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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

ORIGINAL APPLICATION NO.615 of 2000

Allahabad, this the 30th day of July, 2008

Hon'ble Mr. Justice Khem Karan, Vice Chairman
Hon'ble Mr. N.D. Dayal, Member-A

Gaya Prasad Sharma, S/o late Mishri Lal Sharma. Aged about 46 years, R/o N-15/584-A Kirahia Road, Khojwan, Varanasi.

...Applicant.

(By Advocate: Shri Wasim Alam)

Versus

1. Union of India- owned and represented by General Manager, N.R., Baroda House, New Delhi (Notice to be served upon-The General Manager).
2. The Union of India-owned and represented by General Manager, Diesel Locomotive Works, Varanasi. Diesel Locomotive Works. Notice to be served upon the General Manager, Diesel Locomotive Works, Varanasi.
3. Sri Pramod Kumar, Chief Project Manager and Appellate Authority, Diesel Locomotive Works, Varanasi.
4. Sri Babban Singh, Deputy Chief Engineer and Disciplinary and Punishing Authority (both), Diesel Locomotive Works, Varanasi.
5. Sri Santosh Shukla, presently posted as Deputy Chief Engineer (TOT)/Inquiry Officer, Diesel Locomotive Works, Varanasi.

.....Respondents.

(By Advocate: Sri Amit Sthalekar)

O R D E R

N.D. DAYAL, MEMBER-A

The applicant, herein, is seeking the quashing of total proceedings of enquiry, impugned orders at Annexure A-1 and A-2 (Compilation I) of punishment as well as all consequential benefits of seniority, promotions, and salary etc. He further prays for

strictures against and award of compensation of Rs. 10,000/- to be paid, by respondent nos. 3, 4 and 5 as well as special costs to be paid by these respondents.

2. The applicant states that he was recruited as Inspector of Works Gr.III in the pay scale of Rs. 425-700 (RS) by Railway Service Commission, Allahabad and thereafter appointed by a letter of General Manager (P), Northern Railway, Baroda Hosue, New Delhi. He joined on 5.9.1980. Having completed training of one year, he was posted in vacancy under the Chief Engineer (Construction), Kashmere Gate, Delhi by order dated 11.9.1981 issued by General Manager (P) at Annexure A-3 of Compilation-II. Therefore, he claims that he was appointed by General Manager. His lien had also been fixed under DRM by the General Manager (P) vide order dated 3.9.1980 communicated on 30.7.1985 at Annexure-4.

3. The applicant submits that he was sent on deputation to Diesel Locomotive Works, Varanasi in 1993 under respondent nos. 2 to 5 on request by respondent no.2 to respondent no.1 Annexure 5 & 6. As inter railway/zonal transfer on deputation is only made by or with the approval of General Manager, he reiterates that the General Manager, Northern Railway, Baroda House was his appointing authority.

4. It is stated that a charge memo was issued Annexure A-7 to the applicant dated 11.9.1995 by respondent no.4 which shows no misconduct and without supply of relied upon documents which were not sent with memo, which is contrary to rule sl. No. 8702 of Northern Railway. Therefore, without getting any reply, which was not possible in the absence of the documents, an Enquiry Officer was appointed by Annexure A-8.

5. The Article of charge against the applicant was as under:-

"Article of Charges framed against Sri G.P. Sharma the then Offtg. IO4/Gr.Rs.2000-3200 (RPS)

That the said Sri G.P. Sharma intentionally violated Article (illegible) and did not hand over full charge of Store to Sri U.P. Pathak IOW (D)/CNB even till date as he was ordered. Consequently, fact finding enquiry was conducted by Sri R.C. Choudhary, AEN/C-1/CNB and Sri A. Hamberum, ACCS, Northern Railway, Kashmere Gate, Delhi. As a result of investigation, store material amounting to Rs. 272850.02/- was found short.

That by his above act of omission/commission Sri G.P. Sharma has failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Railway Servant and thereby contravened Rule 3.1(i) (ii) and (iii) of Railway Servant (Conduct) Rules, 1966."

6. The applicant submits that he had earlier moved the Tribunal in O.A. no. 1368 of 1994 which was pending and recovery of amount was stayed by interim

order dated 20.10.1994 at Annexure-9 which makes the impugned orders void ab initio and non-est.

7. According to the applicant enquiry on 16.1.1996 was contrary to Rules (Annexure A-10) and the Enquiry Officer was changed, who conducted the proceedings on 23.9.1996, 17.10.1996 and 15.11.1996. It is argued that the enquiry report was sent to the applicant (Annexure-14 page 50) by letter dated 26.5.1997 of the disciplinary authority without decision on all findings of the Enquiry Officer in disregard of Rule 10 without noticing the defects and applying his mind. It is stated that enquiry proceedings on above dates are vitiated in terms of Rule dated 26.10.1971 serial 5481. Copies of proceedings and enquiry report have been annexed at Annexure A-11 to A-14

8. The applicant assails the order of penalty whereby punishment of recovery of Rs. 272850/- was imposed upon him vide order dated 22.10.1997 for shortage of railway property. The recovery was to be made from the regular salary in equal 100 installments. The applicant submits that the disciplinary authority has disregarded Rule 12 of Railway Servants (Discipline & Appeal) Rules, 1968 and provisions of Section 19(4) of A.T. Act as well by a vague and non-speaking order and that there was no witness produced by the administration except one

and no opportunity of cross examination and leading defence evidence was provided at all.

9. Further, it is submitted that appeal was preferred and the appellate authority i.e. Chief Project Manager, DLW, Varanasi, who is equivalent in rank to Chief Engineer only, proposed enhancement of punishment by letter dated 18.8.1999 (Annexure A-15) and by order dated 8.5.2000 imposed the punishment of compulsory retirement from service with immediate effect and loss suffered by Railway i.e. 272850.02/- be recovered from his dues. It is contended that the show cause letter dated 18.8.1999 did not disclose the reasons for disagreement with penalty imposed and its proposed enhancement which was against principles of natural justice.

10. Although, personal hearing was granted by appellate authority on 18.1.2000 to the applicant alongwith his Defence Assistant, but the applicant complains that what was said in the personal hearing was ignored and it was wrongly stated that the applicant did not deny receipt of documents including the fact finding enquiry report, which were not produced in the enquiry and never shown to the applicant or proved by anyone as clearly mentioned by the applicant in his reply dated 5.9.1999 (Annexure-16) to the show cause notice as well as during the personal hearing. The order is based on no evidence and takes into account what is not there

in memo of charge. Therefore, as the Chief Project Manager-respondent no.3 is not the appointing authority of the applicant, appellate order in which punishment order has merged is non-est and void ab initio.

11. The respondents have filed Short Counter Affidavit as well as detailed one. They have pointed out that there is a provision of an appeal against the order passed by the appellate authority dated 8.5.2000 as per sub-rule (iii) (i) of Rule 18 of Railway Servants (Discipline & Appeal) Rules, 1968, but the applicant has failed to avail of this statutory remedy. It is pointed out that two earlier O.As filed by the applicant were also dismissed as pre-mature. It has been contended that the punishment order and appellate order do not suffer from any illegality as the applicant has been given due opportunity of defence before penalty was finally imposed upon him of compulsory retirement and recovery of Rs. 272850/-. It is stated that the order dated 11.9.1981 at Annexure-3 to the O.A. is not the order of appointment of the applicant, but it is posting order of the applicant as IOW Gr.III on successful completion of one year's training. Infact, the applicant was appointed as Apprentice IOW Gr. III by order dated 3.9.1980 issued by Senior Personnel Officer at Annexure CR-I. He was promoted to officiate IOW Gr.II by order dated 12.2.1987 passed by Sr. Civil Engineer (Construction-I), N.R.,

Allahabad, but his actual promotion as IOW Gr. III was made by order dated 26.10.1989 of Divisional Personnel Officer, N.R. at Annexure CR-2. By order dated 6.11.1990 of Dy. Chief Engineer (Construction), Kanpur the applicant was put to officiate as IOW Gr.I on adhoc basis as per Annexure CR-3. While working as IOW Gr.II, he was imposed the punishment of 'Censure' by Dy. Chief Engineer (Construction), Northern Railway. The order dated 13.5.1992 is at Annexure CR-4. Again penalty of recovery of Rs.55.28/- was ordered by Deputy Chief Engineer, DLW, Varanasi on 21.7.1995 as per Annexure CR-6. Annexure-4 to the O.A. only shows that lien had been fixed under DRM, Delhi and Annexure-5 is the request for transfer involving lien. Even if the transfer can be approved by the General Manager only, it does not make him appointing authority and as such it cannot be said that the appointing authority of the applicant was the General Manager.

12. It is further argued that the applicant never complained about non-supply of document or non-receipt of Annexures to the chargesheet. It is not necessary for the disciplinary authority to record the reasons while providing a copy of the enquiry report in all the cases. The punishment was awarded by a detailed and reasoned order and the appellate authority proposed enhancement of the same due to seriousness of the charge and not only issued show

cause notice, but also gave an opportunity of personal hearing alongwith Defence Assistant.

13. In his Rejoinder Affidavit, the applicant has denied and disputed the averments made by the respondents. He reiterates the arguments already advanced in the O.A.

14. We have heard the learned counsel for the parties and perused the pleadings. Written arguments have also been submitted though without any leave of the Court. The first contention of the applicant is that his appointing authority is General Manager Railways and in order to establish such contention, he has initially stated that after recruitment he was appointed by letter of General Manager (P), Northern Railway, Baroda House, New Delhi. He joined on 5.9.1980. However no such letter has been placed by him. He further states that by letter at Annexure-3 he was posted in a vacancy under Chief Engineer {Construction} by order dated 11.9.1981 also issued by General Manager (P) This is not an order of appointment, but posting after training. Another letter of 30.7.1985 sent on behalf of General Manager (P) to DRM, Northern Railway, New Delhi is regarding the lien of the applicant having already been fixed. The applicant has also referred to his request for transfer being sent by General Manager (P) to General Manager (P), Northern Railway, New Delhi seeking their views whether he

could be relieved on deputation, which is neither an appointment order, nor an order of promotion.

15. A perusal of Rule 2 of Railway Servants (Discipline & Appeal) Rules, 1968 shows the definition of appointing authority in relation to Railway servant means:

"

- (i) the authority empowered to make appointments to the Service of which the Railway servant is, for the time being, a member or to the grade of the Service in which the Railway servant is, for the time being, included, or
- (ii) the authority empowered to make appointments to the post which the Railway servant, for the time being holds, or
- (iii) the authority which appointed the Railway servant to such Service, grade or post, as the case may be, or
- (iv) where the Railway servant having been a permanent member of any other Service or having substantively held any other permanent post, has been in continuous employment under the Ministry of Railways, the authority which appointed him to that Service or to any grade in that Service or to that post,

which ever authority is the highest authority."

16. In a decision of the Full Bench of this Tribunal in the case of Gafoor Mia Vs. Director DMRL reported in 1988 6 ATC 675 it was held that the disciplinary proceedings can be initiated and punishment imposed on Group 'C' and 'D' Railway

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employees by the General Manager only and not the delegate. The Court had interalia considered the provisions of Rule 215 of Railway Establishment Code Vol. I. This judgment also took into account the definition of appointing authority as contained in the relevant rules. We find that in the case of Scientific Adviser to the Ministry of Defence and Others Vs. S. Daniel and Others and batch of cases decided by Hon'ble Supreme Court reported in 1991 SCC (L&S) 355, the above order of Full Bench of this Tribunal alongwith others have been overruled after taking note of relevant rules/definitions relating to appointing authority, disciplinary authority etc. as contained in both CCS (CCA) Rules, 1965 as well as Railway Servants (Discipline and Appeal) Rules, 1968. The Court observed that Schedule II of Railway Servants (Discipline & Appeal) Rules lays down that an order of compulsory retirement, removal or dismissal from service may be ordered, in the case of a Group 'C' or Group 'D' railway servant by the appointing authority or authority equivalent in rank or any higher authority and Note 2 to the Schedule mentions that such authority may also impose any of lower penalty. Under Rule 215 of the Railway Establishment Code (Vol.I) which deals with the recruitment, training and promotion of Group 'C' and Group 'D' railway servants, the authority competent to make a first appointment is the General Manager or lower authority to whom he may delegate the

power. The General Manager of each railway has delegated his powers under several heads. In this background and keeping in view that the disciplinary power is a different and separate power from the power to appoint, as well as having analyzed the real and true interpretation of the rules/definition, it was concluded by the Court that the appointing authority in terms of rule/definition contained in Rule 2(1)(a)(i) of Railway Servants (Discipline & Appeal) Rules, 1968 would be the authority to whom the power of appointment has been delegated and not both the authority which delegated such powers as well as the delegate. It was observed by the Court that the appointing authority, being high ranking authority in an organization like Railways it will be virtually impossible for him to consider each and every case of appointment of, or disciplinary action against all the class III or Class IV employees and this is what which makes such delegation necessary. It is not the case of the applicant that there has been no delegation of powers of the General Manager.

17. The applicant has further contended that no documents were supplied with charge memo. A perusal of charge-memo dated 11.9.1995 shows that the list of documents in support of charge had been enclosed at Annexure-3 and the applicant was invited to inspect them and other documents as well within a period of 10 days. The applicant does not appear to

have sent any response & expressing grievance about this. Infact he has complained that the Enquiry Officer was appointed without receiving any reply from him which was not possible without the documents which should have been enclosed with charge memo. If the applicant chose not to avail of the opportunity to inspect documents and ask for copies of these he could hardly claim prejudice afterwards.

18. The applicant is aggrieved that the Enquiry Officer was changed more than once without intimation and contrary to Rules. However, no copy of any rule is furnished on record. On the other hand the applicant attended the enquiry proceedings conducted by the Enquiry Officers. The applicant further submits that the Enquiry officer's report was sent to him without decision of the disciplinary authority on all findings of the Enquiry Officer and without noticing the deficiencies in the enquiry or applying his mind. No instructions or order has been placed which requires the disciplinary authority to express views on the findings of an Enquiry Officer at the stage of sending the enquiry report to the applicant for making his representation, if he does not disagree with any of them. It is observed that the communication to the applicant in this regard did not mention any disagreement with the findings of the Enquiry Officer and as such no specific comments were required.

19. It has been generally stated that the enquiry proceedings on certain dates had been conducted by non-compliance with Rules and principles of natural justice. But once again no sufficient details are available from which such allegation could be appreciated as to how the applicant has been prejudiced thereby.

20. The applicant is aggrieved that no opportunity was provided to cross examine the witness and only one witness was produced by the prosecution although, as seen from Annexure-4 to the charge-memo, five witnesses were listed. It is not explained as to in what manner non-examination of some of the witnesses has adversely affected the applicant's defence. In so far as cross examination of the witness is concerned, it appears that the applicant had declined to do so. A photocopy of day-to-day enquiry proceedings has been annexed with the O.A. which shows that the Enquiry Officer having recorded the statement of prosecution witness Sri U.P. Pathak, IOW-D Kanpur, asked the applicant what he wanted to say in defence. The applicant stated that for some reasons his defence counsel had not come and so he would give reply in one week. He also asked for a set of photocopies deposited by Sri Pathak, which was given to him. It is also evident that Sri Pathak gave his statement in the presence of the applicant. As such having not availed of

opportunity to cross examine it is not open to the applicant to complain on that account. In view of the above and statement recorded by the applicant in his defence as well as opportunity given to him to produce defence witness/documents, we are not satisfied that the applicant has made out a case of violation of the principles of natural justice.

21. A perusal of the Article of charge framed against the applicant shows that the applicant was alleged to have not handed over full charge of store to Sri U.P. Pathak, IOW-D, Kanpur despite orders and a fact finding enquiry was conducted as a result of which store material amounting to Rs.272850.02/- was found short. We, therefore, are unable to appreciate the applicant's contentions that the chargesheet was not specific and revealed no misconduct. The statement of imputations of misbehaviour and misconduct sets out the further details and quotes the relevant rules with regard to the charge made against the applicant. A preliminary fact finding enquiry is normally resorted to before charges are to be framed and issued. Normally such reports are not relied upon in the enquiry although they may contribute to the drafting of the charge. Therefore, if such fact finding enquiry report, though listed as a document, was not produced in the enquiry, it is not clear as to how prejudice could be claimed on such ground if the evidence in the enquiry otherwise led to the charge being established.

22. A perusal of punishment order dated 22.10.1997 reveals that the Deputy Chief Engineer- disciplinary authority, had taken into consideration the enquiry report, representation of the applicant as well as prescribed procedure as per rules. It was noted that the applicant took an excessively long time to hand over charge including the specific ledger and documents based upon which the stock balance can be verified. As a result the discrepancies could not be found out at the time when the applicant was relieved, but subsequently a committee was formed for the purpose which located the ledgers and discovered discrepancies amounting to Rs. 272850/-. Since the applicant was holding the charge of the post of IOW-D-I, he was held responsible and penalty of recovery of Rs. 272850/- was ordered for shortage of railway property to be recovered from the regular salary in equal 100 installments.

23. When the applicant preferred an appeal, the Chief Project Manager-Appellate Authority, as per his order dated 8.5.2000, considered the representation of the applicant dated 5.9.1999 to the show cause notice dated 18.8.99 as well as the objections raised by the applicant in his appeal against the punishment order alongwith points raised during personal hearing and having noted the charge against the applicant and the grounds taken by the applicant, observed that various objections taken

had not been raised by the applicant either in the enquiry or in appeal, but raised for the first time in representation of 5.9.1999 to the show cause notice. It was observed that the applicant participated in the enquiry and did not deny the relied upon documents. The list of shortage of store material was made available on request, but even then no specific reply denying the shortage was made. Contrary to the contention of the applicant that he handed over the charge to Sri U.P. Pathak on 22.8.1992 and was spared on 29.8.1992, it was noticed that the charge report dated 22.8.1992 showed that stock sheet was under preparation and would be submitted soon, which established that the full charge was not given on 22.8.1992. It was further noted that Sri U.P. Pathak was examined in the presence of the applicant, but the applicant did not choose to cross examine him despite opportunity. Besides, the applicant had failed to produce his list of defence witnesses and documents during enquiry and there was no record to show that any request in this regard was denied by the Enquiry Officer. It was, thus, held that due to lapse and misconduct on the part of the applicant the Railway had suffered pecuniary loss and, therefore, punishment imposed by the disciplinary authority was found to be inadequate and not commensurate with the gravity of misconduct. Hence, in addition to recovery, the applicant was also ordered to be

compulsory retired from service with immediate effect.

24. It is noteworthy that both the punishment order as well as order passed for enhancement of punishment are speaking orders. The argument that these orders are vague and non-speaking would not be tenable. It is significant that the reasons put forth in the punishment order and order of enhancement of penalty cannot be said to have been controverted by the applicant by the material placed on record. The objections taken by the applicant during personal hearing afforded in the order of enhancement of penalty to him have also been mentioned in the order of enhancement of penalty, whereas the applicant himself has failed to produce any distinct record of the objections taken by him which he alleges were ignored.

25. The applicant has contended that show cause notice purporting enhancement of penalty did not indicate any reasons as to why the penalty was proposed to be enhanced. It is seen from a copy of the notice placed at Annexure-15 that the applicant had been informed that the charges against him were very serious and penalty imposed was not considered sufficient in view of gravity of the same. It was made clear that there was a proposal of enhancement of penalty and, therefore, opportunity was extended to make a representation, which it was assured would

be considered before passing the order. The applicant has not drawn attention to any rule which requires detailed reasons to be spelt out in show cause notice issued for such purpose. We note that the applicant was aware not only of the charges against him but also familiar with the material relied upon against him in the departmental proceedings. Besides he availed the opportunity of making representation as well as personal hearing. Therefore, even otherwise we are not persuaded that he was handicapped in presenting his case against the proposal of enhancement of penalty.

* 26. From the case file of O.A. no.1368 of 1994 that he has been mentioned by the applicant, it is seen that in this O.A. the applicant had challenged the correctness and legality of the order dated 3.8.1994 by which direction was given to recover the amount of Rs. 500950/- from the salary of the applicant. This O.A. was dismissed after considering the various issues raised by order of 4.4.2000 by Division Bench of this Tribunal at Allahabad. The Tribunal also noted that the applicant had filed O.A. no. 295 of 1996 against the present chargesheet dated 11.9.1995 wherein the applicant had alleged that the charge sheet was nothing but a fictitious manipulation in order to implicate the applicant in a false case. It was noted that the enquiry had been completed and penalty imposed to recover an amount

of Rs. 272850/-, for shortage of railway property from the salary of the applicant in 100 equal installments. At that time, the Court could not be correctly informed about the status of appeal, if any, submitted by the applicant. This O.A. too was dismissed. The operative part of the order is reproduced:

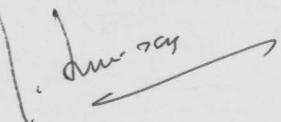
"In view of the above facts, it is clear that both the applications filed by the applicant are premature. Even the enquiry held against him was not complete and no order imposing penalty to recover the amount from the salary of the applicant was passed by the respondents before filing both the O.As i.e. 1368/94 and 295/96. The O.A no. 1368/94 and 295/96 are therefore, dismissed and disposed of accordingly. A copy of this order may be kept in O.A. no. 295/96.

It is, thus, evident that the O.A. no. 1368 of 1994 stands already dismissed on 4.4.2000 whereas the applicant had filed the present O.A. on 31.5.2000 stating that the O.A. was still pending with stay order continuing in relation to recovery of amount. No-doubt, there was stay order passed in O.A. no.1368 of 1994 with regard to recovery, but the O.A. stood dismissed. Therefore, this only appears to be an attempt by the applicant to mislead by falsehood.

27. As observed by the Apex Court in *Swapan Kumar Pal Vs. Achintya Kumar Nayak and Others* reported in

(2008) I SCC 379 in exercising the power of judicial review, the Court has a limited role to play. It could interfere only if any legal error has been committed in the decision making process. It is well settled that the Court does not sit in appeal over the decision of the executive authority nor would it usurp quasi judicial powers vested in them or re-appreciate the evidence. It cannot be said that this is a case of no evidence. We, therefore, do not find sufficient grounds to intervene on behalf of the applicant.

28. The O.A., therefore, fails and is dismissed. No costs.


MEMBER-A
VICE CHAIRMAN

GIRISH/-