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OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD**

(THIS THE 28<sup>TH</sup> DAY OF MAY 2009)

PRESENT

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

**ORIGINAL APPLICATION NO. 576 of 2002**  
**(U/S 19, Administrative Tribunal Act, 1985)**

Franklin Dived Singh, aged about 51 years, S/o Late Shri C.D. Singh R/o  
Bungalow No.2, Mission Road, Old Katra, Kachery, Allahabad.

By Advocate: Shri Rakesh Verma

..... Applicant

*Versus*

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Chief Mechanical Engineer (O&F), Northern Railway, Baroda House, New Delhi.
3. The Divisional Mechanical Engineer (p), Northern Railway, Lucknow.
4. The Assistant Mechanical Engineer, Northern Railway, Lucknow.
5. The Additional Divisional Railway Manager, Northern Railway, Lucknow.

By Advocate: Shri D.S. Shukla

..... Respondents

**(Delivered by: Justice A.K. Yog Member-J)**

Heard Shri Rakesh Verma, Advocate and Shri D.S. Shukla,  
Advocates appearing for the respective parties.

2. The applicant, an employee of the Railway Department, was subjected to disciplinary enquiry on the basis of certain charges pertaining to forging of bills/supplemental Bills and drawing Rs.4,952.50/- and thus taking payment in fraudulent manner which was otherwise not due to him causing loss to the Railways. Other charges was of the Applicant being absent from duties without information.
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Enquiry Officer held enquiry and found charge proved and the applicant guilty of omission and commission and thereby failing to maintain absolute integrity, devotion to duty and having acted in a manner unbecoming of a Railway Servant under Rules 3.1(2)(ii) and (iii) of Railway Servants (Discipline and Conduct) Rule, 1968. The Disciplinary Authority (D.A.) gave show cause notice and before passing impugned order in view of request made by the applicant, fixed 04.04.1994 to afford opportunity of hearing. Applicant does not dispute that DA had fixed for 04.04.1994 for personal hearing. According to the Applicant when he approached DA on 04.04.1994, he could not meet the Disciplinary Authority on the said date. The DA, however, held the applicant guilty and passed impugned order dated October 31, 1994/Annexure-1 Compilation-I.

3. In the said impugned order Disciplinary Authority has in the impugned order observed that "Shri F.D. Singh, who was given time for personal hearing on 04.04.1994 did not turn-up on that date. On the other hand, learned counsel for the applicant, refers to Photostat copy of letter dated 02.04.1994 addressed to DME(P) Lko which contains an endorsement dated 04.04.1994 -(signed eligible) to the effect—"Shri F.D. Singh ..... attended this office on date but he could not meet DME and he is being spared back at your for further duty" /Annexure-9 Compilation-II/

4. Admittedly, order of punishment was passed (by Disciplinary Authority) after about Six months of the last date fix for personal hearing i.e. 04.04.1994. There is no explanation as to why the applicant did not protest/object and asked for another date. In Para-3 of Memorandum of Appeal dated 6.1.1995 for the first time he alleged- "that the appellant was ordered to be appear before D.M.E.P. on 4.4.1994 in compliance of

Per -

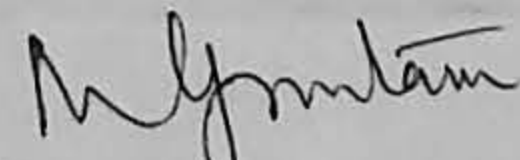



the said order appellant approached D.M.E.(P) but he was not available at the place of meeting".

5. It is interesting to note 'contradiction' between Para-3 of the said memorandum of appeal and the endorsement dated 04.04.1994 (on above referred letter dated 02.04.1994) Annexure-9. In para 3 of memo of Appeal it is asserted that DME(P) was not available at the place of meeting. On the other hand, the above endorsement dated 4.4.1994 or letter dated 2.4.1994/Annexure-9 purports to state that the applicant could not meet DME(P) but interestingly it is not disclosed under what circumstances.

6. We find that the applicant did not ask for another date and remained silent till decision of DA. The Appellate Authority has taken into account attending circumstances and noted that the applicant did not ask for 'other date' for personal hearing. We find that Disciplinary Authority/ Appellate Authority has not faulted in providing opportunity of personal hearing.

7. Persons who do not avail the opportunity himself when offered and remained quiet for Six months and he also later turn down and challenge the order of DA on the ground of depriving reasonable opportunity of hearing. O.A. dismissed being devoid of merit. No costs.

  
**Member-A**

  
**Member-J**

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