

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 34 OF 2003

ALLAHABAD, THIS THE 23rd DAY OF march 2003

HON'BLE MAJ GEN K.K. SRIVASTAVA, A.M.
HON'BLE MRS. MEERA CHHIBBER, J.M.

Ashok son of Late K.D. Lal, Srivastava,
L.C. Porter, A Himanpur,
Resident of Village & Post - Ajana,
District-Deoria working as a Station Master
at Bilthara Road, N.E.R. Varanasi.

.....Applicant

(By Advocate : Shri A.B. Singh)

V E R S U S

1. Union of India through its General Manager,
N.E. R. Gorakhpur.
2. Divisional Railway Manager,
N.E. R. Varanasi.
3. Divisional Railway Manager,
Safety, Varanasi.

.....Respondents

(By Advocate : Shri A.V. Srivastava)

O R D E R

By Hon'ble Mrs. Meera Chhibber, J.M.

By this O.A. applicant has sought the following
relief(s) : -

- (i) The Hon'ble Court may be pleased to set aside the
order dated 08.10.2002 communicating vide order
dated 17.10.2002 (Annexure-VIII to O.A.)
- (ii) Issue an order/direction commanding the respondents
to review the decision taken in a departmental
proceeding on acquittal granted in a criminal case
in favour of the applicant and to re-instate the
applicant.



.....2/-

- (iii) to issue any such other and further writ order or direction in favour of the applicant for which this Hon'ble Court may deem fit just and proper in the facts and circumstances of the case and for which the applicant/petitioner may be entitled under law. Otherwise, the applicant will suffer an irreparable loss and injury.
- (iv) To award the applicant with the cost of this O.A.
- (v) Pleased to issue an order to set aside the order of removal dated 20.05.1999 (Annexure-III to the O.A.) and reinstate the applicant with all consequential benefits."

2. It is submitted by the applicant that he was given a chargesheet dated 28.04.1998 with the following allegations:-

" दिनांक 15/16-11-97 को जब श्री अशोक, फाटकवाला/झुसी 18-6 की पाली में रक्षित समपार सं० 67"बी" पर फाटकवाला के पद पर कार्यरत थे तब इनके कार्यकाल में दिनांक 15-11-97 को झुसी में 22.03 बजे समपार फाटक संख्या 67"बी" पर 5003 डाउन चोरी चोरा एक्सप्रेस तथा मरुती वान से अक्कर हो गयी क्योंकि श्री अशोक ने 5003 डाउन एक्सप्रेस के आगमन के लिए रक्षित समपार सं० 67"बी" के दोनों तरफ के फाटक सड़क यातायात के लिए बन्द है, सुनिश्चित करने के पूर्व ही कार्यरत सहायक स्टेशन मास्टर को अपना प्राईवेट नम्बर दे दिया। श्री अशोक, उत्तर तरफ के फाटक को बन्द कर ताला बन्द सका था तथा दक्षिण तरफ का फाटक बन्द नहीं कर सका था तब तक 5003 डाउन एक्सप्रेस रक्षित समपार पर पहुच गयी तथा दक्षिण तरफ के समपार में प्रवेश कर चुकी मरुती वान से टकरा गई।

इस प्रकार श्री अशोक, फाटकवाला ने झुसी स्टेशन कार्य संचालन नियमावली के परिशिष्ट "क" अनुलग्नक-1 के मद संख्या 2-4 नियम का उल्लंघन किया है।"



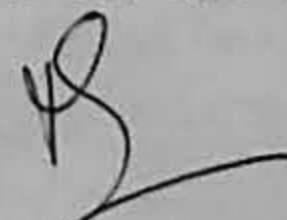
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3. It is submitted by the applicant that during enquiry his defence assistant was not being relieved nor he was given copy of the enquiry documents i.e. relied upon statements inspite of demand therefore he could not defend himself properly and exparte enquiry was held wherein charge were held to be proved(Annexure-II).

4. On the basis of report submitted by enquiry officer disciplinary authority passed an order dated 20.05.99 removing applicant from service(Annexure-III). Being aggrieved he filed appeal but that was also dismissed on 24.12.1999 (Annexure-IV). He then filed revision under rule 24 but that was also rejected by a non-speaking order dated 29.09.2000 (Annexure-V).

5. It is submitted by the applicant that in the criminal case on the same facts he was exonerated and acquitted vide judgment and order dated 27.11.2000(Annexure-VI) therefore, he gave an application before DRM, N.E.R. to review the order of removal in view of his acquittal but since no reply was ^{being} given he filed O.A. No.1276/2001 which was disposed off with a direction to dispose off his representation(Annexure VII) ultimately DRM Varanasi rejected the applicant's representation vide order dated 08.10.2002 on the ground that no review lies against revision, therefore, he may approach the President (Annexure-I). Thus, finding no other option he had to file the present O.A.

6. Respondents have opposed this O.A. on the ground that since his nominated defence Assistant was not being relieved, applicant was given opportunity to give name of some other defence assistant but inspite of various opportunities, he did not give the name nor participated in the enquiry knowing



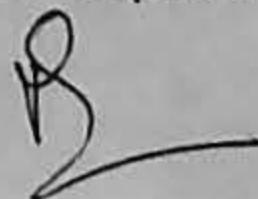
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fully well the dates fixed for enquiry and since he was not co-operating enquiry officer had no option but to proceed ex-parte. He examined the witnesses and gave opportunity to the applicant even at this stage but he refused to cross ^{examine} ~~cross~~ witnesses so enquiry was completed ex-parte wherein charges were proved on the basis of evidence available on record.

7. A show cause notice dated 11.03.1999 along with findings was served on the applicant and on receiving his reply, the same was considered and looking at the evidence on record, applicant was removed by the disciplinary authority which is absolutely valid as full opportunity was given to him and now applicant cannot be ^{allowed to} ~~complain~~ that he was not given appointment. Moreover, his case was considered by the appellate as well Revisionary authority both, but the same was rejected and applicant did not challenge those orders in any court of law at that time.

8. As far as his acquittal in the criminal case is concerned they have submitted, perusal of judgment shows he was acquitted by giving benefit of doubt and not on merits. Moreover, standard of proof required in a ^{departmental enquiry} ~~is~~ is only preponderance of probabilities whereas a criminal case has to be proved beyond any doubt by the prosecution. Since penalty was imposed on the basis of evidence available on record, no interference is called for. The D.A. may therefore be dismissed.

9. We have heard both the counsel and perused the pleadings as well. Counsel for the applicant relied on 1998 SCC(L&S)810 Capt. M. Pal Anthony's judgment and 2002(3)UPLBEC 2379 Judgment given by Single Judge of Lucknow Bench in the case of Virendra Kumar Sharma Vs. State of U.P. & Ors. In support of his contention that Departmental enquiry ^{could} ~~not~~ not have been proceeded on the same charge when criminal ^{was pending and has been decided} ~~case~~ in favour of petitioner, the findings on same facts against him in departmental ^{enquiry} ~~cannot~~ cannot be allowed to stand.



10. At the outset it would be relevant to give the background in which Capt.M. Pal Anthony's case was decided;

Applicant therein was a Security Officer in respondents company. Disciplinary case as well criminal case was initiated him on the ground that during police raid spouge gold berl weighting 4.5 grams and 1276 grams of gold bearing sand was recovered from his House. He was put under suspension and during suspension period he was not even given the subsistence allowance, as a result of which it was held that he could not even participate in the departmental enquiry and in the criminal case he was acquitted with a clear finding that prosecution failed to establish its case. The witnesses in criminal as well as enquiry were same viz the police officers and panch witnesses who had effected the recovery. In the criminal case a categorical finding was recorded that neither search was conducted nor was any recovery made from the applicant's house whereas on the evidence of same very police officers on same charge different finding was recorded by the enquiry officer hdding the charge was proved, it was in these circumstances that the Hon'ble Supreme Court held that it would be unfair, unjust and rather appressive to allow the findings arrived at exparte in departmental enquiry to stand.

11. In fact in this case also it was held that departmental proceedings and criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously because standard of proof required in those proceedings is different than in a criminal case.

12. Keeping in view the above background if the present case is judged, it would be seen there is absolutely no similarity with Paul Anthony's case because the applicant was indeed given opportunity to attend the enquiry and defend himself but he chose not to participate therefore, he can not now be heard of complaining that he was deprived of his right to defend himself. It is not the case of the applicant that he

had not been given the subsistence allowance as in Anthony's case. On the contrary perusal of original record shows that applicant did not defend himself inspite of opportunity having been afforded to him, therefore, now at this stage he cannot be heard of saying that he has been deprived of his right to defend. It would be relevant at this juncture to quote the Judgment of Hon'ble Supreme Court reported in 1997(1)SCC 386 Ranjan Kumar Mitra Vs. Andrew Yale wherein it was held that if opportunity is given and employee chose not to appear, it cannot vitiate the consequential termination.

13. In fact perusal of records show that on 29.01.1999 the statement of Shri M.B. Singh Guard, Varanasi was recorded in applicant's presence and he was asked to cross examine the witness but applicant refused to cross ^{examine} on the ground that he is unable to defend himself in the absence of his defence assistant. His defence assistant was not being relieved so he was asked to nominate some other defence assistant but no steps were taken by him and he kept on 29.06.1998, 13.07.1998, 15.10.1998, 08.12.1998, 14.12.1998, 01.01.1999, 11.01.1999 and 19.01.1999 insisting for same defence assistant. Again on 09.02.1999 the statement of diesel assistant Shri V.P. Bhasker ^{examine} was recorded in the presence of applicant but he refused to cross / thus it is clear that at every stage opportunity was afforded to the applicant. Enquiry Officer could not have waited for defence assistant of applicant's choice indefinitely. If one defence assistant was not being relieved due to some problems, applicant should have given some other name so that enquiry could have proceeded smoothly. Simply because applicant could not make his defence assistant available, the enquiry could not have been brought to a stand still.

14. Perusal of the record shows that applicant was given



opportunity on 29.06.1998, 13.07.1998, 15.10.1998, 08.12.1998, 14.12.1998, 01.01.1999, 11.01.1999 and 19.01.1999 for giving the name of some alternative defence assistance but he did not co-operate with the enquiry officer. Therefore, in these circumstances, we cannot accept the contention of applicant that he was denied the right to defend himself.

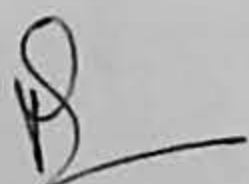
15. Counsel for the applicant has raised only these two grounds to challenge the order passed by the respondents but we are not satisfied as this case is fully covered by Judgment of Hon'ble Supreme Court reported in 1997(4)SCC 385 wherein it was held that acquittal in a criminal case does not entitle automatic reinstatement in service. Moreover, respondents have explained that in the present case applicant was not exonerated on merits but was only given benefit of doubts. Therefore, it was open to the disciplinary authority to take his own view as to whether applicant's services were required to be continued or discontinued. In the instant case, applicant was removed from service on 20.05.1999 whereas the criminal case was decided at a much later stage. It goes without saying that the scope of a criminal case and departmental enquiry were absolutely different in as much as in the departmental enquiry charge against the applicant was that he had committed a serious irregularity and had ^{not} followed the rule in manning the gate of the level crossing as a result of which accident took place between Chauri Chaura Express and the Maruti Van. The exact charge against the applicant was that he had given clearance for passing of the Train without ensuring that Gate No.67-B had been closed from both the sides of Road. Whereas in criminal case, the charge was that ^{of} negligence. Even in the case of Capt M. Paul Authority, Hon'ble Supreme Court has held that both the proceedings could proceed simultaneously. Moreover applicant did not get stay of departmental enquiry proceedings

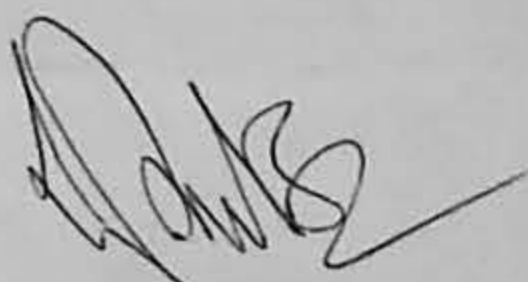


from any court of law at an appropriate stage. Therefore, now it is not open to him to contend that departmental enquiry could not have proceeded so long, the criminal case was pending.

16. As far as the impugned order is concerned, respondents have rightly stated that there is no provision to review the case after the revision is rejecting. Therefore, respondents rightly pointed out in the impugned order that if applicant is so desirous he can give a petition to the Hon'ble President of India under Rule 13 of Discipline & Appeal Rules 1968. It is also relevant to mention here that even though applicant was removed from service in 1999 and his appeal was dismissed in 1999 and the revision in the year 2000, but applicant never challenged those orders at that stage. Now simply because he has been exonerated in the criminal case, it does not give him a right automatically to be reinstated in service. In fact even in the present O.A. applicant has not challenged either the appellate order or the revisionary authority's order. He has merely challenged the order of removal dated 20.05.1999 whereas this order had merged ultimately in the revisionary order dated 20.09.2000 passed in the revision. Therefore, this O.A. is misconceived.

17. In view of the above discussion, we find no merit in the case, the O.A. is accordingly dismissed. No order as to costs.


Member (J)


Member (A)

shukla/-