

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 12th day of April, 2002.

Original Application No.1043 of 1994.

CORAM:-

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

Hon'ble Mrs. Meera Chhibber, J.M.

1. Krishna Pal Singh S/o Shri Rahmalie,
Resident of Village Mitchki P.O. Hushuwa,
District Fatehpur.
2. Shrawan Kumar Son of Roop Lal,
Bangla No.C-17, Out House Quarter No.1,
Juhi Soot Colony, Northern Railway,
Govind Nagar, Kanpur.

(Sri B.N. Singh, Advocate)

. Applicant

Versus

1. Union of India through the General Manager,
Northern Railway, Baroda House, New Delhi.
2. Divisional Superintending Engineer (II),
Northern Railway, Allahabad.
3. Assistant Engineer, Northern Railway,
Fatehpur.

(Sri A.C. Mishra, Advocate)

. Respondents

O R D E R (O_r_a_l)

By Hon'ble Mrs. Meera Chhibber, J.M.

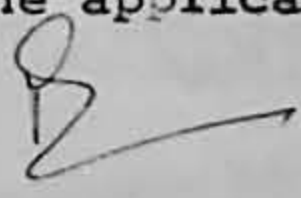
In this OA the applicants have challenged the penalty order dated 30-12-1993 whereby though the applicants have been removed from service with an identical warning (Annexures-8 & 8A) and also the appellate order dated 26-4-1994 whereby the appeal has been rejected by the appellate authority upholding the penalty. Both the applicants were chargesheeted for having abused, insulted and alapped Shri J.K. Rai,

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P.W.I. on 15-10-1983. The enquiry was held and after the Inquiry Officer gave his report holding the charges proved against both the applicants, the disciplinary authority had passed the order of removal which has been upheld by the appellate authority. The grievance of the applicant is that the enquiry was not held in accordance with law, inasmuch as, neither they were given the intimation before the date before the enquiry was fixed or for all purposes the enquiry was scheduled to be held nor they were given an opportunity to cross-examine witness, namely, Sri AK Chatterjee, Sri NP Sarkar, Sri Jagdish Prasad, even though their statements given directly to the Inquiry Officer having relied upon for coming to the conclusion that charges were proved. It is also their grievance that they were not allowed to produce defence witness nor were given the documents even though they were specifically asked for by the applicants for preparing their defence as a result of which they have been deprived of their rights to defend themselves effectively which is violative of the principles of natural justice, and vitiates the enquiry.

2. Learned counsel for the applicant has contended that the applicants have taken all the in reply to the enquiry report as well as on the detailed appeal filed by them but neither the disciplinary authority nor the appellate authority have dealt with the same. It is contended by the applicant's counsel that the orders have been passed in a mechanical and stereo-type manner without due application of mind. The applicants have claimed that these orders be quashed and set aside and they be reinstated with all consequential benefits.

3. The respondents on the other hand have contested the OA by stating that the applicants have not cooperated



in the enquiry and whenever the date was fixed, they were only seeking adjournment on one pretext or the other thus delaying the enquiry wilfully as a result of which the authorities have even passed an order reducing subsistence allowance of the applicants since they were themselves delaying the enquiry. They have further stated that even though three witness as mentioned above had not appeared before the Inquiry Officer but apart from it even other witnesses who have appeared in the enquiry and have deposed against the applicants in their presence and they were extensively cross-examined by the applicants' defence counsel. Thus, it is on the basis of evidence on record that the Inquiry Officer has rightly held the charges to be proved against both the applicants. Since the evidence of other than these three witnesses was already available before the Inquiry Officer, the respondents' counsel stated that it cannot be stated that any prejudice has been caused to the applicant by not producing the three witness for cross-examination and since the evidence was available of other witnesses the authorities have rightly passed orders regarding penalty of removal. The learned counsel for the respondents has further submitted that it is not open to the Tribunal to reappreciate evidence or interfere with the quantum of punishment. They have thus submitted that the OA should be dismissed with costs.

4. We have heard counsel for both the parties and perused the pleadings on record as well as the enquiry report produced by the respondents. It is seen from the file that there are number of orders whereby the applicants have been called upon to appear on a specific date but the applicants having taken adjournment for a month together. The record also shows that the subsistence allowance of the applicant had to be

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reduced by passing the order in writing as the applicants had been delaying the enquiry while there are two things which according to us were not getting appropriate answer from the enquiry held. Firstly, it was seen that admittedly from 2-11-1987 to 5-11-1987 the enquiry could not be held as the Inquiry Officer was busy elsewhere and even there is an order sheet of 6-11-1987 wherein it is stated that though Shri Ram Bali was present, no one else had appeared on the date. But inspite of our best efforts we could not get anything on the file to show that the applicants had been informed by the Inquiry Officer about fixing the enquiry on 6-11-1987. We have also requested the counsel for the respondents to show from the file in case there was any such notice or acknowledgement. But even he failed to show any such fact from the record. Therefore, the basic question which requires reconsideration is that the finding given by the disciplinary authority that the applicants were not cooperating in the enquiry is correct or based on any valid material or just as stated in a mechanical fashion. Since it is not shown any where in the file that the applicants were indeed informed about the enquiry as fixed for 6-11-1987. According to us it would be wrong to hold that the applicants have not cooperated in the enquiry. It goes without saying that in an enquiry the right of defence is the most important and crucial thing which cannot be ignored at any stage unless the applicant was informed about the next date, it cannot be expected from the applicants to be present on the said date and defend himself as well. The enquiry officer in the order sheet has stated that both the applicants were not present but the reasons for their not being present is due to the fact that they were not properly

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intimated. Thus it vitiates the enquiry. Apart from it the law is well settled that in an enquiry no evidence can be taken at the back of the delinquent and if any evidence is taken on record, the delinquent has full opportunity to cross-examine the said witnesses. and if the right of cross-examining the witnesses is denied and yet the said evidence is taken on record and relied upon for coming to the conclusion that the charge is proved that will also vitiate the enquiry. We have mentioned earlier that the perusal of the enquiry report shows that apart from the evidence of three officers as mentioned above, there were other evidence available on the file to show that the incident ~~xx~~ had taken place and that the applicants had abused, insulted and slapped the said ^PWI and there is no requirement to rely on the statements made by these officers as even without their statements the charge would still be proved against the applicants. However, since the Inquiry Officer had relied on the statements made by these three officers, who were not allowed to be cross-examined by the delinquent, it does vitiate the enquiry. The law is well settled by the Hon'ble Supreme Court that in such case where there is a procedural irregularity, in the holding of enquiry, the enquiry report as well as the consequential orders may be quashed and set aside but the matter should be remanded back, to the authorities to start enquiry from the stage where the said irregularity has taken place. Therefore, in our opinion, considering that the interest of justice would be properly met if the enquiry report is set aside and the respondents are given opportunity to start enquiry from the stage of 6-11-1987 giving appropriate notice the applicants and record the statements of the officers, if need be,

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in the presence of the applicants or his defence counsel and give opportunity of cross-examining them and in case they do not wish to avail of the said benefits then the applicant should be given opportunity to lead their defence witnesses in accordance with law and proceed from that stage. It would be entirely for the respondents to decide the course of action they wish to take. Apart from this, we also find that the applicant had taken these very grounds before the disciplinary authority as well as appellate authority but they had not even dealt with the said grounds taken by the applicants. Therefore, the orders passed by the disciplinary authority as well as the appellate authority are quashed and set aside and the respondents are directed to pass a reasoned and speaking order after getting the inquiry report and dealing with the same in accordance with rules and instructions. Since this enquiry started somewhere in 1985-86, it would also be in the interest of justice to direct the respondents to complete enquiry within a period of six months from the date of receipt of a copy of this order and the applicant is also directed to co-operate in the conducting of enquiry. In case the applicants do not cooperate in the conducting of enquiry, it would be open to the respondents to bring it to notice of the Court at the appropriate stage so that proper orders may be passed. We assume that the respondents will keep the principles of natural justice in mind while conducting the enquiry and to ensure that no prejudice is caused against the applicant in any manner. The applicants



would be put under deemed suspension till the final order is passed and after the conclusion of enquiry appropriate orders should be passed by the authorities for the interim stage. The OA is thus allowed with the above directions. There shall be no order as to costs.



Member (J)



Member (A)

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