

(RESERVED)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 16th day of September, 2005

Original application No. 452 of 1999

Hon'ble Mr. A.K. Bhatnagar, Member- J.
Hon'ble Mr. S.C. Chaube, Member- A.

Ram Gopal S/o Sri Baboolal, Ex MRCL,
KSV (Kosikalan), Mathura,
Permanent Address – Makhdoom, P.O. Farah,
Distt. Mathura.

.....Applicant

Counsel for the Applicant :- Sri Arvind Kumar

VERSUS

1. Union of India through Divisional Railway Manager,
(North), Central Railway, Jhansi.
2. The Senior Divisional Engineer (North),
Central Railway, Jhansi.
3. The Assistant Engineer (North), Mathura Jn.

.....Respondents

Counsel for the respondents :- Sri G.P. Agarwal

ORDER

BY HON'BLE MR. S.C. CHAUBE, JM.

The applicant has impugned order dt. 19.06.97 passed by the Assistant Engineer (North), Mathura Jn (respondent No. 3) as well as Appellate order dt. 18.12.1997 passed by the Senior Divisional Engineer (North), Central Railway, Jhansi .

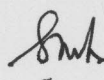
2. Brief facts are that the applicant was initially appointed on the post of MRCL on temporary basis in 1976. His appointment on the aforesaid

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post was regularized in the year 1988 and since then he is continuously working and performing his duty.

3. Before February 1995 the work and conduct of the applicant was rated as satisfactory by superior authority. On 04.02.1995 the applicant was suspended by the Assistant Engineer (North), Mathura Jn (respondent No.) 3 with collusion of Sri A.K. Asthana, Mukhya Rail Path Nirikshak, Mathura Jn with malafide intention when the applicant was on leave. On coming to know that the applicant was on leave on the date of alleged occurrence, the order of suspension dated 04.02.1995, however, was withdrawn vide order dated 23/24.02.1995. However, the departmental enquiry against the applicant continued.

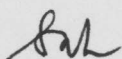
4. On 09.03.1995 the applicant met to Superintendent of Police Mathura with a letter to register of FIR against Sri Kuldeep Raj Chopra, Mukha Rail Path Nirikshak and on the direction of SP Mathura, case crime No. 68/95 u/s 323,504 IPC was registered. The same day the applicant was put through medical examination which reported abrasions on the body of the applicant. After registration of the FIR against the Sri Kuldeep Raj Chopra, Mukha Rail Path Nirikshak, higher authorities started pressurizing and threatening him to withdraw the FIR. The applicant complained against it to the SP Mathura vide Registered letter dt. 18.10.1996. When the applicant did not withdraw his FIR inspite of strenuous efforts by Sri Kuldeep Raj Chopra and his colleagues, respondent No. 3 with collusion of Sri Kuldeep Raj Chopra, Mukha Rail Path Nirikshak and their colleague got prepared a false and concocted order dt. 19.06.1997 by which the applicant was removed from service in violation of principle of natural justice and without completing the enquiry (Annexure A-1 to the O.A). Being aggrieved by the order dated 19.06.1997 passed by the respondent No.3, the applicant preferred an appeal before



the Senior Divisional Engineer (North), Central Railway, Jhansi (respondent No. 2) through letter dt. 25.07.1997. However, the appeal preferred by the applicant was dismissed by the respondent No. 2 vide order dated 18.12.1997 .

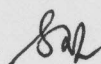
5. It has been contended by the applicant that no charge sheet was issued to the applicant for regular enquiry; that Rule 14(ii) of the Railway Servants (Discipline & Appeal) Rules 1968 is an exception to the normal rule and this provision can only be exercised by the disciplinary authority in exceptional circumstances; that disciplinary authority is not the appointing authority of the applicant as such he is not empowered to remove the applicant from service; that no opportunity was given to the applicant to make representation as orders passed by respondents No. 2 and 3 are in violation of principles of natural justice ; that the applicant was denied reasonable opportunity in DAR case and no chance was given to prove himself not guilty of the charge; that the order of removal as well as the order of the Appellate authority are arbitrary, against the law and without jurisdiction and thus liable to be quashed etc.

6. The respondents on the other hand have stated that the service record of the applicant has not been up to the mark and his deportment and conduct have never been satisfactory with his colleagues and higher authorities. The applicant was suspended because he misbehaved with Sri K.R. Chopra, CPWI , Mathura Jn at his residence. Further the applicant cooked up and fabricated a wrong story and got his medical examination on 09.03.1995 whereas no such incident took place. Due to undesirable activities and continuous threats meted out by the applicant to Railway official and officers, the Divisional Engineer vide order dated 15.10.1996, transferred him From Mathura to Kosikalan in the interest of smooth functioning of the Railways. As a matter of fact, on 27.05.1997 at



10.30 AM ,the applicant forcibly entered the chamber of CPWI, Mathura Jn and started misbehaving and threatening for his transfer from Kosikalan to Mathura . He also misbehaved in Mathra Yard with PWI for which a report was lodged with PS, G.R.P., Mathura followed by detailed report to higher Railway Authorities. An FIR was also lodged against the applicant for the occurrence with P.S Kotwali, Mathura. On the basis of enquiry and facts , Railway administration removed the applicant from Railway Service w.e.f. 19.07.1997 . The appellate authority after going through the all relevant records and facts,dismissed the appeal preferred by the applicant.

7. The respondents have further stated that the applicant was served SF 5 dated 01.03.1995 under DAR rules for his misbehavior with Sri K.R. Chopra, CPWI Mathura Jn at his residence when he threatened to him. According to respondents, the SF 5 has been acknowledged by the applicant .On 08.10.1996 one P.Way Mistry, Mathura Jn Yard Sri Om Prakash intimated the Assistant Engineer, (North), Mathura Jn, (respondent No. 3) regarding the misbehavior of the applicant with the mistry . Again on 15.10.1996 the applicant abused P.Way Mistry and also threatened Sri R.K. Saxena, PWI, Mathura Jn with an Axe in his hand . A written complaint was lodged by Sri Om Prakash, PWM. Same day one Sri Pooran Singh intimated Sri R.K. Saxena, PWI, MTJ Yard that the applicant misbehaved with Sri Om Prakash, PWM and when Sri R.K. Saxena reached the site of incident he saw the applicant having an Axe in his hand misbehaved with Sri R.K. Saxena. On 17.10.1996 the applicant filed a written apology to the Railway officials and assured for his good behavior. Further on 24.04.1997 the applicant threatened Sri Y.S Tyagi, PWI , Bad with a stick in his hand and did not allow him to move for more than a hour. On 25.05.1997 the applicant entered the chamber of PWI, Mathura Jn at about 10.30 hrs and threatened Sri A.K. Asthana and his



family for liquidation ,if he will not transfer him from Kosikalan to Mathura for which he has issued a massge to all concerned on 25.05.1997 . Later Sri A.K. Asthana was going to material train working in MTJ Yard, the applicant met him near narrow gauge platform and started misbehaving and threatening for which a complaint was lodged with SO/PS GRP MTJ dated 27.05.1997 . The applicant was arrested by the Police and bailed out from the court.

8. The respondents have further contended that Sri Om Prakash and Bhuri Singh refused to given any statement against the applicant for the incident occurred on 27.05.1997 because the applicant was a criminal type of person. According to the respondents the applicant is a harded criminal who bears no respect for law as well as respect to his superior authorities and maintains bad relations with his colleagues . He is generally armed with lethal weapons to terrorize others. Even though the applicant has admitted his guilt and asked for being excused , he has no regard to his apology being a man of criminal proclivity and violent nature.

9. In the RA the applicant has made sweeping allegations against R.K. Asthana and KR Chopra. As the applicant refused to withdraw his FIR he was made escape goat by his colleagues and superior authorities.

10. We have heard the counsel for the parties and perused the pleadings.

11. The applicant has contended that no charge sheet was issued to him for regular enquiry against him. As such the impugned order of disciplinary authority removing him from service is bad in law. This assertion of the applicant has been challenged by the respondents who have since stated in para 16 of their counter affidavit that the applicant was served with SF-5 dated 1.3.95 under Discipline and Appeal Rules.



The same has been acknowledged by the applicant. We have no reason to disbelieve the respondents on this ground.

12. Secondly as contended by the applicant, no reasonable opportunity was given to the applicant to make representation and therefore, the order passed by the respondent NO.2 as well as respondent NO.3 are in violation of principles of natural justice. This assertion of the applicant has further been denied by the respondents. On the other hand, the respondents have cited specific instances of misbehaviour with Superior Railway Officers and his colleagues such as false and fabricated complaint against Sri K.R. Copra, C .P.W.I Mathura Junction to S.S.P. Mathura on 9.3.1995, forcibly entering the chamber of C.P.W.I on 25.7.97, misbehaviour with Sri O.M Prakash P. Way Mistri Mathura Junction on 8.10.96 and refusal to give attendance sheet and consequent abusive behaviour with P. Way Mistri on 15.10.96 and threatening Sri R.K. Saxena P. W.I. Mathura Junction Yard with an axe in his hand, transfer of the applicant by Divisional Engineer Mathura Junction from Mathura Kushi Kalan on 15.10.96, misbehaviour with Sri Y.S. Tyagi P.W.I on 24.4.97 and abusing and threatening him with a stick in his hand, misbehaviour and threat on 25.5.97 with P.W.I Sri A.K. Asthana for which a case was lodged with a local police and consequent arrest of the applicant by local police: later the applicant was bailed out by the court ; written refusal of Sri Om Prakash and Sri Bhuri Singh Trolley Man who refused to give any statement as witness against the applicant for the incident occurred on 27.5.97 or earlier before the Railway Administration because the applicant was a local and criminal type of person. The respondents have further attached a copy of written apology dated 17.10.96 of the applicant and his undertaking to observe appropriate deportment and behaviour with his senior officers.



13. We have considered the rival contentions of the parties and are of the view that there was ample justification on the part of the disciplinary authority to remove the applicant from service under Rule 14 of the Railway Servant (Discipline and Appeal) Rules 1968 which reads as below:-

“14. Special procedure in certain cases.

Notwithstanding anything contained in Rules 9 and 13:

1. Where any penalty is imposed on a Railway Servant on the ground of conduct which has led to his conviction on a criminal charge; or
2. where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or
3. Where the President is satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules:

The Disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit;

Provided that the Railway Servant may be given an opportunity of making representation on the penalty proposed to be imposed before only an order is made in a case falling under clause (i).

Provided that the Commission shall be consulted where such consultation is necessary, before any orders are made in any case under this rule”.

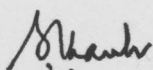
14. In a situation where the witnesses have refused to depose against the applicant as they were threatened and terrorized by the latter there are adequate grounds for removal of the applicant under Rules 14 (Supra) . Learned counsel for the applicant has not been able to sufficiently establish the malafide or bias on the part of either the disciplinary authority either the Appellate Authority. He has, however, cited the case of Railway Construction Company Ltd. Vs. Ajay Kumar (2003) 4 SCC 579 which however, does not render any help to the applicant .



15. Where the enquiry has been dispensed with on the satisfaction of the Disciplinary Authority that it is not reasonably practically to hold an enquiry, it is settled law that the court should not sit as an Appellate Authority so as to substitute its own view to that of the Disciplinary Authority. Further malafide, if alleged must be supported by specifics and burden of proof discharged. In the present case, we observe that the applicant has not been able to cite specific instances of malafide either against the disciplinary or the Appellate Authority. Further the courts and Tribunal will not be justified in its power of judicial review to sit over the appeal on the decision of Appellate Authority particularly on a matter which fell squarely within the sphere of jurisdiction of that authority. As observed by the Apex Court in Union of India & Ors. Vs. Balbir Singh & Anr, JT 1998 (3) SC 695 when a government servant is dismissed without enquiry there should be cogent material to indicate that it is necessary to do so in the security of the state. In our opinion, there is ample justification for removal of the applicant from Railway Service.

16. Railways occupy a place of primacy as a national carrier for transportation of men and material all over the country day and night. In an essential service which is operation oriented there can be no place for indisciplined conduct on the part of a Railway official lest the operations of the Railways as an essential public service suffer.

17. For reasons and case law cited above we are of the considered view that the action of the respondents is amply justified. The O.A being devoid of merits is, therefore, dismissed. No order as to costs.



MEMBER- A.



MEMBER- J.

/ANAND/