

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO. 1035 OF 2000.

ALONGWITH

ORIGINAL APPLICATION NO.1021 OF 2000
ALLAHABAD THIS THE 8th DAY OF Feb., 2007.

**HON'BLE Mr. Justice Khem Karan, V.C.
Hon'ble Mr. P.K. Chatterji, A.M**

Mahabir Prasad Singh, S/o late Aghori Singh, Village
Jaruha, Post Jaruha (Hazipur) District Vaishali (Bihar).

.....Applicant in O.A. No.1035/2000.

(By Advocate: Sri S.S. Sharma)

Versus.

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, D.R.M Office, Allahabad.
3. The Additional Divisional Railway Manager, Northern Railway, D.R.M Office, Allahabad.
4. Sri Dayal Dogra, The Senior Divisional Electrical Engineer/TRD, D.R.M Office, Northern Railway, Allahabad.
5. Shri T.N Kakaji, Divisional Electrical Engineer/TRD, Northern Railway, D.R.M Office, Allahabad.
6. Shri S.K. Dubey, Divisional Electrical Engineer/RSQ, Northern Railway, D.R.M Office, Allahabad.

.....Respondents in O.A. 1035/2000.

(By Advocate: Sri Amit Sthalekar)

ALONG WITH

Original Application NO.1021 of 2000.

Mahabir Prasad Singh, S/o late Aghori Singh, Village
Jaruha, Post Jaruha (Hazipur) District Vaishali (Bihar).

.....Applicant in O.A. No.1021/2000.

(By Advocate: Sri S.S. Sharma)

Versus.

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.

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2. The Divisional Railway Manager, Northern Railway, D.R.M Office, Allahabad.
3. The Additional Divisional Railway Manager, Northern Railway, D.R.M Office, Allahabad.
4. Sri Dayal Dogra, The Senior Divisional Electrical Engineer/TRD, D.R.M Office, Northern Railway, Allahabad.
5. Shri S.K. Dubey, Divisional Electrical Engineer/RSQ, Northern Railway, D.R.M Office, Allahabad.

..... Respondents in O.A. 1021/2000.

(By Advocate: Sri Amit Sthalekar)

O R D E R

By Mr. Justice Khem Karan, V.C.

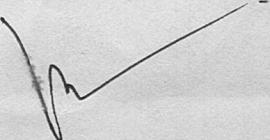
While Original Application No.1021 of 2000 is directed against the memorandum of charges dated 23.6.1998 (Annexure A-1), punishment order dated 26.8.1998 (Annexure A-2) passed by Senior Divisional Electrical Engineer/TRD/Northern Railway/Allahabad, connected original Application No. 1035 of 2000 is directed against memorandum of charges dated 5.5.1998 (Annexure A-1 therein), punishment order dated 9.2.1999 (Annexure A-2 therein) passed by Divisional Electrical Engineer/TRD/Northern Railway/Allahabad and punishment order dated 15.6.1999 (Annexure a-3 therein) passed by Senior Divisional Electrical Engineer/TRD/Northern Railway/Allahabad. In both the O.As, the applicant has also claimed compensation to the tune of Rs.50,000/- each.

2. While working as Junior Engineer Grade I in the scale of Rs. 5500-9000 at Chunar under Assistant Electrical Engineer/TRD (for short AEE/TRD) and under DEE/TRD and Senior DEE/TRD, Northern Railway in Allahabad Division, the applicant was served with two memorandum of charges, one dated 5.5.1998 (Annexure A-1 in O.A. No.1035/2000) and other dated 23.6.1998 (Annexure A-1 in O.A. No.1021/2000) issued by Sri S.K. Dubey,

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DEE/TRD/Allahabad, under Rule 11 of Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as the Rules of 1968). The applicant submitted his explanation in respect of both the memorandum of charges.

3. There is no dispute that on the basis of memorandum of charges dated 23.6.1998 (Annexure A-1 in O.A. No.1021/2000) issued by DEE/TRD, Allahabad, Senior Divisional Electrical Engineer/TRD/Northern Railway/Allahabad passed an order dated 26.8.1998 (Annexure A-2 in O.A No.1021/2000) imposing the penalty of reduction to the stage of Rs.5500 in the pay of 5500-9000 for a period of three years without any cumulative effect on the future increments. Against this order, applicant preferred an appeal (Annexure A-3) to Additional Divisional Railway Manager which according to the applicant was pending even on the date this original application was filed and which according to the respondents, was dismissed vide order dated 8.4.1999 (see para 17 of reply filed in December 2000). It appears that on the basis of memorandum dated 5.5.1998, Sri S.K. Dubey, DEE/TRD passed order dated 9.2.1999 (Annexure A-2 in that O.A.) imposing a penalty of withholding of two increments for a period of two years without any cumulative effect on the future increments. He provided that this punishment order will take effect after the currency of previous penalty inflicted vide order dated 26.8.1998. It was also stated in this order dated 9.2.1999 that these orders were being passed with the approval of Senior Divisional Electrical Engineer/TRD/Northern Railway/Allahabad. The applicant preferred an appeal to Senior Divisional Electrical Engineer/TRD/Northern Railway/Allahabad, who vide his order dated 15.6.1999 (Annexure A-3) in O.A. No.1035/2000 recalled the punishment order dated 9.2.1999 passed by DEE/TRD and himself passed a fresh order of punishment withholding two increments for two years without any



cumulative effect, and providing that the same will take effect after the currency of previous penalty imposed on 26.8.1998. It transpires from Annexure A-4 (in O.A. No.1035/2000) that the applicant preferred an appeal to Additional Divisional Railway Manager, Allahabad against order dated 9.2.1999 of DEE/TRD/Allahabad. The record does not reveal that Additional Divisional Railway Manager, Allahabad passed any order in this appeal. Pleadings do not disclose that the applicant preferred any appeal against the order dated 15.6.1999 of Senior Divisional Electrical Engineer/TRD/Northern Railway/Allahabad.

4. Since punishment order dated 9.5.1999 passed on the basis of memorandum dated 5.5.1998 by DEE/TRD/Allahabad has been recalled by Senior Divisional Electrical Engineer/TRD/Northern Railway/Allahabad vide order dated 15.6.1999 so we will retain from referring to the grounds taken in the Original Application for challenging that order as in our opinion that order did not survive after order dated 15.6.1999 of Senior Divisional Electrical Engineer/TRD/Northern Railway/Allahabad. The grounds taken by the applicant in both the O.As for assailing two memorandum of charges and the respective punishment orders are almost common and the same are as under:-

(i) That two memorandum of charges as mentioned above were actuated by malice and were based on false and frivolous grounds;

(ii) That in case of the applicant, DEE/TRD was not the Disciplinary Authority as is clear from Schedule-II of the Rules of 1968, as he was not holding in dependent charge, so was not competent to issue two memo of charges and not only the charges but also the punishment orders, deserve to be quashed;



(iii) That two memorandum of charges were not as per the requirement of Rule 11 of the Rules of 1968;

(iv) That punishment orders dated 26.8.1998 and 15.6.1999 being non-speaking and cryptic, deserve to be quashed on that ground alone;

(v) That punishment orders are influenced by extraneous consideration;

(vi) That the two punishment orders dated 26.8.1998 and 15.6.1999 have been passed in breach of sub-Rule (2) of Rule 11, as the applicant was due to retire on 31.8.2003;

(vii) That in the facts and circumstances of the case, an enquiry was necessary with a view to afford reasonable opportunity of hearing to the applicant;

4. Defending the issuance of two memorandums of charges issued by DEE/TRD/Allahabad, respondents have said that since DEE/TRD/Allahabad was competent under the Rules to impose the penalty of 'censure' on the applicant, so was fully competent to issue two memorandum of charges. They concede in para 8 of supplementary reply, that it is correct that DEE/TRD/Allahabad was not holding independent charge. They also concede in para 7 of the same reply, that in the case of applicant, Senior Divisional Electrical Engineer/TRD/Northern Railway/Allahabad, a junior administrative grade officer was the Disciplinary Authority. They have tried to say that in minor penalty chargesheet, the Authority was not required to hold any full fledged enquiry under Rule 9. It is stated that the punishment orders are speaking one and are fully justified and the allegations to the effect that Senior D.E.E. Sri Dogra was harbouring any malice

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against the applicant, is totally ill-founded. They say Sub Rule (2) of Rule 11 of the Rules of 1968 was not attracted to the fact of the case and so two punishment orders cannot be interfered with for want of full fledged enquiry, as referred to therein. According to them, appeal preferred by the applicant against the punishment order dated 26.8.1998, was rejected by Additional Divisional Railway Manager, Allahabad and no appeal was preferred against the punishment order dated 15.6.1999. They do not dispute that the applicant took voluntary retirement on 9.1.2000.

5. In his rejoinder filed in O.A. NO.1021/2000, the applicant has asserted that appeal preferred against the punishment order dated 26.8.1998 to Additional Divisional Railway Manager, Allahabad was still pending and had not been disposed of.

6. There appears to be sufficient force in the submission of Shri S.S. Sharma, that Shri S.K. Dubey the then D.E.E/TRD, who issued the two memos dated 5.5.1998 and 23.6.1998, under Rule 11 of the Rules of 1968, was not the Disciplinary Authority within the meaning of Rule 2 (C) read with Rule 7 and Schedule-II of the Rules of 1968, in the case of applicant. The applicant being a Junior Engineer Grade-1 was Group C employee. His scale of pay was 5500-9000. As per Schedule-II, Sr. Scale Officer and Asstt. Officers (Junior Scale of Group B) holding independent charge, as mentioned in column 3, were competent to impose "censure", the minimum penalty under Rule 6, on Group 'D' and 'C' staff except in grade of 6500-10,500. The Officers mentioned in column 4 of Schedule II are those officers who can impose penalty of censure, withholding of passes and other penalties as mentioned therein, on Group D and C staff, irrespective of their pay scales. Since the applicant was in the scale of Rs.5500-9000, so none of the officers mentioned in

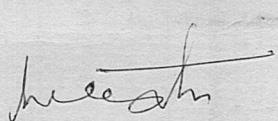
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column 1 and 2 was a disciplinary Authority in his case. Admittedly, Shri S.K. Dubey was a Senior Scale Officer but was not holding independent charge, so was not a Disciplinary Authority, in case of the applicant. We fail to understand as to how it is being said in reply that Shri S.K. Dubey, DEE/TRD was competent to impose a penalty of censure, on the applicant.

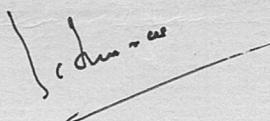
7. Rule 8 (1) of the Rules of 1968, only a Disciplinary Authority can institute proceedings, for imposition of penalties specified in Rule 6. We think the two memo of charges issued under Rule-11, by Shri S.K. Dubey the then DEE/TRD, were without jurisdiction. We agree with Shri Sharma that not only the memo of charges but also entire subsequent proceedings, including the punishment orders deserve to be quashed for that reason. We think, the case for compensation is not made out, as there are no personal allegation against Shri S.K. Dubey nor Shri Sharma has addressed us on that point.

8. In view of what we have found above, we need not enter into other aspects of the matter. The applicant is already retired.

9. The two memorandum of charges dated 5.5.1998 and 23.6.1998 issued by Shri S.K. Dubey the then DEE/TRD, N. Railway, Allahabad as well as the punishment orders dated 28.6.1998 and 15.6.1999, on referred to above, are hereby quashed with all consequential benefits. Both the O.As as mentioned in the beginning stands dispose of accordingly. No order as to costs. Copy of this order be placed on the record of corrected O.A.


Member-A

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Vice-Chairman