Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH, ALLAHABAD.

ORIGINAL APPLICATION NO. 655 OF 2000

THIS THE 24th DAY OF February, 2005.

HON'BLE MR. K.B.S. RAJAN, MEMBER(J)

Vinod Kumar Gaur,
Aged about 44 years,
S/o Sri Gajraj Singh Gaur,
R/o RB III, Sector 11,
Quarter no. 62-B, Railway Colony,
Agra Cantt.

.....Applicant.

By Advocate: Sri Rakesh Verma.

Versus

1. Union of India, through the General Manager North Central Railway, Chhatrapati Shivaji Terminus, Mumbai.

2. Senior Divisional Mechanical Engineer, N.C.R., Jhansi.

3. The Additional Divisional Railway Manager, N.C.R., Jhansi.

.....Respondents.

By Advocate: Sri D.C. Saxena

O R D E R (ORAL)

The applicant, through this O.A., has challenged the following two orders :-

(i) Order dated 26.4.2000 passed by the Disciplinary Authority (Senior DME, Jhansi) whereby the applicant had been awarded a minor penalty of reduction to a stage in the same scale of 6500-10500 (RSPS), reducing the pay from the stage from Rs. 6900 to 6500 for a period of three years without cumulative effect.

(ii) Order dated 23.5.2000 passed by the Appellate Authority (ADRM-1), Jhansi whereby the Appeal dated 8.5.2000 filed by the applicant was dismissed.

2. The capsulated facts of the case as submitted by the applicant are as under :-

(a) The applicant, at the relevant point of time was functioning as Laboratory Superintendent in the pay scale of Rs. 6500-10500 and was posted at Diesel Shed Agra Cantt. coming directly under its Divisional Mechanical Engineer.

(b) By a communication dated 15.10.1999, the Senior Deputy General Manager advised the DME to initiate a stiff minor penalty against the applicant and alongwith this communication a draft statement of imputation was also sent. The said communication further contains the following paragraph :-

"The date of serving SF-11 and penalty order may please be advised to this office endorsing copies of the same alongwith acknowledgements at the earliest for onward communication to the Railway Board."

(c) The charge against the applicant as contained in the draft forwarded by the Senior Deputy General Manager reads as under:-

"Shri V.K. Gaur while working as Lab. Supdtt. under CWM/RSK/STLI during the period

1993-94 committed the following irregularities :

(d) He signed and released an incomplete/incorrect test report regarding testing of Red Oxide Zinc Chrome Primer to IS : 2075/79 stating that it conforms to specification though two important tests i.e. protection against corrosion under condition of condensation and resistance to salt spray were not conducted.

(e) He signed and forwarded the Test Report No. M/RSK/Lab-2/Paint dated 10/11.12.93 to ACOS/RSK/ STLI. In this Test Report he has mentioned various tests carried out by him s per IS 2075/79 and the results thereof. At the end, in the concluding remarks of the Test Report he mentioned that on the basis of the above test results, the material conforms to IS : 2075/79 hence may be accepted, even though he did not carry out two important tests i.e. protection against corrosion under condition of condensation and resistance to salt spray for want of facilities which were necessary to be carried out for the material to conform to IS : 2075/70. These tests were particularly important because the previous supply against the same order received from the firm failed when tested at RDSO in the

test of protection against corrosion under condition of condensation. Instead of advising the paint for acceptance, he should have advised to send the sample to C&M/Parel where the facility to conduct these tests exist, which he failed to do so.

(f) By the above acts of commissions and omissions, Shri V.K. Gaur, Lab. Supdtt., failed to maintain absolute integrity of devotion to duty and thereby contravened the provisions of Rule 3.1 (i) & (ii) of Rly. Services (Conduct) Rules, 1966."

3. The applicant submits that the Disciplinary Authority issued a Memorandum dated 3.11.1999, mechanically copying the statement of imputation as made available to him by the Senior Deputy General Manager and called for a representation of the applicant. It is further the case of the applicant that fin his representation, he had in unequivocal term requested for holding an enquiry so that he would be able to meet the charge against him. In addition of course, he had denied the charge and gave elaborate explanation defending his case vide representation dated 25.11.1999.

4. The Disciplinary Authority had, vide order dated 26.4.2000, held the applicant guilty of the article of charge levelled against him and imposed a

minor penalty. The order dated 26.4.2000 reads as under :-

> *"I have carefully considered your representation dated 25.11.99 in reply to charge sheet issued to you vide letter of even no. dated 3.11.99 and I hold you guilty of the article(s) of charge/imputations of misconduct or misbehaviour viz. as shown in the charge memorandum levelled against you.*
>
> *I have decided to impose upon you the penalty of reduction to a stage in the same time scale. You are, therefore, reduced from the stage of Rs. 6,900/- to the stage of Rs. 6,500/- in the scale of Rs. 6500-10500 (RSPS) at present you are holding for period of Three years and Nil months from the date of this order with further directions that on expiry of the period, the reduction will not have the effect of postponing further increments.*
>
> *Under Rules 18 and 19 of the RS (D&A) Rule 1968, an appeal against these orders lies to ADRM-I, JHS.*
>
> *The appeal shall be preferred in your own name and under your own signature shall be presented within 45 days from the date you received the orders of the appellate authority sending a copy of the same to the undersigned.*
>
> *The appeal shall be complete in itself, shall contain all material statement and arguments on which you rely and shall not contain any disrespectful or improper language."*

5. The above order was accompanied by another "Speaking Order" which is as under :-

> *"After careful consideration of the whole case and the explanation of the employee, I have come to the conclusion that the delinquent*

employee is habitual in making false reports and raising allegations against his supervisors and colleagues which on investigation by vigilance department were found baseless and incorrect. Such a habit and attitude sports the congenial environment in the office and creates an environment of mistrust among office staff. In this particular case the employee fabricated a false report of anti corrosion and ant. condensation test report of paints for which no facility of check was available at Sithauls to embarrass his colleague. I have, therefore, decided to impose a penalty of reduction to the lowest stage Rs. 6500/- in grade 6500-10500 (RSRP) for a period of Three Years (NC)."

6. The applicant, vide his appeal dated 8.5.2000, challenging the aforesaid penalty order, specifically contended that although he had demanded an enquiry into the matter, inviting the attention to the mandatory provisions enshrined in Rule 11 of the DAR, the Disciplinary Authority had not afforded him necessary opportunity to defend his case. He had also specified in the Appeal that from the contents of the operative portion of order dated 15.10.1999, it is evident that the matter had already been prejudged by the Vigilance Branch of the Head Quarters and it is an obvious and clear cut case of punishment fixing.

7. The Appellate Authority, vide order dated 23.5.2000, as per the appellant passed a cryptic order of dismissal of the Appeal and the said order reads as under :-

> *"I have gone through the case and your Appeal dt. 8.5.2000. I find that you have not brought out anything in your appeal on the statement of misconduct served on you with SF-11 issued to you. I hold you responsible and penalty imposed by D hold, good.*
>
> *Revision appeal against these orders will lie to CME, CSTM within 45 days of receipt of this letter."*

8. Having exhausted the statutory remedies, the applicant approached this Tribunal inter-alia with the following prayers :-

> *"(i) to issue a writ, order or direction in the nature of certiorari quashing impugned order of punishment dated 26.4.2000 reducing the Petitioner from the stage of Rs.6,900/- to the stage of Rs. 6,500/- in the scale of Rs.6500-10500 passed by the Respondent No. 2 as well as the appellate order dated 23.5.2000 rejecting the appeal of the Petitioner and upholding the punishment passed by the Respondent No. 3.*
>
> *(ii) To issue a writ, order or direction in the nature of mandamus directing the Respondent No. 2 to restore the Petitioner at the place where he would have been had he not been punished in such an illegal and arbitrary manner with arrears thereof."*

9. To substantiate his case, the applicant had in the ground emphasised that the higher authorities should not dictate the appropriate Disciplinary Authority to initiate disciplinary proceedings with an already prepared imputation of misconduct. The tenor of the communication dated 15.10.1999 also reflects the decision to penalize the applicant has been taken even before issuance of the charge sheet and calling for the defence of the Petitioner. The grounds also emphasised that when specific demand for enquiry was

made the authority ought to have conducted the enquiry.

10. The Respondent had filed their counter denying the contentions of the applicant. The fact that the applicant sought enquiry was admitted but it was stated on behalf of the Respondents that it was got checked by the Disciplinary Authority and after ascertaining all the facts and investigation in this case that the Disciplinary Authority did not hold enquiry.

11. Rejoinder Affidavit reiterating the contents of the original application was also filed and the pleadings were complete.

12. Arguments were advanced at the time of final hearing and the Learned counsel for the applicant emphasised the following three grounds :-

a. The higher authority, apart from giving a direction had made available a draft charge sheet and also advised the Disciplinary Authority that "the date of serving SF 11 and penalty order may please be advised to this office endorsing copies of the same" (emphasis supplied) and this clearly reflects the pre-determined decision of the higher authority to penalise the applicant. This kind of a direction is unheard in the history of service jurisprudence.

b. When provisions relating to holding enquiry if the employee asked for it are available and applicant sought for the same, it is thoroughly illegal on the part of the Disciplinary Authority to ignore the demand and pass the impugned penalty order.

c. Extraneous considerations by the Disciplinary Authority are also manifest when in the speaking order the Disciplinary Authority has stated, "*delinquent employee*

is habitual in making false reports and making allegations against his superiors and colleagues which on investigation by vigilance department were found baseless and incorrect". The applicant contends that the above has not been part of the charge.

13. The above three grounds in my opinion are pregnant and merit full consideration. As regards 5(a) above, of course, it is not uncommon that the higher authority directs the disciplinary authority to initiate disciplinary proceedings on the basis of available documents against an employee. What is unusual in this case is that the higher authority itself took the pain of drafting the article of charge and making it available to the Disciplinary Authority for further proceedings. More surprising than that is when the higher authority asks the Disciplinary Authority to forward the penalty order. This instruction of making available the penalty order is a tacit direction to the Disciplinary Authority that some penalty or the other should be imposed upon the applicant irrespective of whether there be any truth in the charge. And this direction was given to the Disciplinary Authority even before serving upon the applicant the charge sheet. This, in other words, means that the Disciplinary Authority's action in calling for the representation of the applicant is only an empty formality and a mechanical ritual as, the decision to impose penalty had already taken place. This itself vitiates the entire disciplinary proceedings.

14. As regards para 5(b) above, the Rule relating to request for an enquiry in minor penalty proceedings is clear and unambiguous. The said Rule reads as under:-

> *"Holding inquiry if the employee asks for it -- A demand was made that even in the cases of imposition of a minor penalty if the charged employee asks for an inquiry it should be held. The DOP observed that Rule 16 (1-A) (which is the same as Rule 11 (1) and (2) of the D&A Rules) provides for holding an inquiry in the circumstances mentioned therein. In other cases, where a minor penalty is to be imposed, the rule leaves it to the discretion of the Disciplinary authority. The implication is that on receipt of the representation of the employee, the D. Authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding the inquiry and form the opinion whether an inquiry is necessary or not. In case where the employee has asked for inspection of certain documents and cross-examination of the prosecution witnesses, the DA should naturally apply its mind more closely to the request and should not reject it solely on the ground that the inquiry is not necessary, it should say so indicating the reasons, instead of rejecting the request for holding inquiry summarily without any indication that it has applied its mind to the request, as such an action could be construed as denial of natural justice."*

15. The above Rule mandates that when an employee facing a charge under minor penalty proceedings demands an enquiry to be made, due consideration of the demand shall have been given by the Disciplinary Authority. A judicious decision has to be taken in this regard and if the Disciplinary Authority decides to accede to the request, obviously an enquiry shall follow. Instead, if the Disciplinary Authority rejects the request for the enquiry and if he comes to a

conclusion that the enquiry is not necessary, "*it should say so including the reasons, instead of rejecting the request for holding enquiry summarily without any indication that it has applied its mind to the request, as such an action could be construed as denial of natural justice*".

16. When the decision of the Disciplinary Authority is tested on the touch stone of the above mandatory provision it would be manifest that the Disciplinary Authority which has chosen not to hold the enquiry has not reflected any reason for not holding the enquiry and the decision as communicated vide order dated 26.4.2000 clearly reflects the mechanical following of the dictates of the higher authority. Not a modicum of evidence to show that the Disciplinary Authority had applied its mind in awarding the penalty is traceable in the entire penalty order.

17. In addition to the above, the Disciplinary Authority had brought in extraneous aspects in arriving at the decision as rightly contended by the applicant. The speaking order of the Disciplinary Authority indicates, that the applicant was "*habitual in making false reports and raising allegations against Supervisors and Colleagues*". However, there is no such charge in the charge sheet and the applicant had no way to meet with this allegation. It is settled law that when extraneous matters are taken into

consideration the decision becomes a polluted one and the decision is liable to be quashed.

18. As regards the decision by the appellate authority the applicant had argued that a glimpse at the same will go to show that the order was cryptic and lack of application of mind by the Appellate Authority was as much in abundance in considering the appeal as that of Disciplinary Authority in considering the representation and request for an enquiry. There is full substance in this argument. The Appellate Authority has not considered any of the grounds of Appeal though he had stated, *"I have gone through the case and your Appeal dated 8.5.2000. I find you have not brought out anything in your Appeal on the statement of misconduct served on you with SF 11 issued to you."* While the Appellate Authority could endorse the decision of the Disciplinary Authority in which case there need not be any elaborate orders, when certain legal questions have been raised in the appeal, the Appellate Authority is expected to consider such legal issue raised in the Appeal (in this case, ordering enquiry in accordance with the rules). This not having been done, the order of the Appellate Authority is also liable to be quashed and set side.

19. In view of the above, I have no hesitation to hold that the entire disciplinary proceedings are vitiated on account of violation of principles of natural justice, consideration of extraneous aspects

and non-application of mind by the Disciplinary Authority. The cryptic order of the Appellate Authority confirms his non application of mind while passing the appellate order. Consequently, orders dated 26.4.2000 (Annexure - AI) and 23.5.2000 (Annexure - AII) impugned in this O.A. are hereby quashed and set aside. The Respondents are, therefore, directed that any action for reduction in the stage of pay of the applicant taken in the wake of implementation of the above orders shall be undone by passing suitable orders and by paying the amount withheld by them. This amount shall be incremented with an interest @ 6% p.a. from the date of reduction of the pay till the date of payment (This direction is in consideration of prayer "to issue any other suitable writ, order or direction in the facts and circumstances which this Hon'ble Tribunal may deem fit and proper.")

20. This order shall be implemented within a period of three months from the date of receipt of a certified copy of this order.

Under these circumstances that will be no order as to costs.

MEMBER-J

GIRISH/-