

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Original Application No.575 of 1999.

Allahabad this the 3rd day of March 2004.

Hon'ble Mr. Justice S.R. Singh, Vice Chairman.
Hon'ble Mr. D.R. Tiwari, Member-A.

Parsoti Singh
S/o Shri Lala Ram,
Resident of RB-1-16 H (Double Story)
TRD Railway Colony, Mathura.

.....Applicant.

(By Advocate : Sri S.S. Sharma)

Versus.

1. The Union of India
owing & Representing 'Central Railway'
Notice to be served to the General Manager
Central Railway, Headquarters Office,
Chhatrapati Shivaji Terminal, Mumbai.
2. The Divisional Railway Manager,
Central Railway, D.R.M Office,
Jhansi.
3. The Divisional Electrical Engineer/TRD,
Central Railway, Agra Cantt.
(The Appellate Authority).
4. The Senior Divisional Electrical Engineer/TRD,
Central Railway, D.R.M Office, Jhansi.
The Revising Authority.
5. The Assistant Electrical Engineer/TRD,
Central Railway, Mathura Jn.
(The Disciplinary Authority).
6. The Assistant Enquiry Officer (HQ),
General Manager's office, Central Railway,
Vigilance Branch, Chhatrapati Shivaji Terminal,
Mumbai
7. Shri G.V. Ghorpada,
Divisional Personnel Officer
C/o The General Manager,
Central Railway, Headquarters Office,
Mumbai (C.S.T)

.....Respondents.

(By Advocate : Sri A Sthalekar)

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(By Hon'ble Mr. Justice S.R. Singh, V.C)

Heard Sri S.S. Sharma, learned counsel for the applicant, Sri S.K. Pandey holding brief of Sri A Sthalekar, learned counsel for the respondents and perused the pleadings.

2. The applicant was served with charge memorandum dated 10.04.1996 (Annexure A-5). The substance of the imputation of misconduct and misbehaviour in respect of which the enquiry was proposed, as disclosed in the statement of Articles of Charge, was as under :-

"He used - unfair means in the written test held on 25.04.1992 in D.R.M Office, Jhansi for departmental promotion as Clerk (Group 'C' service) from Group 'D' service for which he managed to obtain the copy of solved answer to question No.9 of the question paper of the written test in the examination hall, with an intention to pass in the test and cheated the Railway Administration.

Thus, he failed to maintain integrity and contravened Rule 3 (i) (ii) of Railway Service (Conduct) Rules, 1966".

3. The Enquiry Officer in his report dated 28.11.1997 held as under:-

"The only charge of detecting the paper with Parsoti Singh has been proved where as the copying of the said answer in his answer sheet with the intention to qualify is not proved. Because Parsoti Singh obtained qualifying mark on his own efforts without copying the answer to question no. nine. But it is established that these two papers were found in his possession. And as such the charges framed against Shri Parsoti Singh vide SF-5 No.MTJ/TD/43 dated 16.4.1996 are 'PARTIALLY PROVED'.

4. A copy of the report was forwarded to the applicant in response to which he submitted his reply vide letter dated 29.05.1998 (Annexure A-21). The Disciplinary Authority, by its order dated 22.6.1998 (Annexure A-1) held the applicant guilty of Article of Charge/imputation of misconduct and misbehaviour viz. used unfair means in the test on 25.4.1992 for the reasons stated in the attached memorandum and imposed the major penalty of withholding the

increment from Rs.2960/- to Rs.3020/- in the scale of Rs.2550-3200 which was due on 1.1.1991 for a period of one year without the effect of postponing future increment. The submission made by the learned counsel is that the charge levelled against the applicant was held only 'Partially proved' to the extent that though unauthorised material was found from his possession but the charge of using the said unauthorised material in the examination was not proved. But the Disciplinary Authority held the applicant guilty of using unfair means even though reasons for disagreement with the finding recorded by the Enquiry Officer were never communicated to the applicant.

5. Rule 10(3) of the ~~R~~ Railway Servant (Discipline & Appeal) Rules, 1968 clearly provides that "the Disciplinary Authority shall, if it disagrees with the finding of the enquiring authority on any articles of charge, if the evidence on record, is sufficient for the purpose". The question that arises for consideration is whether the Railway Servant in such matters is entitled to have reasons of disagreement from the Disciplinary Authority?. Initially there was no provision providing for furnishing the reason of disagreement with the finding recorded by the Enquiry Officer but Railway Servant (Discipline and Appeal) (Amendment) Rules, 2002 now provides that Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority a copy of the report of the Inquiring Authority, its findings on further examination of witnesses, if any, held under sub rule (1) (a) together with its own tentative reasons for disagreement, if any, with the findings of the inquiring authority on any article of charge to the

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Railway Servant, who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Railway Servant; shall consider the representation if any, submitted by the Railway Servant and record its findings before proceeding further in the matter as specified in sub rules (3), (4) and (5).

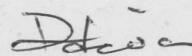
6. We are of the view what is explicit in Rule 10 (2) (a) as it stands amended by Railway Servants (Discipline and Appeal) (Amended) Rules, 2002 was implicit in the original rules as it stood before its amendment. The Railway Board by R.B.E. No.33/96 (No.E(D&A) 87 RG 6-151 dated 04.04.1996 had made it clear that as held in case of Managing Director (ECIL) Hyderabad Vs. B Karunakar (JT 1993 (6) SC-1), the Disciplinary Authority before making a final order in the case shall forward a copy of the report of the inquiry held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority to the charged railway servant with a view to affording him an opportunity to submit, if he so desires his written representation or submission to the disciplinary authority within 15 days, irrespective of whether the report is favourable or not to the charged railway servant. In para 5 of Railway Board's order, it has been made clear that where the Inquiring Authority holds a charge as not proved and the disciplinary authority takes a contrary view, "the reasons for such disagreement must be communicated, in brief, to the charged officer alongwith the report of Enquiry so that the charged officer can make an effective representation".

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7. In the instant case, as pointed out hereinabove, the inquiry officer held the charge 'partially proved' to the extent that though the unauthorised material was found from the possession of the applicant. The charge of using unauthorised material was not proved. The Disciplinary Authority held the applicant guilty of using unauthorised material, even though the reasons of disagreement with the finding recorded by the Inquiry Officer were not communicated to the applicant. This resulted in breach of principles of natural justice and violation of Railway Board's order referred to above. The punishment order is, therefore, liable to be set aside on this ground.

8. Accordingly, the O.A. succeeds and is allowed. Impugned orders are set aside with the liberty to reserved to the disciplinary authority to furnish the reasons of disagreement with the report of inquiry officer to the applicant and then proceed afresh from that stage in accordance with law. The applicant shall be entitled to consequential benefits.

No costs.



Member-A



Vice-Chairman.

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