

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
THIS THE 14th DAY OF JULY, 2007
Original Application No.609 of 2002

CORAM:

HON.MR.JUSTICE KHEM KARAN, V.C.
HON.MR.P.K.CHATTERJI, MEMBER(A)

Parshu Ram, Ex. Head Clerk
Resident of 257/79-A/1 Menhajpur
Jalsanstham, Khusrubagh, Allahabad.

..Applicant

(By Adv: Shri B.Behari)

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Allahabad.
3. The Addl. Divisional Railway Manager, Northern Railway, Alld.
4. The Senior Divisional Operating Manager, Northern Railway, Divisional Railway Manager's Office, Allahabad.
5. The Divisional Operating Manager, Northern Railway, Allahabad.

..Respondents

(By Adv: Shri P.N.Rai)

ORDER

BY HON.JUSTICE KHEM KARAN,V.C.

Applicant Parshu Ram prays for quashing order dated 7.8.01 (A-3) by which the respondent No.5, removed him from service; (ii) order dated 28.1.01 (A-2) by which the respondent no.4, dismissed his appeal under Rule 18 of Railway Servants (Discipline & Appeal) Rules, 1968 and (iii) order dated 8.4.02 (A-1) by which the respondent no.3, dismissed his revision under Rule 25 of the said Rules of 1968 but

Connected vide order
dated 14.9.07

14.9.07

modified the punishment so as to substitute compulsory retirement in place of removal from service.

2. Applicant's case in brief is that while being posted as head clerk at Naini Railway Station of Northern Railway, he was insulted, humiliated, and intimidated on 2.9.1996, by the then Station Manager, Shri D.C. Mishra, against which he petitioned to various authorities including to National Commission for Scheduled Castes and Scheduled Tribes and State Commission for Scheduled Castes and Scheduled Tribes and ultimately an F.I.R was lodged, in April, 2000 against Shri D.C. Mishra, for having committed offences punishable u/ss 3 (1) (X) of Scheduled Caste D Scheduled Tribes (Prevention of Atrocities) Act, and u/ss 504/506 of I.P.C (See Annexures 2,3,4,5,6,&7 to supplementary affidavit dated 7.2.07 and para 4, of O.A.). He says in para 5 of O.A. and in Annexure 2 to supplementary affidavit dated 7.2.07 that the Senior Divisional Operating Manager (Shri Anurag) pressurized him to withdraw the case against Shri Mishra, else to face music.

It appears in December 1999, he was transferred to Chunar Railway Station. It was in the month of July, 2000 that he received a charge sheet dated 5.7.2000 (A-4), issued by respondent No.5. He alleges, copies of relevant documents as mentioned in the charge sheet were not supplied to him, so he demanded the same, but the same could not be supplied, and consequently he could not reply to the charge sheet. One L.D.Sen, Traffic Inspector was appointed Inquiry Officer, but he too ignored the demand for copies of documents. He alleges since Shri Sen, being under administrative control of respondent No.4, was not expected to hold 'impartial inquiry' so on applicant's representation to D.R.M, he was replaced by one Behari Ram, who too was of Operating branch, hence the applicant insisted for an enquiry by an officer of the branch, other than Operating branch, but his request was not accepted. On retirement of Shri Behari Ram, one R.N. Sagar, Supdt. Kanpur Central, was appointed as Inquiry officer, but he being under administrative control of respondent no.4, was also not independent. It was Shri Sagar, who appear to have submitted enquiry report dated 30.6.2001 (A-34), holding all the six charges proved. On receipt of show cause notice

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and copy of report dated 30.6.2001, the applicant, submitted reply dated 26.7.2001 (A-35). Thereafter, the impugned orders, were passed, one after the other.

3. The main grounds taken in the OA for assailing the finding of guilt and the order of punishment, are that he was not supplied with the copies of the relied on documents nor was afforded reasonable opportunity of hearing and the Inquiry Officers were not impartial and independent as all of them were under the administrative control of respondent no.4 namely Senior Divisional Operating Officer, on whose report all this was cooked up, because applicant did not oblige him and others by withdrawing his FIR, against Shri D.C.Mishra. He complains that even the appellate and revisional authority did not pay attention to his main grievance, regarding non supply of copies of the relevant documents so mentioned in the charge sheet and Inquiry Officers being under the administrative control of respondent no.4 & 5 were not impartial and independent and their actions reflected their biased attitude. Attempt has also been made to say that charges were not so serious as observed by the Revisional Authority, so penalty of removal from service or penalty of compulsory retirement is disproportionate to the guilt. It has also been said that findings regarding the guilt are not based on any acceptable evidence.

4. The respondents have contested the claim by filing a reply. They say in para 9,11,14 & 39 of this reply that documents so relied on in the charge sheet were supplied to the applicant. They say that applicant should prove that the copies of the relied on documents were not supplied to him. Shri Anurag, Senior Divisional Operating Manager has also filed his counter affidavit. In para 8 of this counter affidavit it has been stated that though copies of relied on documents were supplied to the applicant along with the charge sheet itself, but on his specific request, the same were again sent to him by registered post, which he received on 18.7.2000 and this fact was also confirmed by letter dated 20.7.00 of Station Supdt, Chunar. SCA-1 is letter dated 20.7.00 and SCA-2 is the photo copy of acknowledgement. The respondents have tried to say that the entire allegations that the applicant was pressurized by a Senior Divisional Operating Manager to withdraw his FIR or respondent no. 4 & 5 were biased or pre

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occupied or were determined to remove the applicant from service, are totally false and frivolous. They say that the applicant himself adopted lingering tactics by giving one representation or the other, for supply of the documents or for change of the Inquiry officer and he himself avoided to cross examine the witnesses so examined, and so the Inquiry officer had no option but to proceed exparte and record his findings on the basis of the documents and the un cross examined testimonies of the witnesses. They say the applicant was afforded reasonable opportunity of hearing at all stages but he avoided to avail of the same and wanted to keep the matter pending on one pretext or the other. They say appellate and revisional authorities applied their mind to the facts and circumstance of the case and their orders cannot be interfered with.

5. The applicant has filed rejoinder, supplementary rejoinder affidavit referring to incident of 2.9.96 and to the efforts made by him right from the date till the lodging of the FIR in 2000 and has also filed copies of the applications and representations.

6 Parties Counsel have filed their written arguments and have also been heard orally. We have perused the entire material available on record.

7. The learned counsel for the applicant has vehemently argued that it is more than evident from the material on record that 9 documents shown in Annexure 3 of the charge sheet dated 5.7.2000 were not supplied to the applicant inspite of his representations dated 22.7.2000 (A-5), 25.9.2000 (A-6), 9.10.00 (A-7), 10/16.1.01 (A-13). He argues that the question of non supply of relied on documents was also reiterated in reply (A-35) to the show cause notice and also in memo of appeal (A-36) and memo of revision (A-37) but none of the authorities adverted to this grievance. It is said that due to non-supply of the relevant documents, the applicant could not, reply to the charge sheet nor could cross examine the witnesses, with the results enquiry proceeded almost exparte.

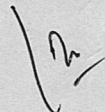
8. Shri P.N.Rai, the learned counsel for the Railways, has submitted that copies of all documents, cited in the charge sheet, were given to the applicant alongwith the same and on specific request from him, were again sent to him by the registered post,

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which he received on 18.7.2000. Shri P.N.Rai, has referred to averments made in para 8 and 9 of original reply and to para 8 of supplementary counter-affidavit of Shri Anurag, Sr.Divisional operating Manager Northern Railway, Allahabad and to Annexure SCA-1 and SCA-II to that affidavit. According to him, the applicant was more interested in delaying the matter on one pretext or the other and his complaint regarding non-supply of the relevant documents, is totally ill founded.

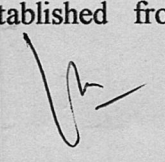
9. This Tribunal need not reiterate that supply of the copies of relevant documents so cited in the charge sheet is part and parcel of the principles of natural justice, which have to be followed, in conducting formal disciplinary proceedings under the Rules of 1968, and violation may vitiate not only the enquiry proceedings but also the penalty orders as held by the Apex court in State of U.P. Vs. Shatrughan lal (1998) 6 SCC pg 651 and in Kashi Nath Dixita Vs. Union of India (1986) 3 Scc 229.

10. We have considered the respective submissions in the light of the material on record. We have not been able to appreciate the plea taken in para 9 and 11 of the reply that applicant should prove that copies of relied on documents were not supplied to him. Law does not expect a party to prove a negative. The principles of evidence, that govern trial of such matters as before us, require that a party who affirms that something was done or something happened, has to prove it, if the other party denies the same. The party affirming a positive action cannot throw the burden on the other side to prove the same. In the instant case, it is the consistent stand of the applicant right from his representation dated 22.7.00 to this date (see A-5, A-6, A-7, A-13, A-36, A-37 etc) that copies of the relevant documents were not supplied to him. In the circumstances, the Inquiry officer or the Disciplinary Authority or the Appellate Authority or the Revisional Authority, ought to have adverted to this plea and ought to have given positive reply. No order or letter (excepting SCA-1 and SCA-2 to the supplementary counter of Shri Anurag) have been brought to our notice, wherein any of the authorities stated in so many words that documents referred to in the representations had already been supplied on this and this date and in such and such manner and demand for supply of the documents was therefore totally illfounded. Plea taken by Shri Anurag



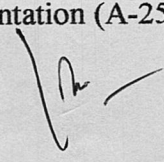
in para 8 of his supplementary counter that on specific request of the applicant, documents were sent to him by registered post and the same were received by him on 18.7.00 and this fact was confirmed by letter dated 20.7.00 of the Station Supdt, Chunar, has been denied by the applicant in para 7 and 8 of his supplementary rejoinder dated 26.3.03. What surprising is that no reference to this fact as mentioned in para- 8 of the supplementary counter of Shri Anurag, has been made in the original reply nor any request in writing of the applicant preceding to 18.7.00, demanding the copies of the documents has been referred to. According to the averments made in para-9 of OA it was on 22.7.00 that the applicant for the first time sent representation (A-5), demanding copies of documents. It is nowhere alleged or stated by the respondents that demand for supply of the copies of the documents was made by the applicant in writing earlier to 22.7.00. We don't think the respondents would have sent the copies of the relevant documents by registered post, merely on the oral demand of the applicant and if there was such an oral demand, what was the difficulty in supplying the same to him in person and what was the need for sending the same by regd. Post. When the demand for supply of the copies of the documents was made in writing for the first time on 22.7.00, then how the respondents could have sent copies by registered post a few days earlier to it. The circumstance that the applicant dispatched representation dated 22.7.00 followed by representation dated 25.9.00, 9.10.00 for furnishing him the copies of the relevant documents and the circumstance that none of the communications in between the applicant and the authorities stated in so many words that copies of the documents were also sent to him by registered post and the applicant received the same on 18.7.00, we find it difficult to believe that the copies of the documents were sent to him by registered post earlier to 22.7.00. If it was so, it should have been stated in the original reply and in other communications as well.

The respondents have not been able to prove to our satisfaction that copies of the relevant documents as mentioned in the charge sheet, were furnished to the applicant, before the start or during the course, of inquiry. The last portion of the inquiry report (Annexure34) says that the charges were established from the



documentary evidence. In other words, considering the nature of the charge and importance of the documentary evidence so cited in the charge sheet, non supply of the documents caused prejudice to the applicant so much so, he could not file his written reply to the charges nor could cross examine the witnesses. We hold that the conclusion drawn by the Inquiry Officer and the Disciplinary Authority as regards the guilt of the applicant is vitiated for want of affording reasonable opportunity of hearing to the applicant.

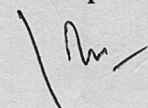
11. The second main grievance of the applicant is that the Inquiry Officer's were not impartial and independent as all the 3 were under administrative control of Senior Divisional Operating Manager, who was allegedly biased against the applicant because of the reason that he (the applicant) refused to oblige him and others by withdrawing the criminal case against Shri D.C. Mishra. It is said that document mentioned at Sl.No.5 of the charge sheet, was nothing but a complaint of respondent no.4, against the applicant. The argument is that if the respondent no.4 being the appellate authority, was complainant, how those three Inquiry Officers working under him, could have been independent and impartial. Reference is being made to para 8 & 9 of representation dated 27.11.00 (A-1)) addressed to Divisional Railway Manager. It is said that accepting these grounds in para 8 & 9, the D.R.M replaced L.D.Sen by Shri Behari Ram vide order dated 2.1.01 (A-12) but Behari Ram was also under the administrative control of Senior Divisional Operating Manager, so he gave representation (A-13) to change Shri Behari Ram as he was also of the Operating branch and more over had just been served with a charge sheet on 1.1.01 itself and so no impartial inquiry was expected from such a person. The request was however turned down (A-15). Applicant did not give up the hope and continued representing (see A-17 & A-18). Vide letter dated 19.3.01 (A-19) the D.R.M informed that the change of Inquiry officer was not possible and his apprehension that Behari Ram would not act independently was not wellfounded. This stand was reiterated in letter dated 1.5.01 (A-22). On retirement of Shri Behari Ram Shri R.N. Sagar, Station Supdt., Kanpur Central was appointed as Inquiry Officer on 4.5.01. The applicant gave representation (A-25) to



the authorities that Shri Sagar being under the administrative control of the respondents no.4 & 5 was equally not independent and impartial and more over his attitude in not ensuring the supply of the copies of the documents and straight away fixing dates for oral inquiry (A-25, A-26 & A-27) was reflective of his biased approach.

12. The learned counsel for the respondents has argued that there was nothing specific with the applicant against the three Inquiry Officers so as to say that they were not independent or impartial and the applicant wanted to keep the matter pending by making request after request for change of Inquiry Officer. Shri Rai says that in normal course an officer of the same branch is appointed as Inquiry officer and there was nothing unconventional in appointing Officer of the same branch as Inquiry Officer but Shri Bipin Behari, the learned counsel for the applicant contends that this aspect of the matter should be looked into and appreciated in the back drop of events starting from the incident of 2.9.1996 in which Station manager of Naini station had allegedly insulted and intimidated the applicant only because he belonged to a particular caste. He says that applicant has stated in his communication dated 27.7.00 (Annexure-2 to the supplementary affidavit) addressed to National Commission for SC/ST, New Delhi that Head Clerk Arun Kumar Sharma of the Operating branch came to his residence at Allahabad and told him that Senior Divisional Operating Manager, Shri Anurag wanted that he should compromise with Shri D.C.Mishra else matter was ready to dismiss him within a month. It is also pointed out that it was Senior Divisional Operating Manager who had complained against the applicant vide letter dated 19.6.00, cited as document no.5 in Annexure-3 to the charge sheet dated 5.7.00. The learned counsel says that in the circumstances one could have expected an inquiry into the charges, by a person not under administrative control of Senior Divisional Operating Manager and it was with this view that the applicant had requested the authorities to entrust inquiry to any other official or officer of the branch other than the operating branch, but request of the applicant was not accepted.

13. We have considered the respective submissions on this point, in the light of material on record. Shri P.N.Rai could not show any Rule or circular that prohibited the

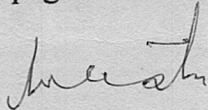


authorities concerned to appoint official or officer of a branch such as Personal, Finance and Accounts etc as Inquiry officer. The matter ought to have been considered in the light of the back ground leading to lodging of the FIR. When the Divisional Railway manager passed an order on 2.1.01 (Annexure) substituting Shri L.D.Sen by Shri Behari Ram, he was perhaps influenced by the averments made in para 8 & 9 of applicant's representation dated 27.11.00 (A-10). After all what was the legal difficulty with DRM to assign the inquiry to an officer or official of another branch as demanded by the applicant so as to remove the apprehension from the mind of the applicant. The conduct of the 3 Inquiry Officer in not verifying whether the demand for copies of the documents was well founded or ill founded and in any case their conduct not to serve the copies of the documents in their presence by abundant caution and not to allow him time to file his written reply to the charges and to straight away fix dates for oral inquiry, substantiates the apprehension of the applicant that they were not impartial and independent as they were under the administrative control of respondent no.4, whom the applicant could not oblige by compromising the matter with Shri D.C. Mishra. We come to the conclusion that the Inquiry officers who conducted the inquiry were not free and independent as they were under the administrative control of respondent no.4, who was dissatisfied with the applicant because he refused to oblige him by withdrawing FIR by compounding the case lodged against Shri D.C.Mishra. Had the three Enquiry Officers been unbiased, independent and impartial, they would have ensured the supply of the copies of the documents before them by abundant caution so as to remove apprehension from the mind of the applicant that they being under the administrative control of respondent no.4&5 could not be impartial or independent. So this aspect of the matter also vitiates the inquiry.

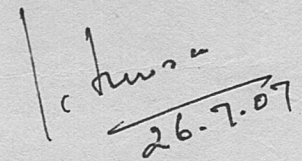
14. This is a case where the applicant was not provided with the services of defence assistant. It is evident from the inquiry report itself. It is a case where applicant could not file his written reply to the charges, allegedly because he was not supplied with the copies of the relevant documents. It is a case where witnesses were not cross examined. Inquiry report itself says that the inquiry has proceeded exparte. So we

think that proper course is that the inquiry report, punishment order, appellate and revisional order should be quashed with liberty to the respondents No.5 to proceed afresh from the stage of the service of the copies of the nine documents mentioned in the charge sheet and other relevant documents as mentioned in representation dated 22.5.00 (A-5) and to get the matter inquired into in accordance with the rules and the law in the light of the observations made above.

15. In the result, the OA is allowed and the three impugned orders are set aside, with liberty to the respondent No.5 to get the inquiry held afresh in accordance with rules in the light of the observations made above, from the stage of the service of the documents mentioned in the charge sheet and other relevant documents as mentioned in representation dated 22.7.00 (A-5). The applicant shall be treated to be in service, as if the said impugned orders were never passed. No order as to costs.



MEMBER(A)



VICE CHAIRMAN

Dated: July , 2007
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