

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

(THIS THE 27TH DAY OF MAY 2009)

PRESENT

HON'BLE MR. JUSTICE A.K. YOG, MEMBER-J
HON'BLE MRS. MANJULIKA GAUTAM, MEMBER- A

ORIGINAL APPLICATION NO. 258 of 2002.
(U/S 19, Administrative Tribunal Act, 1985)

Amar Chandra son of Late Girdhari Lal, Resident of 115-B, Rly.
Colony No.2, Subedar Ganj, Allahabad-211011.

.....Applicant

By Advocate : Shri D.S. Srivastava
Shri S.L. Kushwaha
Shri R.L. Varma
Shri S.K. Maurya

Versus

1. Union of India, through General Manager, Northern Rly.
Headquarter Office, Baroda House, New Delhi.
2. Additional Divisional Railway Manager, Allahabad
Division, Northern Railway, Allahabad.
3. Senior Divisional Commercial Manager, Northern
Railway, Allahabad Division, Allahabad.
4. Divisional Commercial Manager, Northern Railway,
Allahabad Division, Allahabad.
5. Senior Divisional Personnel Officer, Northern Railway,
Allahabad Division, Allahabad.
6. Enquiry Officer, (Shri Sunder Lal, Chief Enquiry Inspector
HQ), Northern Rly. New Delhi) D.R.M., Office, New Delhi.

.....Respondents

By Advocates : Shri P Mathur

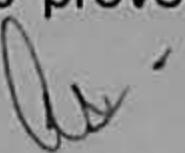
ORDER

(Delivered by: JUSTICE A.K. YOG - JUDICIAL MEMBER)

Heard Shri D.S. Srivastava, Advocate appearing for the applicant and Shri P. Mathur, Advocate appearing for the Respondents. Perused the pleadings and documents on record.

2. The applicant/Amar Chandra- filed above O.A. being aggrieved against impugned order of punishment in pursuance to the disciplinary enquiry initiated on the basis of chargesheet as provided under relevant Rules, which finally culminated in the impugned order dated 01.12.2000 (Annexure A-13/Compilation 1) passed by Disciplinary Authority/Respondent No. 4 whereby he is being awarded punishment of 'Penalty of Removal from service'. Admittedly, the applicant filed appeal before respondent No. 3 who is also dismissed vide impugned order dated 21.3.2001 (Annexure A-14/Compilation I). Not being satisfied, applicant filed revision, which has dismissed by means of impugned order dated 23.11.2001 (Annexure A-15/Compilation I).

3. Briefly stated; Inquiry Officer after holding detailed enquiry submitted its report finding charges *prima facie* proved. Disciplinary Enquiry issued show cause notice, and after holding enquiry in accordance with Rules (including opportunity to the applicant) found charges proved. Perusal of impugned



order passed by Disciplinary Authority as well as FIR dated 8.5.1998 (Annexure A-6/Compilation II) go to show that the Applicant was charged of committing fraud/irregularities/embezzlements. It is on record that there are several other officials/employees in the department involved in a planned racket amounting to criminal misconduct. The applicant has been held guilty of serious lapses in discharging his duties while working as Booking Window.

4. Learned counsel for the applicant extraneously argued that inquiry held by the applicant is not in order as the applicant was not given adequate opportunity to examine certain documents and important witnesses including in respect of ERDC Engineer of (Ex-P-2), as mentioned in his letter dated 12.11.1999 (Annexure A-8/Compilation II). Nothing has been, however, shown on record that 'prejudiced' is caused to the Applicant because of alleged omission.

5. The Appellate Authority has, in its order dated 21.3.2001 observed as follows:-

".....I have gone through the case in detail. You has asked for personal hearing, which was granted on 5.2.2000 but you did not turn up. Thus, you have nothing more to say except for your written defence.....".

6. Para 4.33 of the O.A. reads:-

"4.33 That the applicant thereafter under Rule 18 RS (D & A) Rules, 1968 preferred an Appeal before the appellate Authority, Sr. D.C.M, Respondent NO. 3 who declined to interfere with the order dated 1.12.2000 passed by Disciplinary Authority, the DCM, respondent NO. 4, and rejected appeal without giving any reason vide order dated 21.3.2001 violating the principles of providing

reasonable opportunity for not ensuring the personal hearing to the applicant. The true copy of the Order dated 21.3.2001 passed by the Respondent NO. 3 is being filed herewith as marked ANNEXURE 14 to the compilation I to this O.A"

7. Interestingly no ['averments'/'pleadings' is available on record to effect that the fact mentioned in the Appellate Order, (viz the applicant was called for personal hearing on 5.2.2000) is incorrect.
8. Apart from it, applicant has not filed memo of revision. It is admitted before us that there is no incorrect statement of fact in the order of Appellate Authority.

9. On the other hand, relevant extract of para 25 of the counter reply filed by the respondents reads:-

"25. That the contents of paragraphs NO. 4.33, 4.34, 4.35, 4.36, 4.37 and 4.38 of the application are not admitted in the form they stand and are emphatically denied. In reply thereto, it is submitted that as per the provisions as contained under Rule 18 of the Railway Servant (Discipline & Appeal) Rules, 1968, the appeal so preferred by the applicant before the competent Appellate Authority was duly considered and a detailed speaking order dated 21.3.2000 was passed by the competent authority by affording an opportunity of personal hearing on 5.2.2000 but the applicant did not turn up and therefore, there was no other option before the competent Appellate Authority except to decide the appeal on the basis of the material available on file and the grounds put forth with by the applicant in the memo of appeal"

10. Aforequoted para 25 of the counter reply has been replied by the applicant vide para 21 of the rejoinder. Relevant extract of which reads:-

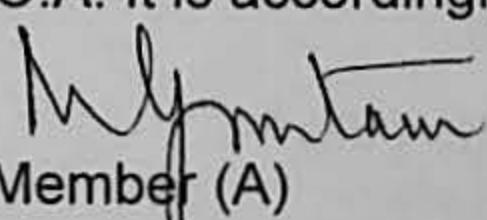
"21. That the contents of para No. 25 of the counter reply as stated are wrong hence denied. In reply to the same the contents of para NO. 4.33, 4.34, 4.35, 4.36, 4.37 and 4.38 of O.A. are

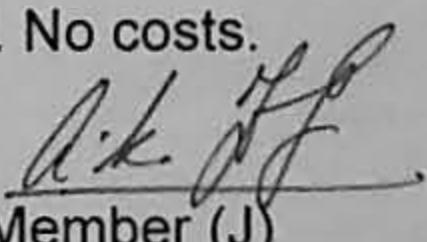
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reiterated and reaffirmed. It is further stated that sit is wrong to say that the respondent NO. 3 Sr. D.C.M had afforded an opportunity of personal hearing. True fact is that respondent No. 3 has not informed/intimated the applicant in any manner for the personal hearing dated 5.2.2000 as such the allegation that the applicant did not turn up is wholly misconceived".

11. From the pleadings brought on the record of this O.A., it is clear that veracity/correctness of the fact mentioned in the Appellate Order regarding 'opportunity of hearing' provided to the applicant has no been disputed. New averments in rejoinder affidavit alleging that 'respondents did not give opportunity to reply'- has to be ignored. Applicant cannot, now, challenge the order of Disciplinary Authority. Applicant himself having failed to avail opportunity, he cannot be permitted to point out illegality in the order of the Appellate Authority for the first time in the present O.A.

12. Otherwise also, we find that applicant has failed to show any ground for interference with the order of Disciplinary Authority. Before parting, we may refer to the argument made by learned counsel for the applicant regarding competency of Appointing Authority. It is being submitted that in fact it is the concerned General Manager, who was competent to pass order of removal against the applicant. We do not find categorical pleadings as to the factum of delegation of power as per Relevant Rules, if any,. Applicant has made half hearted argument in this case. Moreover applicant did not take up plea before Appellate Authority and Revisional Authority, who had better position to adjudicate on this issue which require examination of fact as well as legal position. We find no merit in this O.A. It is accordingly dismissed. No costs.


Member (A)


Member (J)

Manish/-