

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Allahabad this the 6th day of August 2001

Original Application no. 221 of 1999.

Hon'ble Mr. Justice RRK Trivedi, Vice-Chairman  
Hon'ble Maj Gen KK Srivastava, Administrative Member

Om Prakash Tewari, Asstt. Station Master,  
S/o Late A.P. Tewari,  
R/o 180, Himmat Ganj,  
Allahabad.

... Applicant

C/A Shri BN Singh  
Shri LM Singh  
Shri AP Srivastava

Versus

1. Union of India through the General Manager,  
Northern Railway, New Delhi.
2. Divisional Railway Manager, N. Rly., Allahabad.
3. Sr. Divisional Operating Manager, Allahabad Div.,  
Allahabad.
4. Divisional Traffic Manager,  
Tundla, N. Rly., Station,  
Distt. Ferozabad (UP)  
(Allahabad Div.).
5. MM Kush Traffic Inspector/  
Northern Railway (UP). (Enquiry Officer)

... Respondents

C/Rs. Shri AK Gaur

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O R D E R

Hon'ble Maj Gen KK Srivastava, Member-A.

By this OA under section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the exparte inquiry report, punishment order dated 14.7.1998 and the appellate order dated 20.01.1999. The applicant has prayed for quashing the inquiry report, punishment order dated 17.7.1998 and appellate order dated 20.1.1999 and to direct the respondents to restore the applicant to his original post of Station Master in the grade of Rs. 5000 - 8000, besides the payment of salary of February 1996.

2. The facts in short according to the applicant are that the applicant was employed as Asstt. Station Master (in short ASM) in the <sup>Sub</sup> grade of Rs. 1200 - 2040 (revised <sup>State</sup> pay Rs. 4500 - 7000) w.e.f. 13.10.1986. He was, thereafter, promoted to the grade of Station Master in the scale of Rs. 5000 - 8000 and posted at Bhogaon Station as Leave Reserve and working at Nibkaroli, Railway Station. As per applicant's case, he was relieved on 3.5.1996 from Nibkaroli to receive his pay at Bhogaon. When he reached there he found that Shri RA Yadav was working as rest giver Station Master (in short SM) and Shri SP Singh, Station Supdt. Bhogaon (in short SS /BGQ) was taking rest. On request Shri SP Singh, SS/BGQ, attended office and informed the applicant that he had spent the applicant's

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pay in connection with his son's marriage which he would repay soon. Shri Singh requested the applicant to sign his pay sheet, which he refused. The applicant made a complaint about this to the authroities concerned. Instead of getting redressal of his grievance, he was chargesheeted for major penalty on 18.10.1996. An exparte inquiry was conducted and the disciplinary authority vide punishment order dated 14.07.1998 imposed the penalty of removal from service. The appellate authority vide his order dated 20.01.1999 reduced the punishment of removal from service to that of reversion to the grade of Rs. 4500 - 7000 for 5 years with cumulative effect. In the counter affidavit filed on behalf of the respondents the allegations made in the OA have been controverted.

3. Heard Shri B.N. Singh learned counsel for the applicant and Shri AK Gaur learned counsel for the respondents.

4. Shri B.N. Singh learned counsel for the applicant made the following submissions :-

i. Firstly the charges made against the applicant are vague and frivolous. Through Shri SP Singh, SS/BGG is responsible for making payment of his salary for February 1999, Shri SP Singh has been shown as witness

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for payment of salary of February 1996 to the applicant. Hence article 1 of the imputation of misconduct suffers from legal infirmity.

ii. Secondly alleged charges constitute no misconduct in the eyes of law as there is no rule which provides payment of salary without obtaining acquittance of the officer/official concerned. In support of his submission the learned counsel has relied upon the decision of the Hon'ble Supreme Court reported in 1967 (2) LLJ (46), Northern Railway Co-operative Society Ltd. Vs. Industrial Tribunal & another that if allegation made against the employee are not supported by any rule it is no misconduct in the eyes of law.

iii. The third submission of the learned counsel for the applicant is that the applicant objected to the appointment of Mr. Kush as Inquiry Officer on account of his status, caste & bias. According to the learned counsel the applicant's prayer for the change of Inquiry Officer was rejected without application of mind and relevant facts. Hence, the applicant did not attend the proceedings of the enquiry. Such an enquiry is not valid where the enquiry <sup>by order</sup> has been conducted <sup>under</sup> vague & frivalous charges. In support of his submission he has cited decision of the Apex Court in Northern

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Railway Co-operative Society Vs. Industrial Tribunal  
Jaipur and another (supra) as under :-

"It is true that the Tribunal Correctly held that Kanraj was not entitled to be represented by a stranger to the society at the enquiry proposed to be held against him. In fact, the correspondence which passed between Kanraj and the society <sup>shows</sup> ~~says~~ that Kanraj was taking a very unreasonable and undesirable attitude in this matter and his conduct in persistently demanding representation by a stranger and on that account refusing to participate in the enquiry deserves to be condemned. That circumstances, however, will not make the enquiry valid, unless it be held that an adequate opportunity was given to Kanraj to meet the charges framed against him. The charges, as we have indicated above, which were served on Kanraj were very vague and he had no opportunity to give a reply to them."

5. Learned counsel for the applicant further submitted that the applicant has not joined the lower post of ASM in the scale of Rs. 4500 - 7000 as he would loose his rights to challenge the order passed by the appellate authority. Respondents have issued chargesheet to the applicant for absence from duty by not complying with the order of reversion which has been challenged by another OA no. 6461 of 2000. He has relied upon the decision of the Tribunal in OA 635 of 1992, Ram Milan Gupta Vs. Union of India & another decided on 28.8.2000, dismissing the OA on the ground that the applicant joined the reverted post as per order of the appellate

authority. He has also cited, the judgment of Hon'ble Supreme Court in State of Punjab Vs. Krishna Niwas, reported in 1997 SCC (L&S) 998, in which Apex Court has laid down as under :-

"The respondents having accepted the order of the appellate authority and joined the post, it was not open to him to challenge the order subsequently. By his conduct, he has accepted the correctness of the order and acted upon it. Under these circumstances, the civil court should not have gone into the merits and decided the matter against the appellants."

6. Shri AK Gaur learned counsel for the respondents contested the claim of the applicant. He submitted that it is clear from the letter dated 3.5.1996 of the Station Master Nibkarora (Annexure A-4) that the salary for the month of March 1996 & April 1996 was to be paid to the petitioner. Obviously the pay of February 1996 had been paid to the petitioner and he was falsely claiming the same. The statement of the then Station Master (LR) Bhogaon Shri RA Yadav does not give any indication about the month for which the discussion between Sri OP Tewari the applicant and Shri SP Singh SS/BG took place. Even in his letter dated 14.04.1996 to DRM, Northern Railway, Allahabad (annexure CA 2) the applicant has demanded the salary for the month of March and April 1996 only.

7. The learned counsel for the respondents further submitted that when the application regarding non payment of salary for the month of February 1996 was received on 08.04.1996 in the office of Divisional Traffic Manager, Tundla, an enquiry was ordered and it was found that the payment of salary for the month of February 1996 had already been made in the presence of Sri Girendra Singh, Porter BGQ and Sri Bankey Lal Safaiwala BGQ whose endorsements are made on the pay sheet. Hence the petitioner was charged on two grounds namely making false complaint against SS/BGQ and trying to get payment again for the month of February 1996 on <sup>in</sup> fraudulent complaint.

8. As regards change of Enquiry Officer the petitioner never gave any application as per rules. The petitioner simply made an endorsement on the letter of Inquiry Officer dated 1.7.1997 which was sent calling for the names of defence witnesses. The endorsement of the petitioner that he wanted only Class II Gazetted Officer who is not SC is highly objectionable. The enquiry was got conducted according to rules and the petitioner was given innumerable chances to associate with the inquiry on 1.7.1997, 26.10.1997, 29.11.1997, 13.11.1997 etc. Though the petitioner did not make any formal application to the competent authority for change of inquiry officer. Yet his request as per endorsement on the Inquiry Officer letter dated 1.7.1997 was duly considered by the disciplinary authority for change of inquiry officer and was turned down on merits by a

speaking order. Thus the principle of natural justice was never violated at any stage.

9. <sup>given</sup> We have careful consideration to the submissions made by the learned counsel for the parties and perused records. We are of the view that the applicant has not been able to prove that the Inquiry Officer <sup>has</sup> a bias against him. His endorsement on the letter of Inquiry Officer dated 1.7.1997 that the Inquiry Officer should be a gazetted officer and not SC is highly objectionable and smacks of communal bias. This cannot construe at all a ground for the change of Inquiry Officer. The proper course open to the applicant was to have applied to the competent authority as per the rules for change of Inquiry Officer giving full reasons. Besides it would have been appropriate for the applicant to have appeared before the Inquiry Officer and co-operated in the inquiry proceedings. Nothing has been shown to us to prove that the Inquiry Officer was biased against the applicant. By not participating in the inquiry proceedings the applicant has lost opportunity to defend himself.

10. The conclusion of the learned counsel for the applicant that the charges are vague and frivolous because in charge no. 1 Sri SP Singh SS/BGQ has been shown as a witness instead <sup>h</sup>disbursing officer cannot be accepted. Articles no. 1 and 2 of the imputation of misconduct are reproduced below :-

"Article No. 1. The said Shri OP Tiwari, ASM/BGQ is held responsible for making false complaint against SS/BGQ after getting his salary for the month of Feb. 96 in presence

of Sh. SP Singh SS/BGQ, Sh Bankey Lal, Safaiwala/NBUE and Sh Girendra Singh, Porter/BGQ on 09.03.96".

Article No. 2 That the said Sh OP Tiwari, ASM/BGQ is held responsible for trying to get payment again by making fraudulent complaint to the officer even though he has already received his payment on 9.3.96 in presence of two witnesses and did not sign deliberately on the pay sheet."

As regards the first charge it is true that Sri SP Singh SS/BGQ is the disbursing officer but he also becomes a witness to the payment of salary for the month of February 1996 to the applicant alongwith Sri Bankey Lal, Safaiwala and Sri Girendra Singh, Porter. We do not find that the charge, in any case, is vague. As regards charge no. 2, it is supported by documents as the applicant did prefer a false complaint to DRM that he has not received the salary for the month of February 1996 which he had already received. There is no doubt that the payment of salary for the month of February 1996 has been made to the applicant by SS/BGQ which has been corroborated by two independent witnesses Sri Bankey Lal and Sri Girendra Singh. During inquiry another witness Sri DS Chauhan has stated that the applicant himself told him that he has taken the salary of February 1996 and did not sign the pay sheet to harm SS/BGQ (Ann. A-6). Thus we have no doubt in our mind that the payment of salary for the month of February 1996 has been made to the applicant. All the aspects including endorsements of witnesses on pay sheet for the month of February 1996 have been covered in the Enquiry report and we do not find that the enquiry report suffers from any error of law.

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11. The submission of the learned counsel for the applicant that the applicant did not join the lower post of ASM as in that case he would have lost the right to challenge the order of the appellate authority in a court of law is not an issue for adjudication in the present O.A. It has been informed by the learned counsel for the applicant that respondents have issued charge sheet to the applicant for absence from duty which has been challenged by another OA no. 6461 of 2000.

12. Case relied upon by the learned counsel for the applicant are distinguishable on facts as in our view the conduct of the applicant was not above board and highly reprehensible particularly his allegation against the Inquiry Officer without approaching the authorities concerned and following the correct procedure.

13. It may be mentioned here that the Appellate Authority has after considering the entire facts and circumstances of the case and the conduct of the applicant, reduced the punishment from removal from service to that of reduction in rank and has directed that he should be appointed to the post of ASM in the scale of <sup>Rs. 4500 - 7000</sup> for a period of 5 years ~~which~~<sup>with</sup> cumulative effect on humanitarian grounds. We see no reason to interfere with that order.

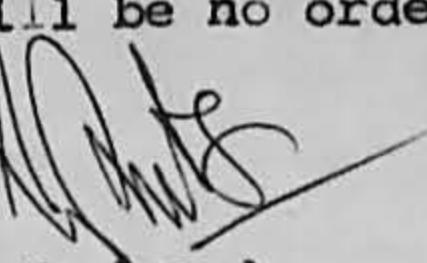
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14. In view of the above observations we have  
no reason to interfere. The O.A. is dismissed.

15. There will be no order as to costs.



Member-A



Vice-Chairman

/pc/