 letters were to be filed in the respective files. Therefore, there was some evidence of not attending the letters and it cannot be said that no evidence to establish the charge.

6. It is further contended that the charge regarding not performing his duty properly is not established and the E.O. as well as the disciplinary authority have not considered the statement of the applicant to the effect that he used to chase the letters in different offices to justify his absence from his seat. We find that the applicant in so many words had admitted his mis-conduct vide his answer in reply to question no. 7 on 26.2.90 that despite written warning to the applicant given by the administration authority, he did not show his performance under the prescribed proforma to the officer concerned. Therefore, it cannot be said that there was no evidence <sup>against</sup> the applicant. We are satisfied that there is no scope of any interference in the findings given by the E.O. in his inquiry report.

7. The learned counsel for the applicant has brought to our notice that the appellate authority in his impugned order while reducing the punishment for dismissal from service had used the words ( पुनः नियुक्ति ) ' re-appointment', whereas no such punishment can be awarded under the Railway Servants (Discipline & Appeal) Rules 1968. The relevant part of the order of the appellate authority is as under :

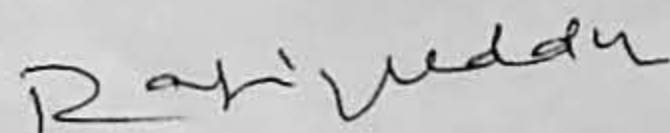
" मैं आपके डिसमिसल के आदेश को रद्द करके आपको अवर लिपिक के पद पर वरीयता की हानि के साथ निम्नतम वेतन पर पुनः नियुक्ति का आदेश सोनपुर मण्डल की रिक्ति के विरुद्ध करता हूँ "

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8. We also agree with the contention of the learned counsel for the applicant on this point. It appears that the intention of the appellate authority was to reduce the punishment for reduction in rank instead of dismissal from the post of Senior Clerk to the post of Junior Clerk at the initial stage. We, therefore, upheld the punishment order as well as the appellate order. However, it is clarified that the word used ( पुनः नियुक्ति ) 're-appointment' in the appellate order dated 16.7.91 will not be treated as fresh appointment on the post of Junior Clerk.

9. The O.A. stands disposed of as above with no order as to costs.

  
MEMBER (A)

  
MEMBER (J)

GIRISH/-