

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD**

ORIGINAL APPLICATION NO. 1027 OF 2000

ALLAHABAD THIS THE 18<sup>th</sup> DAY OF MARCH 2008.

**Hon'ble Mr. A.K. Gaur, Member-J**  
**Hon'ble Mr. K.S. Menon, Member-A**

B.B Bhargava, son of late K.L. Bhargava, resident of 24/74, Punia Para, Loha Mandi, Agra PIN 282002.

.....Applicant

(By Advocate: Shri S.S. Sharma)

Versus.

1. The Union of India through General Manager, Western Railway, Church Gate, Bombay.
2. The Divisional Railway Manager, Western Railway, Kota Division, Kota.
3. The Senior Divisional Operating Superintendent, Western Railway, Kota Division Kota/Now Divisional Operating Manager, Western Railway, Kota Division, Kota.
4. Shri R.C. Mudgil, the Inquiry Officer/Station Superintendent (Gazetted), Sawai Madhopur Station, Western Railway.

.....Respondents

(By Advocate: Shri K.P Singh/Shri G.P. Agrawal)

**ORDER**

By Hon'ble Mr. A.K. Gaur, Member-J

Through this O.A., the applicant has claimed following main relief(s):-

- "(i) Issue a suitable order or direction quashing the impugned order dated 8.11.1999 and 4.4.1991 passed by the respondent NO.2 and 3 respectively.
- (ii) Issue a suitable order or direction directing the respondents to reinstate the applicant in service with

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full back salary and all emoluments and consequential service benefits due to him time as if he has not been dismissed".

2. The Brief facts of the case are that applicant while working as Assistant Station Master at Sawai Madhopur Railway Station, was served with a charge-sheet (SF-5) for major penalty on 15.12.1989. The main ground mentioned in the charge-sheet was that while working as Assistant Station Master at Laban Station from 22.00 hrs. of 30.5.89 to 8.00 hrs. of 1.7.89, he removed one cut bundle of 60 printed card tickets of Ex. Laban to Mathura bearing number 05340 to 05399, which were subsequently sold by him to passengers from Narainpur Tatwara Railway Station, where he was subsequently transferred to and posted. For caused loss to the Railway Administration, chargesheet was issued on 15.12.1989 to the applicant (Annexure 1). The applicant demanded the copies of the documents, to enable him to submit his defence. Inspite of repeated request to the respondents, respondents did not pay any heed and no action was taken on the applicant's request. True copy of the order dated 23.5.90 has been filed as Annexure 4. Inquiry Officer was appointed by the Competent Authority without supplying the copy of required documents. According to the applicant, the Inquiry officer could only be appointed after submitting the defence by the applicant, which could be filed due to non-supply of documents by means of letter dated 19.7.90. The applicant came to know for the first time that respondent no. 4 has been appointed as Inquiry officer. The applicant gave the name of Nanak Chand Meena retired DCS, and J.P Gupta, Chief Clerk under MS Kota as his defence counsel as no intimation was received by the applicant from the Inquiry Officer. The respondent NO. 4 with biased attitude proceeded to hold the inquiry and fixed 1.12.1990 and 2.12.1990 as the date for enquiry and recorded the statement of as many as six prosecution witnesses. In nutshell, the inquiry was conducted in utter violation of the provisions of the Rule 9 (13) (a) and 9 (13) (b) and 9 (6) (b) of the Railway Servants (Discipline

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and Appeal) Rules 1968. The applicant was asked to cross-examine the witness in absence of defence witnesses. The request for change of Inquiry officer was also made before respondent NO. 3, however, the request of the applicant remained unconsidered and unattended and the inquiry continued in utter violation of the Rule 9 (3) of the Railway Servants (Discipline and Appeal) Rules 1968. The applicant submitted another application dated 4.12.1990 in writing to the respondent NO. 3 with a copy to the respondent NO. 4 informing that the inquiry was being conducted without providing a defence assistant. On 10.1.1991, i.e. last sitting of inquiry, Inquiry Officer only informed the applicant that Shri J.P. Gupta, Defence Counsel had appeared on 25.12.1990 and withdrew to act as Defence Counsel. Withdrawal of Shri J.P. Gupta was not placed on record by the respondent no.4. The applicant demanded adjournment on several grounds but respondent NO. 4 did not fix any further dates and closed the enquiry and even at the final stage of demanding a brief from the applicant after closure of the inquiry was not filed in the matter. Inquiry Officer submitted the inquiry report before the respondent NO. 3 on the same day i.e. on 10.1.1991 and the enquiry report was received by the applicant by means of letter dated 11.1.1991 asking him to file representation, if any. Vide order dated 4.4.1991, the applicant was awarded the punishment of dismissal from service with the immediate effect (Annexure 14). Departmental appeal preferred to the respondent NO. 2 was rejected contrary to the Rule 22 (2) of the Railway Servants (Discipline and Appeal) Rules 1968 vide order dated 17.10.1991. The applicant filed O.A. No. 2071 of 1993 before the Principal Bench, New Delhi. Counter and Rejoinder replies were exchanged. As the order passed by the Appellate Authority was not in consonance with Rule 22 (2) of Railway Servants (Discipline and Appeal) Rules 1968, the Tribunal vide judgment and order dated 21.7.1999 quashed the order of the Appellate Court dated 17.10.1991 and remanded the matter back for its decision afresh within a period of three months in accordance with Rules (Annexure





17). Vide order-dated 8.11.1999, respondent NO. 2 again passed order dismissing the appeal of the applicant-dated 22.8.1991 and upholding the punishment awarded to the applicant.

3. According to the applicant, the Appellate Authority has again failed to even discuss the issue with regard to quantum of punishment looking to the gravity of the offence which is the implied duty of the respondent no. 2 as per Rule 22 (2) of the Railway Servants (Discipline and Appeal) Rules, 1968. The punishment is too harsh and severe inasmuch as only for loss of Rs.1260/- to the Railway Administration, the services of the delinquent employee could not be dismissed especially when the loss is not of irreparable in nature. According to the applicant, the Appellate Authority even on the remand of the matter by the Principal Bench of the Tribunal while deciding the appeal afresh did not marshal the evidence on record. There is no indication that respondent no. 3 has applied his mind as to whether the act of misconduct with which the applicant was charged together with attendant circumstances and the past record of the applicant was such that he should have been visited with the extreme penalty of dismissal from service for a single lapse, though not admitted, in a span of 26 years. The applicant has already served about 26 years under the respondents and retired after attaining the age of superannuation in the year 2003.

4. It is seen from the record that after remand of the case, the respondents did not file any counter reply except that preliminary objection on the point of maintainability of petition, on the ground of territorial jurisdiction or res-judicata. The respondents did not file any reply on the point of sustainability of subsequent appellate order dated 1.11.1999.

5. In the rejoinder reply filed by the applicant, submitted that respondents did not file counter reply to the O.A. filed by the

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applicant but respondents has incorrectly alleged that this O.A. has been exactly on the facts and law filed in the earlier O.A. NO. 2071/1993 before the Principal Bench, New Delhi. In fact, O.A. NO. 2071/1993 was filed against punishment order dated 4.4.1991 imposing the penalty of dismissal from service and order 17.10.1991 issued by D.R.M, Kota rejecting the appeal of the applicant. The Principal Bench, New Delhi decided the aforesaid O.A. vide judgment and order dated 21.7.1999 with a direction to the Appellate Authority to decide the appeal afresh in accordance with procedure laid down in Rule 22 (2) of Railway Servants (Discipline and Appeal) Rules 1968.

6. We have heard Shri S.S. Sharma, the learned counsel for the applicant and Shri G.P. Agrawal, learned counsel for the respondents and also perused the written argument submitted by learned counsel for the applicant.

7. Shri S.S. Sharma, the learned counsel for the applicant contended that Enquiry officer was biased against the applicant and the entire inquiry was vitiated on this ground alone. According to the applicant, the Inquiry Officer has been suggesting the answers to the witnesses and recording evidence of the witnesses as per his own will and not as per the version of the witnesses. The representation to the Authorities concerned was, therefore, made on 3.12.1990 but the said request was turned down. The Railway Board's letter dated 19.6.1974 was relied upon by the applicant to buttress the contention that where an application was made for change of the inquiry on the ground of bias, the inquiry should be stayed and the application be forwarded to the Competent Authority for passing appropriate orders thereon. It is amply clear that the Reviewing Authority passed an order rejecting the request to change the Inquiry Officer. In our considered view, there is no substance in the allegation that the Inquiry Officer was biased.

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8. We have also noticed that the Principal Bench of the Tribunal had already considered both these points of bias of the Inquiry Officer and non providing the help of a defence assistant, inextentio, in his judgment and order dated 21.07.1999 (Annexure 17 to the O.A.). The Principal Bench of the Tribunal, after considering the entire case on merits, finally came to the conclusion that appellate order suffers from infirmity of non-fulfilling of the requirements of Rule 22 (2) of the Railway Servants (Discipline and Appeal) Rules, 1968. Due to said reason, the order of Appellate Authority dated 17.10.1991 was quashed and Appellate Authority was directed to dispose of the appeal afresh in accordance with the procedure laid down in Rule 22 (2) of the Railway Servants (Discipline and Appeal) Rules, 1968 and in the light of the observation made in the judgment.

9. Shri Ganga Prasad Agrawal, learned counsel for the respondents is wholly right in raising the preliminary objection to the effect that the points, which the applicant has raised in the present O.A., has already been finally adjudicated by the Principal Bench, New Delhi and as such on the principle of res-judicata and constructive res-judicata, the O.A. filed by the applicant is not maintainable. In support of his contention, learned counsel for the respondents has placed reliance on the decision of Hon'ble Supreme Court reported in **1990 ATC Vol. 12 page Jadav Chand Sarkar Vs. Union of India**. In our considered opinion, the present O.A. is barred by the Principle of constructive res-judicata/res-judicata. Learned counsel for the respondents would further contend that earlier the applicant has chosen the territorial jurisdiction of Principal Bench for presenting the O.A., now the applicant has filed this O.A. before Central Administrative Tribunal, Allahabad which has got no territorial jurisdiction in the matter. In this regard, we may quote the following averments contained in para 10 of the rejoinder reply:-

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*"In this respect, it is submitted that after dismissal from service vide impugned order dated 4.4.1991 the applicant shifted from Sawai Madhopur to New Delhi and resided with his real brother Shri Bal Krishan Bhargawa working in Punjab National Bank, New Delhi at the address as given in the previous O.A. filed by the applicant in the Principal Bench, New Delhi. It is submitted that before decision of the earlier O.A. by the Principal Bench dated 21.7.1999, the applicant had to shift from New Delhi to his permanent home address at Agra as his brother was transferred from New Delhi to Gurgawan (Haryana)".*

10. The appellate order dated 8.11.1999 passed by the D.R.M, Kota. This order has been communicated to the applicant at his permanent home address i.e. 24/74, Punia Para, Loha Mandi, Agra and in view of C.A.T. Procedure Rules; the appellate order was communicated to the applicant at his permanent home address, which is within the jurisdiction of this Tribunal under the provisions of C.A.T Procedure Rules, 1987. In our considered view, the present O.A. has rightly been filed in this Tribunal and O.A. is not bad for want of territorial jurisdiction.

11. The learned counsel for the applicant has vehemently argued that none of the grounds raised in the memorandum of appeal has been considered in its true and perspective and according to law by the Appellate Authority after remand of the case. Learned counsel for the applicant would further contend that the order of Appellate Authority was not in consonance with Rule 22 (2) of Railway Servants (Discipline and Appeal) Rules, 1968. Specific ground no. 19 has been taken by the applicant that there is no indication that respondent no. 3 has applied his mind as to whether the act of misconduct with which the applicant was charged together with attendant circumstances and the past record of the applicant was such that he should have been visited with the extreme penalty of dismissal from service for a single lapse, though not admitted, in a span of 26 years. It is relevant to state that dismissal of service is a matter of grave concern to the Civil Servant, who after such a long period of service may not deserve such a harsh punishment. It is stated that principle of natural justice warranted that justice should

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not only be done but it should appear that justice has been done, which lacks in the order of the Appellate Authority. There being non compliance with the requirements of Rule 22 (2) and other provisions of the Rules, the impugned orders passed by the respondents are liable to be set aside.

12. From the record, it is seen that respondents have not filed any counter reply denying the facts stated in the O.A. We have carefully considered the pleas advanced by the parties counsel and we are wholly satisfied that on merits, the present OA is barred by the principle of res-judicata/constructive res-judicata, inasmuch as that on both the points namely bias of Inquiry Officer and prejudice caused to the applicant for not providing the help of defence assistant have already been dealt with by the Principal Bench of the Tribunal in O.A. No. 2071 of 1993 in its order dated 21.7.1999 (Annexure 17, page 86 of the paper book). The point of non supply of documents have elaborately been discussed by the Principal Bench of the Tribunal in O.A. NO. 2071 of 1993.

13. On the other hand, Shri Ganga Prasad Agrawal, learned counsel for the respondents contended that it is not within the jurisdiction of the Tribunal to interfere in the matter of evidence and appreciate it if there ~~is~~ exists some evidence against the delinquent official. As we have already observed that this O.A. is barred by principle of res-judicata/constructive res-judicata. It will not be proper for us to delve into merits of the case.

14. However, we find from the order passed by the Appellate Authority that proportionately of punishment has not at all been considered by the Appellate Authority while rejecting the Appeal in view of decision of the Apex Court in the case of **V.C. Chauhan Vs. U.O.I and others, J.T. 1995 Vol.8 SCC 85**. It is settled principle of law that where the punishment is shockingly disproportionate, this Tribunal might interfere with the order of punishment and

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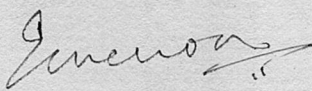


remand the case to the Appellate Authority for consideration of penalty. We have also perused the Appellate Order and do not find that Appellate Authority has considered the proportionately of the punishment. There is also no indication that Appellate Authority has applied his mind as to whether the act of misconduct with which the applicant was charged together with attendant circumstances and the past record of the applicant was such that he should have been visited with the extreme penalty of dismissal from service for a single lapse, though not admitted, in a span of 26 years. In our considered view, the Appellate order cannot be upheld and is not sustainable.

15. Having regard to the reasons referred above, though we do not find any infirmity in procedure as well as in the order passed by the Appellate Authority, but the punishment being disproportionate the appellate order dated 8.11.1999 (Annexure NO. 18) is quashed and set aside with a liberty to the appellate authority to pass fresh, reasoned and speaking order dealing with proportionality of the punishment and having regard to the long service of about 26 years, size of family and clean record of the applicant. The aforesaid exercise shall be completed within a period of 3 months from the date of receipt of copy of the order.

16. With the above observation, the O.A. is disposed of.

No costs.

  
**Member-A**

  
**Member-J**

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