

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1024 OF 2002

Allahabad This the 31st day of January, 2005

HON'BLE MR. JUSTICE S. R. SINGH, VICE-CHAIRMAN

HON'BLE MR. S. C. CHAUBE, MEMBER-A

Hanno Son of Kallu,
R/o Village & Post Hansar Kalan,
Tehsil-Talbehat, District-Lalitpur.

..... .Applicant

(By Advocate Sri V.S. Kushwaha & Sri B.N. Singh)

Versus

1. Union of India,
through General Manager,
Central Railway, CST, Mumbai.

2. Assistant Engineer, Central Railway,
Mathura.

3. Senior Divisional Engineer (N),
Central Railway, Jhansi.

..... .Respondents

(By Advocate Sri A.V. Srivastava)

O R D E R

HON'BLE MR. JUSTICE S. R. SINGH, VICE-CHAIRMAN

The applicant was chargesheeted for the misconduct of being absent from duty. The Enquiry Officer in his report found the charge of absence from duty w.e.f. 27.03.1999 without any information as established. The disciplinary authority by its order dated 04.12.2000 removed the applicant from service w.e.f. 04.12.2000. Appeal preferred against the said order came to be dismissed by cryptic order which reads as under:-

QHJ

"I have gone through the case carefully and found that you were habitual absentee so penalty imposed by ACN signed A.K. Singhal
Sr. DEN(N) | JHS Appellant Authority."

It would appear from the Appellate order that the Appellate Authority has completely failed to address itself to the grounds taken by the applicant in his memo of appeal and the factors enumerated in Rule 22(2) of Railway Servants (Discipline and Appeal) Rules 1968. It may be pertinently observed that the order dated 12.10.1999 passed by the Disciplinary Authority goes to show that Enquiry report was furnished to the applicant for the first time alongwith the order dated 04.12.2000. In fact, it ought to have been furnished before a decision was taken to impose the penalty of removal from service. The enquiry appears to have been made ex-parte. However, failure to furnish enquiry report by itself may not vitiate the order of punishment unless a prejudice is shown to have been caused due to the non-supply of copy of the enquiry report. All these questions ought to have been examined and considered by the Appellate Authority. Appeal, it cannot be gain said, is not an empty formality. The Appellate Authority has to take a conscious decision after taking into consideration the material on record and all other attending circumstances, in which the applicant had to remain absent from duty without any information. In the case of Ram Chander Vs. Union of India and Others 1986 SCC (L&S) 383 it has been held that a non-speaking order mechanically passed by the Appellate Authority is no order in the eyes of law. In the circumstances, therefore, we are of the view, that it would ^{not} meet the ends of justice if appellate order is set aside and the Appellate Authority is directed to decide the appeal afresh in accordance with law after a proper self direction to the evidence on record, the pleas raised by the applicant in his memo of appeal including the

plea that the order passed by the Disciplinary Authority itself was cryptic and mechanical passed on cyclostyled format without application of mind; and such other circumstances as may be brought on record by the appellant be means of any supplementary affidavit or supplementary memo of appeal.

2. Accordingly, the O.A. succeeds and is allowed in part. The Appellate Order dated 18.01.2001 is set aside and the Appellate ^{Authority} is directed to decide the appeal afresh in the light of the observations made in this judgment and having due regard to the law laid down by the Supreme Court in the case of Ram Chander (Supra). The decision may be taken within a period of three months from the date of receipt of a copy of this order.

3. There shall be no order as to costs.

Shank
Member-A

Pat
Vice-Chairman

/ns/