

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.442 OF 1995  
ALLAHABAD THIS THE 1ST DAY OF JANUARY, 2003

HON'BLE MR. JUSTICE R.R.K. TRIVEDI, V.C.  
HON'BLE MAJ GEN. K.K. SRIVASTAVA, A.M.

Abdul Khaliq  
Son of Shri Subrati,  
Ex-Fireman 'C',  
R/o 131/141 Begampurva,  
Kydwai Nagar,  
Kanpur.

..... Applicant

(By Advocate Shri Arvind Kumar)

Versus

1. Union of India,  
through the Divisional Railway Manager,  
Northern Railway,  
Allahabad.
2. Senior Divisional Mechanical Engineer/P  
Northern Railway,  
Allahabad.
3. Divisional Mechanical Engineer,  
Northern Railway,  
Allahabad.

..... Respondents

(By Advocate Shri A.V. Srivastava)

O R D E R

HON'BLE MR. JUSTICE R.R.K. TRIVEDI, VICE-CHAIRMAN

By this O.A. under section 19 of Administrative Tribunals Act 1985, the applicant has challenged the order dated 17.02.94 (Annexure A-1) by which disciplinary authority awarded punishment of removal from service on conclusion of disciplinary proceedings. The order was upheld by the appellate authority on 29.11.1994 (Annexure A-2) which has also been challenged.

2. The facts of the case are that the applicant was working as Fireman in Northern Railway. On 05.06.1980 he was alleged to have assaulted another Fireman Shri Shiv Kumar. He was served with chargesheet on 29.09.1980. He was dismissed from service on conclusion of disciplinary proceedings by order



.....2/-



dated 11.06.1981. The order was maintained <sup>in appeal</sup> ~~by~~. The applicant challenged the order by filing writ petition no.10390/85 before the Hon'ble High Court which was transferred to this Tribunal and was registered as T.A. No.1858/87. The application was allowed by order dated 17.05.1993. The orders were set aside and the respondents were directed to reinstate the applicant in service with all back wages and other allowances. The respondents were, however, given liberty to hold DE NOVO enquiry from the stage of service of memo of charge. In pursuance of order dated 17.05.1993 fresh enquiry was initiated. However, the applicant did not cooperate. He refused to participate in proceedings on one pretext <sup>of the</sup> ~~to~~ other. Ultimately enquiry officer ~~has~~ submitted his report on 10.01.1994 ex-parte. The disciplinary authority agreed with the report and passed the order of removal from Railway service which has been maintained in the appeal. The learned counsel for the applicant has submitted that the applicant has been deprived <sup>of</sup> ~~the~~ the opportunity to participate in the enquiry and the orders are liable to be quashed being violative of principles of natural justice.

3. We have perused the order of disciplinary authority as well as appellate authority with this angle. However, we are convinced that the applicant deliberately avoided to participate in the enquiry. The finding recorded by the disciplinary authority in this connection may be reproduced for better appreciation, which is as under:-

"Due notice dated 14.10.1993 for holding the enquiry was served on Shri Abdul Khalique, Fireman/C to attend the enquiry alongwith his defence counsel at CNB. But he avoided to attend the enquiry and did not attend the same nor informed about appointed Defence Counsellor for him and witnesses for him. On this he was requested vide letter dated 16.11.1993 to cooperate in the enquiry as per directions of the Hon'ble CAT. This necessitated extension in the period to complete the enquiry by another 3 months from Hon'ble CAT. The Enquiry Officer further tried to hold the enquiry at the training school at Bhagak-Ki-Kothi where he declined to co-operate with various plea and gave in writing to attend the




enquiry at Kanpur dated 22.11.93. Thereafter the enquiry officer had tried to enquiry at Kanpur but at Kanpur he refused to attend the same on 25.11.1993 though listened to the Charges but he did not sign papers not cooperated in the conduct of enquiry. The enquiry was again fixed up at ALD on 13.12.93 here he again refused to cooperate in the enquiry and now he was giving name of D.C. whereupon the C.O. was asked to submit consent of his D.C. wit in a legitimate time but he consumed maximum time on one plea or other to restrict and delay in conduct of the enquiry so that the enquiry may not be completed and finalised within the time period directed ~~by~~ by the Hon'ble CAT. Thus, he was avoiding under the pretext of normal opportunities extended to the C.O. Thus, the non-co-operation was intentional. The enquiry officer had to carry on as a time bound programme given by the direction of Hon'ble CAT and had to proceed with the witnesses who were called present and examined and finally concluded on 10.01.1994 ex-parte."

4. The appellate authority also found that the applicant was given enough opportunity to defend his case but he did not attend the disciplinary proceedings on one pretext <sup>or the other</sup> and disciplinary authority passed the order ex-parte. In view of the <sup>Concurrent findings recorded by</sup> ~~final recording~~ of the authorities that the applicant did not participate in the enquiry, we do not find any good ground to interfere. The O.A. is accordingly dismissed.

5. There will be no order as to costs.

  
Member-A

  
Vice-Chairman

/Anand/