

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,  
ALLAHABAD.

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Original Application No. 993 of 2000

this the 12th day of November 2003

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

O.P. Srivastava, S/o late Sri R.P. Srivastava, R/o C-134/16  
Ramduttpur, Lalatola near Kali Mandir, Gorakhpur, presently  
working as J.E. Works-1, N.E.R., Gorakhpur.

Applicant.

By Advocate : Sri S.K. Om

Versus.

1. Union of India through General Manager, N.E.R.,  
Railway, Gorakhpur.
2. Chief Engineer, N.E.R., Gorakhpur.
3. Chief Engineer (Tools & Plant), N.E.R., Gorakhpur.
4. Deputy Chief Engineer, Gorakhpur, Area N.E.R.,  
Gorakhpur.
5. A.K. Chaudhary, Div. Engineer/II (District Engineer),  
D.R.M. Office, N.E.R., Lucknow.

Respondents.

By Advocate : Sri D.C. Saxena.

ORDER

By this O.A., applicant has challenged the orders dated 15.4.99, 26.7.99, 21.9.99 and 10.4.2000 (Annexure no. 6, 8, 9 and 10 respectively), whereby the applicant has been imposed the penalty in the lowest of the grade for a period of 35 months with non-cumulative effect. The appeal and the revision petition have been decided without giving any reason or without dealing with any submission raised by the applicant in his appeal and revision. The applicant has submitted that he had alleged malafides against the respondent no.5 namely Sri A.K. Choudhary, who was



the disciplinary authority of the applicant and was working as Deputy Chief Engineer, Gorakhpur, It is submitted by the applicant that prior to the period and after the period of Sri A.K. Choudhary, was in the office, the applicant has always been appreciated and commended by his superiors, which is evident from the various certificates annexed by him at page 22 onwards. It is submitted by the applicant that the said Sri Choudhary was his boss for the period from 1997 to 2000 and it was only during his period, the applicant was harassed on various occasions. The reasons given by the applicant is that he has not been able to satisfy unjustified greed and irrelevant demands of the said Sri A.K. Choudhary. The counsel for the applicant also submitted that alongwith his reply to the chargesheet, he had submitted the statement of as many as seven persons, who <sup>were</sup> ~~are~~ working in the Training Institute, who had specifically stated that white washing was done after getting the walls scraped in two coat, as well as paint <sup>was</sup> got done by the applicant, while imposing the punishment the disciplinary authority did not give any reason or basis as to how they come to the conclusion that white washing of the walls was done only in one coat.

2. The respondents' counsel have, on the other hand, submitted that the allegation of malafide is absolute vague and without any substance because the applicant had never taken this ground either before the higher authority or in revision and this ground is being taken <sup>as an</sup> only after thought in the O.A. He has further submitted that the <sup>allegations of</sup> malafides are easy to make <sup>against</sup> a person, but it has to be substantiated by giving instances for proving the allegation of malafides, whereas in the instant case, the applicant has merely stated <sup>that</sup> / he could not fulfil the unjustified greed and irrelevant demands of Sri A.K. Choudhary without substantiated and when it was made. as to what demands ~~was taken~~ / Therefore, he has submitted that these allegations have to be rejected out right.

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3. On merits, the counsel for the respondents submitted that whether the white washing of the walls was done after getting walls scraped or not and whether it was properly painted or not who have passed the orders must have verified the position before passing the order. This matter cannot be adjudicated upon in a court of law as this fact can only be ascertained by evidence. He has, thus, prayed that the O.A. may be dismissed with costs.
4. I have heard both the counsel and perused the pleadings as well.
5. It is seen that while giving his reply to the chargesheet, the applicant had categorically not only denied the charge, but had annexed the certificate issued by the Incharge of the Training Centre who had verified the testimony of the applicant that the whitewashing was done after scraping the walls in two coats as well as the statements of as many as seven persons who were posted in the Training Centre itself. More-over, he had also requested the authorities to come and enquire about the matter from other officers who were available there and re-examine the actual position of work. In spite of it, while imposing the punishment, the disciplinary authority had not given any basis on which he had come to the conclusion that the walls were not scraped or white washing was not done properly. It could have been understood if he had stated that on verification from some relevant and concerned officers or the labourers who were working on the site, he had been informed that only one coat was done, but there is absolutely nothing mentioned in the order to show that any such exercise was carried-out by the disciplinary authority, nor he has referred to any fact finding enquiry. Thus, I am not able to understand as to how he came to the conclusion that white washing was got done only in one coat specially when the applicant had specifically enclosed the statements of seven persons alongwith his reply. It does not even reflect from the order passed, that the disciplinary authority had inquired from atleast those persons who were working

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or staying ~~xxxx~~ on the side. Similarly, the appellate and revision orders are also non-speaking orders, whereas the Hon'ble Supreme Court has repeatedly held that whenever a representation is given by the person concerned or appeal made to the appellate authority, they are expected to pass a reasoned and speaking order so that it may satisfy the employee concerned by knowing the reasons as to why the punishment is being imposed on him or why the appeal is being rejected, apart from <sup>assisting B.</sup> ~~hearing~~ the court to come to the conclusion with regard to the correctness of the order passed. In the instant case, since all the orders passed are absolutely non-speaking and no reasons are given as to how they came to the conclusion, therefore, all the orders are found to be un-sustainable in law. Accordingly, all the impugned orders are quashed and set-aside. However, the matter is remitted back to the disciplinary authority of the applicant who may pass an appropriate orders after considering the reply filed by the applicant and after examining the officers whose statements are annexed by the applicant, if so required, by passing a detailed and reasoned order. In case the authorities come to the different conclusion, an appropriate order shall also be passed with regard to the arrears, which the applicant may be entitled to, incase he is given some lesser punishment. This exercise shall be completed within a period of three months from the date of receipt of copy of this order.

6. In view of the above, the O.A. is partly allowed with no order as to costs.



MEMBER (J)

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