

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Dated : This the 08<sup>th</sup> day of August 2008

Original Application No. 1253 of 2003

Hon'ble Mr. A.K. Gaur, Member (J)

Rajendra Kumar Maurya, S/o Shri Shiv Kumar, R/o Shakti Nagar, P.O. Arogya Mandir, Basharatpur East, Gorakhpur, working as Stenographer, Railway Claims Tribunal, Gorakhpur.

. . . Applicant

By Adv: Shri K.C. Sinha and Sri R. Sinha

V E R S U S

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Chief Personnel Office, North Eastern Railway, Gorakhpur.
3. Chief Personnel Office (Adm.), North Eastern Railway, Gorakhpur.
4. Principal, North Eastern Railway, Senior Secondary School, Gorakhpur.
5. Chairman, Railway Recruitment Board, Gorakhpur.
6. Senior Personnel Office, North Eastern Railway, Gorakhpur.

. . . Respondents

By Adv: Shri S.K. Anwar

O R D E R

I have heard Shri A. Srivastava brief holder of Shri R. Sinha learned counsel for the applicant and Shri S.K. Anwar learned counsel for the respondents.

2. While working as Stenographer in the office of respondent No. 4, the applicant was charge-sheeted vide order dated 11.12.2000 (Annexure A-1). A perusal

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of the order would go to show that while working as Confidential Stenographer under the then Chairman, Railway Recruitment Board, Gorakhpur during the year 1997-98, the applicant has committed certain irregularities, which amounted to negligence and misconduct on the part of the applicant during the recruitment for the post of Assistant Station Master. A detailed reply to the charge sheet was filed by the applicant. In the first paragraph of the reply of the charge sheet, it is clearly and specifically mentioned that the applicant was not provided with any duty list/guidelines in order to know as to what were the duties of confidential Stenographer. After holding written examination to the post of Assistant Station Master, answer sheets were taken by the then Chairman, Railway Recruitment Board, Gorakhpur. The answer sheets were taken in the personal custody of the then Chairman, Railway Recruitment Board, Gorakhpur in a sealed cover of the examination centre. The applicant also submitted that thereafter, he was never associated with evaluation of the answer sheets. The then Chairman, Railway Recruitment Board, Gorakhpur himself got the answer sheets checked through from the Computer maintaining complete secrecy. The instructions that no marks would be awarded in case of overwriting/erasure on answer sheet were printed on each and every answer sheets itself, and it was the duty of the evaluator himself not to award marks on overwriting/erasure. The applicant further submitted that the aforesaid examination was conducted just

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after nine days of his joining in the Railway Recruitment Board, Gorakhpur. He was neither instructed by the Chairman, Railway Recruitment Board, Gorakhpur to ensure coding of the answer sheets nor he was provided with any duty list, nor he had any knowledge of such prevalent instructions and practice of coding of answer sheets as he was a novice and no such duty was ever assigned to him as alleged. After considering the reply of the applicant penalty of censure dated 09.04.2004 (Annexure A-2 to the OA) was awarded to the applicant. The applicant preferred an appeal against the order of censure awarded to him. But surprisingly instead of deciding his appeal the respondent No. 2 had issued a show cause notice dated 09.10.2001 under Rule 25 of the Railway Servant (Discipline and Appeal) Rules through which the respondent No. 2 decided to impose penalty of reduction of lower stage in the same scale for a period of three years, and not adversely affecting the pensionery benefits. Against this order the applicant preferred an appeal to the respondent No. 2 on 22.10.2001 (Annexure 5). In this appeal the applicant reiterated all his earlier stand and submitted that he was not at all associated with the examination conducted by the respondent No. 5 and that too within 09 days of his posting. The main thrust of the objection raised by the applicant was that the answering respondent has awarded punishment in a most causal and perfunctory manner, without any basis, or evidence. After consideration of reply to show cause

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notice dated 30.10.2001 the Senior Personnel Officer punished the applicant by awarding penalty of reduction of one stage in the same time scale of pay for a period of three years without cumulative effect (Annexure A-6 to the OA). As order dated 30.10.2001 was passed by the Senior Personnel Officer contrary to the provision of rules and in view of the fact that he had no jurisdiction, respondent No. 3 withdrew the aforesaid punishment order dated 30.10.2001. Vide letter dated 12.12.2001 the same old punishment was awarded to the applicant by the competent authority. A perusal of the order dated 12.12.2001 (Annexure A-8 to the OA) would go to show that the duty list/work distribution of the applicant clearly indicates that he was responsible for maintenance of confidential records and files. All confidential matter, receipt of question booklet and answer sheets and its distribution to examination centers including its confidentiality were to be maintained by the applicant. Against order dated 12.12.2001, the applicant preferred appeal to respondent No. 2. In this appeal the applicant submitted that at no point of time he was asked by the Chairman to check the answer sheets as alleged and charges levelled against him in this regard are totally baseless and unfounded. It was clearly submitted by the applicant in his appeal that duty list was given to the applicant after the written examination was over. However, after taking over the charge of stenographer in Railway

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Recruitment Board in December 1997, no duty list was ever given to the applicant.

3. The story of giving duty list to the applicant is a subterfuge and no credence could be attached to the same. The applicant had to receive the answer sheet being stenographer of respondent No. 5 from the Examination Centers under sealed cover and same was handed over to the Chairman, Railway Recruitment Board in his personal custody and, thereafter the Chairman himself got the answer sheet evaluated maintaining the secrecy through computer process. Vide order dated 22.07.2002 the respondent No. 2 has modified the aforesaid punishment order by imposing penalty of reducing to the lower stage for two years without cumulative effect. Vide order dated 16.10.2002 the revision filed by the applicant was rejected (Annexure A-11 to the OA) on the ground that there is no provision for second revision in the Railway Rules.

4. By filing reply the respondents submitted that the normal duties of confidential stenographer, as part of confidential staff assisting Chairman, Railway Recruitment Board included carrying out check of evaluated answer sheets manually to ensure correctness of evaluation. A bare perusal of the counter reply clearly indicates that the allegation contained in paragraph Nos. 12, 13 and 14 of the OA has not been denied and the same remained uncontroverted in the counter affidavit.

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5. The applicant has filed Rejoinder Affidavit denying the submission filed by the respondents and reiterated the same fact as stated in the OA.

6. I have heard Shri A. Srivastava, learned counsel for the applicant and Shri S.K. Anwar, learned counsel for the respondents at considerable length. It has been contended by the learned counsel for the applicant that no duty list was ever provided to the applicant. According to the applicant at no point of time the applicant was asked by the Chairman, Railway Recruitment Board, to check the answer sheets and the charges levelled against the applicant on this count are wholly baseless and unfounded. The learned counsel for the applicant would further contend that the applicant had to receive the answer sheets being stenographer of respondent No. 5 from the Examination Centers, under sealed cover and same was handed over to the Chairman, Railway Recruitment Board in his personal custody and, thereafter the Chairman himself got the answer sheet evaluated maintaining the secrecy through computer process. According to the applicant there were serious allegations against the Chairman, Railway Recruitment Board with regard to irregularity and illegality committed by him during the course of selection. With a view to shirk his responsibility the answering respondent has invented an evil design to falsely implicate the applicant. Such kind of duties were never assigned to him. Learned counsel

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for the respondents on the other hand argued that the applicant has not discharged his duties in accordance with duty list assigned to him and he was found negligent and since the applicant has not preferred any appeal against the order of punishment of censure the applicant is estopped from challenging the same.

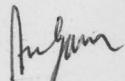
7. I have also gone through the record of the case and perused the pleadings of the parties. It appears that on complaint of certain persons, CBI inquiry was conducted after entrustment of the matter to the local vigilance, the answer sheets were taken into custody. The Chairman, Railway Recruitment Board i.e. respondent No. 3 with a view to lend colour to the case and in order to implicate the applicant has invented an evil design of giving duty list to the applicant on 01.02.1998 after the vigilance case was already started. It is seen, from the record that the written examination was held on 28.12.1997, the result was declared on 07.01.1998 the interview was held on 21.01.1998 to 21.2.1998 and the CBI conducted inquiry on 30.01.1998. It is a matter of great astonishment that the respondent No. 3 did not take cognizance of the negligence and misconduct of the applicant during this interregnum. The applicant was given duty list only after the examination was over and the result was declared. In my, considered view, the story of giving duty list to the applicant has no legs to stand. In my considered view the applicant was never associated with the evaluation of answer

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sheets and the same were evaluated by the Chairman, Railway Recruitment Board, Gorakhpur in order to maintain secrecy. The only duty assigned to the applicant was to handover the answer sheets to Chairman and there was hardly any occasion for the applicant to evaluate and check them. The allegation levelled against the applicant are an after thought and a subterfuge. Learned counsel for the applicant has also argued that full fledged inquiry should have been initiated in the matter before fixing the guilt of the applicant. But neither such inquiry was conducted nor principles of Natural Justice were followed by the respondents. I have given my anxious thought to the pleas advanced by the learned counsel for the applicant and I am firmly of the view that in case where serious allegations have been made against the delinquent employee even in case of minor penalty, principle of Natural Justice must have been followed by holding an inquiry in the matter. The respondents have committed serious illegality in not doing so. I have also carefully seen the charges levelled against the applicant and in my considered view the conclusion arrived at by the Chief Personnel Officer in its order dated 22.06.2002 that the applicant had been negligent in performing his duties and not followed the duty list in its letter and spirit is without any basis or foundation. I have also gone through the decision cited by the learned counsel for the applicant reported in **AIR 1979 SC 1022 : Union of India and other Vs. J. Ahmed** in order to buttress the contention

that mere negligence is not misconduct. The observation of the competent authority that when the applicant was not aware of his duties as confidential steno, he should have demanded the same from his superiors is misconceived. There should have been a positive evidence to indicate that duty list was provided to the applicant. Mere suspicion should not be allowed to take the place of proof as held by Hon'ble Supreme Court in **AIR 1964 SCJ 364 : Union of India Vs. H.C. Goel.** In view of my aforesaid observation the order of punishment awarded by the Disciplinary Authority, Reversionary Authority and Appellate Authority are without any foundation and basis.

8. In view of my aforesaid submissions I hereby quash and set aside the orders dated 09.04.2001, 12.12.2001 and 22.07.2002. Accordingly the OA is allowed with all consequential benefits. No cost.

  
Member (J)

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