

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO.126 OF 2002

ALLAHABAD THIS THE 7th DAY OF Dec OF 2006

**HON'BLE MR. JUSTICE KHEM KARAN, V.C.
HON'BLE MR. P.K. CHATTERJI, MEMBER-A**

Nurul Haq, S/o late Abdul Haq, aged about 50 years, R/o 464, Atala, Allahabad.

.....Applicant

(By Advocate: Sri S.S. Sharma)

Versus.

1. Union of India through the General Manager, N.R., Headquarters Office, Baroda House, New Delhi.
2. Additional Divisional Railway Manager, N.R., DRM Office, Nawab Yusuf Road, Allahabad.
3. Sr. Divisional Signal & Telecommunication Engineer, N.R. DRM Office, Allahabad (Appellate Authority).
4. Divisional Signal & Telecommunication Engineer, N.R., DRM Office, Allahabad (Disciplinary Authority).
5. The Asstt. Signal & Telecommunication Engineer, N.R., DRM Office, Allahabad (Enquiry Officer).

....Respondents

(By Advocate: Sri P. Mathur)

O R D E R

BY P.K. CHATTERJI, MEMBER-A

The applicant in this O.A., while he was working as Helper Khalasi under Senior Section Engineer, Northern Railway, Allahabad, was served with memorandum of charges for major penalty vide memo no. Sig/E/91 dated 28.1.1991 by the Assistant

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Signal & Telecommunication Engineer (I), N.R, Allahabad. The articles of charges are as follows :-

"That the said Shri Nurul Haq while functioning as Khalasi under CSI (D)/W/ Allahabad during April'87 to February, 89 has taken Rs. 34620/- (Rupees thirty four thousand six hundred twenty only) for as Travelling Allowance and Festival Advance and arrear pay illegally in his salary with the collusion of Sri Devashish Ghosh, Head Clerk of CSI (West)/Allahabad. Also he did not report the matter to his superiors that he has drawn above mentioned amounts illegally. He has failed to maintain absolute integrity and has acted in a manner which is unbecoming a Railway servant and thus has violated para 3 (1) (i & iii) of Railway Services Conduct Rules, 1966."

2. It has been alleged by the applicant that after issue of chargesheet, he had requested the disciplinary authority to supply certified copies of all the documents relied upon and also for inspection of the same. But none of the documents as mentioned in the chargesheet were given to him. So, the applicant was deprived of reasonable opportunity for defence. The Chief Signal & Communication Inspector-I, Allahabad was appointed as Enquiry Officer. He conducted the enquiry on several dates. Thereafter he submitted his report. After submission of the enquiry report, the Disciplinary Authority i.e. D.S.T.E., N.R., Allahabad vide his letter no. Sig/E/D&AR/2K/NH dated 8.1.2001 imposed the following penalty upon the applicant:

"As the charges are proved, impose the penalty of reduction to the lowest stage in present grade of your pay scale. That you are reduced to the basic pay of Rs. 2650/- in the pay scale of Rs. 2650-4000/-. This punishment is

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cumulative in nature affecting his future increments also".

3. It is alleged by the applicant that the Disciplinary Authority did not consider and apply his mind to the findings of the Enquiry Officer recorded in para 7.1 and 7.2 of the Enquiry report as well as the facts as mentioned against paras 6.5, 6.6, 6.8 and 6.9 of the Enquiry report, which stated that the documents relied upon, relating to the allegations of excess payment were not supplied to the applicant. The fact that mere imposing the punishment after recording that he ~~agreed~~^{agreed} with the findings of the Enquiry report shows that he had not applied his mind.

4. The applicant is also aggrieved that two vital witnesses in the enquiry namely Sri Agnihotri and Sri Sharma were not examined as witnesses although requested by the applicant and also their submissions during the preliminary enquiry were relied upon. It is pertinent to mention here that while the Enquiry Officer could not prove on the basis of the available evidence that the applicant also got the excess payment through the racket master minded by one Sri Devashish Ghosh, Enquiry Officer has relied upon the alleged confession made by the applicant at some point of time that some subordinate staff were making money through this racket. For this reason, the Enquiry Officer has not

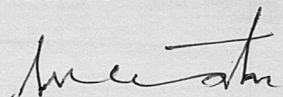
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absolved him totally from the charges levelled against him.

5. Being aggrieved by the punishment order dated 8.1.2001, the applicant filed an appeal before S.D. S.T.E N.R., Allahabad vide his appeal dated 27.2.2001. But the appellate authority after considering his submissions rejected the appeal of the applicant, that too without allowing him any personal hearing. A Revision Petition was filed by the applicant thereafter to the Additional Divisional Railway Manager, N.R., Allahabad on 17.8.2001, but that was also rejected.

6. The applicant has sought the relief that the Tribunal may quash the impugned penalty order dated 8.1.2001 on the following grounds:

- (a) The orders are without any evidence, documentary or oral, but based on extraneous considerations.
- (b) The orders are malafide and biased.
- (c) The applicant's complicity in the fraud has not been established and so the memos of charges are false, concocted and fabricated.
- (d) The documents relied upon in the chargesheet were not produced.
- (e) Two important witnesses namely Sri Sharma and Sri Agnihotri were not called and the applicant was deprived of his right to cross examine them to prove his innocence.
- (f) The orders are violative of the relevant disciplinary rules of the



Railways which stipulates that when a person's salary is reduced to a lower stage in the same time scale of pay, the currency of the order should be of a definite, specified period and it should not be indefinite.

- (g) None of the orders i.e. disciplinary, appellate and the Revisional order are speaking order.
- (h) It has also been alleged by the applicant that there were other officials who were proceeded against in the same case. But all of them have either been let off with a light punishment or exonerated. Only he has been singled out for such heavy punishment.

7. In their submissions, the respondents have denied the allegations and it has been stated by them that there was full application of mind by the disciplinary authority and the report of the Enquiry Officer was taken into consideration. It has been admitted by the respondents that some of the documents mentioned in the chargesheet could not be produced. But it has not ~~been~~ vitiated the disciplinary proceedings inasmuch as such documents have not been relied upon either in the findings of the Enquiry Officer or in the punishment order.

8. During hearing, the learned counsel for the applicant said that it was obvious that the disciplinary authority did not agree with the findings of the Enquiry Officer which had cleared the applicant from the principal allegation that he was beneficiary of the excess payment racket. The charge against him was proved only to the extent

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that the applicant had signed the pay receipt through which excess payment was drawn. In other words, his complicity in the racket of excess payment has not been proved beyond doubt. In making this point, the learned counsel has cited from the judgment of the Apex Court reported in **1998 SCC (L&S) 1783 Panjab National Bank Vs. Kunj Behari Mishra** as follows :

"Departmental Enquiry-Enquiry Report-Findings favourable to charged employee-Disciplinary authority if required to give opportunity of representation to charged before differing with those findings- Held principles of natural justice as enunciated in B. Karunakar Case (1993) 4 SCC 727) require such opportunity to be given. Punjab National Bank Officer Employees' (Discipline & Appeal) Regulations, 1977, Regn. 7(2)-Held, principles of natural justice have to be read into Regn. 7(2) though it is silent on this aspect-When to read into statutory rules."

9. The learned counsel for the applicant is of the view that by application of this decision it was incumbent upon the Disciplinary Authority to record his specific and reasoned views as to the findings of the enquiry report.

10. The other point which has been made by the learned counsel for the applicant is that the disciplinary order is void for violation of the relevant Disciplinary Rules of the Railways which stipulates that punishment order of reduction to a lower stage of the Time Scale of Pay should specify the currency of the punishment order. It has been admitted by the respondents that this was a lacuna

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in the punishment order for which the case can be remanded back to the respondents.

11. The applicant has also pleaded that the punishment order, appellate and Revisional order be quashed. He has not requested to quash the entire disciplinary proceedings although he has cited the various reasons as to why it was vitiated. For this reason, we are not inclined to set-aside the disciplinary proceedings being aware that Tribunal/Court are not appellate bodies but are only required to see that the disciplinary proceedings suffer from no infirmity for violation of the relevant provisions. In this case, we find that the proceedings were conducted as per the rules and documents and witnesses which could not be produced were not relied upon the findings of the enquiry. We observe however, that the Disciplinary authority should have recorded the extent of his agreement or otherwise with the report of the Enquiry Officer. Therefore, we do not quash the disciplinary proceedings. But for the aforementioned reasons, we hereby set aside the punishment order as well as the Appellate and the Revisional order. The Disciplinary Authority should pass fresh orders after apprising the applicants of the points of his agreement/disagreement with the Inquiry Officer, and after giving an opportunity to make representation in respect of those points and the enquiry report, and issue fresh orders. While issuing the orders he should ensure that these are in conformity with the Disciplinary Rules regarding quantum of punishment, as discussed in the preceding paragraph 10.

12. With these observations, the O.A. stands disposed of as above. No costs.

[Signature]

MEMBER-A

[Signature]
07.12.26

VICE CHAIRMAN

G.S.