

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 08th day of April, 2004.

Original Application No. 708 of 1999.

Hon'ble Mr. Justice S.R. Singh, Vice-Chairman.

Hon'ble Mr. D.R. Tiwari, Member- A.

S.C. Mishra S/o Sri L.P. Mishra, R/o 124/2-A,
Muirabad, Allahabad.

.....Applicant

Counsel for the applicant :- Sri H.C. Shukla

V E R S U S

1. Union of India through Secretary/Railway Board,
241, Rail Bhawan, New Delhi.
2. General Manager (P), Baroda House, New Delhi.
3. Divisional Railway Manager, Northern Railway,
Allahabad.
4. Senior Divisional Railway (Opt.) Manager,
Northern Railway, Allahabad.
5. Additional Divisional Railway (Opt.) Manager,
Northern Railway, Allahabad.
6. Sri S. Kapil, Senior Divisional Safety Officer,
Northern Railway, Allahabad.

.....Respondents

Counsel for the respondents :- Sri A.K. Gaur

O R D E R

By Hon'ble Mr. Justice S.R. Singh, VC.

By order dated 10.03.1993 (Annexure-5) the applicant was held guilty of dangerous/unsafe working. Further that his continuance as Section Controller would be unsafe for train movement. Accordingly the disciplinary authority namely Senior Divisional Operating Manager, Allahabad imposed the penalty of reduction from the scale of Rs. 5500-9000 ~~and~~

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to Rs. 5000-8000 until found fit by the competent authority, after a period of 5 years, for restoration of the higher grade of Section Controller. The applicant preferred an appeal against the said order which came to be dismissed in terms of the following order communicated to him vide letter dated 05.05.1990 :-

"I have gone through the whole case. I do not find any grounds for any reducing of punishment already awarded. Appeal is regrated."

The order aforestated ^{has} ~~was~~ been passed in exercise of power 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968 which provides that in case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the Appellate Authority shall consider (a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of Justice; (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe, and pass orders - (i) confirming, enhancing, reducing or setting aside the penalty; or (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case.

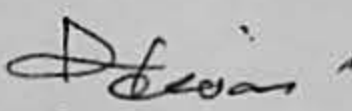
2. ² Submission made by the learned counsel for the applicant is that the Enquiry Officer held the charges not proved and the disciplinary authority without furnishing any reason for dis-agreement ^{will} ~~of~~ the findings recorded by the Enquiry Officer proceeded to punish the applicant without affording any opportunity to the applicant. It is also ^{passed} submitted by the learned counsel that any order ² without considering the grounds taken in memo of appeal would be

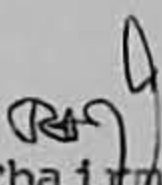
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illegal and contrary to law. Submission made by the learned counsel, in our opinion, carries substance. The appeal, it is well settled, is not an empty formality. The order passed by the Appellate Authority is not in accordance with law and is liable to be quashed.

3. Accordingly, the O.A succeeds and is allowed. The impugned orders dated 10.03.1993 and 05.05.1998 are quashed. The disciplinary authority is directed to proceed from the stage of enquiry report. In other words in case the disciplinary authority dis-agrees with the findings recorded by the Enquiry Officer, it would be open to it to furnish the reasons for dis-agreement to the applicant, afford him an opportunity and then decide the case after taking into reckoning the explanation that may be given by the applicant.

4. There will be no order as to costs.


Member- A.


Vice-Chairman.

/Anand/