

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

ORIGINAL APPLICATION NO.209 OF 2003  
ALLAHABAD THIS THE 13th DAY OF November OF 2006

**HON'BLE MR. P.K. CHATTERJI, MEMBER-A**

Vijay Narain Singh, S/o Ram Krit Singh, R/o 241-B, New Loco Colony, Chittupur Cantonment, Varanasi, posted as Junior Engineer, P. Way Engineer Control, North Eastern Railway BS.B Varanasi.

.....Applicant

(By Advocate: Sri V. Budhwar)

Versus.

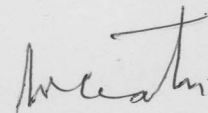
1. Union of India through Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. Additional Divisional Railway Manager, Varanasi.
3. Senior Divisional Engineer/1<sup>st</sup> North Eastern Railway, Varanasi.

.....Respondents

(By Advocate: Sri D. Awasthi)

**ORDER**

The case in this OA is short and simple. The applicant a Junior Engineer working with the respondent was proceed against the disciplinary rules for his alleged failure in supervision at Sub Store at Rajatalab from where fish plates and Metal pieces were found missing. The applicant, it was alleged, failed to take appropriate action after noticing the loss of the property in time. While the properties were lost between 1.1.99 to 8.1.99 he failed to notice the same in time and reported the matter only on 18.01.1999. After necessary enquiry the disciplinary action were concluded by respondent No. 3 who vide his order dated 10.06.2002 imposed the punishment of reducing the pay of the official to the lowest stage of Rs. 5500 in the pay scale of Rs. 5500-9000 for a period of 35 months without any cumulative effect. The order was passed by the Senior Divisional Engineer I i.e. Respondent No. 3 who is the disciplinary authority in the case of



the applicant. Thereafter, the applicant filed an appeal before his appellate authority i.e. respondent No. 2 i.e. ADRM Varansi. The learned counsel of the applicant has drawn the attention of the Tribunal to the appellate decision date 2.1.2003 which was passed after considering the applicant's appeal dated 22.07.2002 (pg 34 of the OA). It is seen from the perusal of the order that it was issued by the same Senior Divisional Engineer I, Varanasi who had issued the punishment order dated 10.06.2002 (Annexed to pg 39 of the OA). It will be pertinent to extract from the relevant portion of the order which is as follows:

*"I, the undersigned as an Appellate Authority in terms of Rule 18 am of the considered opinion that through the appellant was correctly been found responsible for violating conduct rule as above, a lenient view is, taken and decide to modify the earlier penalty of reducing of his pay in Scale of Rs. 5500-9000 fixing at a minimum of Rs. 5500/- for a period of 35 months without cumulative effect to, for a period of 12 months without cumulative effect. Accordingly, the appeal stands disposed off."*

2. The learned counsel for the applicant, in pointing out this irregularity in the Disciplinary Proceedings i.e. the same officer performing the role of Disciplinary Authority as well as the Appellate Authority, has sought the intervention of the Tribunal to quash the order dated 10.06.2002 i.e. the Punishment Order and the order dated 02.01.2003 i.e. the Appellate Order.

3. The learned counsel for the applicant has sought to set aside the punishment order for the reasons that the punishment was imposed without any proper enquiry being conducted in the matter in which reasonable opportunity could be given to the applicant for defence. This however, has not been agreed to by the respondents who have stated in para 10 of the counter affidavit that the applicant was proceeded against under Rule 11 RS (D&A) rules 1968 for dereliction in duty. He was issued show cause notice vide SF-11 dated 6.4.2000 which was duly served by him and only after following due procedure the punishment of reduction of pay was imposed upon him. Regarding the point as to how the disciplinary authority and the appellate authority could be the same person, the learned counsel for the respondents stated that the appellate authority was indeed the ADRM i.e. respondent No. 2 and the

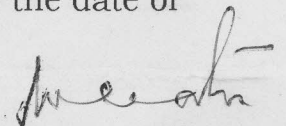
*M. S. Mehta*

appeal of the applicant was considered by the appellate authority. But it was communicated to the applicant by the respondent No. 3 i.e. the Senior Divisional Engineer NER Varanasi vide letter dated 2.1.2003.

4 But if one takes a look of the Order dated 2.1.2003 it will be obvious, particularly looking at the above extract of the order, that it was actually the appellate decision and not merely a communication of the appellate decision. In the first line of the above extract it is written "I the undersigned as an appellate authority in term of rule 18 ....." Therefore, no doubt is left that the Senior Divisional Engineer I issued the order over stepping his authority and assuming unauthorizedly the role of the appellate authority. This appellate decision therefore, suffers from a serious infirmity.

5. With regard to the disciplinary authority I do not find any such irregularity. The applicant has not adduced any particular evidence to show that the proceedings were vitiated by infringement of the relevant disciplinary rules. Merely stating that the rules were not followed and opportunity was not given is not enough. There is no particular ground to assail the disciplinary order.

6. For the above mentioned reason I am of the view that the disciplinary proceedings after the stage of issue of punishment order was vitiated for the reason that the disciplinary authority could not assume the role of the appellate authority. The Appellate order dated 02.01.2003 is therefore, set aside after allowing the OA in part, and the respondent No. 2 is directed that he should take up the appeal of the applicant dated 22.7.2002 for consideration and, thereafter, proceed as per rule and take appropriate decision. This shall be done within a period of three months from the date of receipt of copy of this order. No Cost.



**Member-A**

Manish/-