

[Open Court]

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH ALLAHABAD**

THIS THE 15th DAY OF DECEMBER, 2011

Present:-

HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER-J

HON'BLE MR. SHASHI PRAKASH, MEMBER-A

Original Application No. 848 of 2003

U/s 19, Administrative Tribunal Act, 1985

J. N. Chaturvedi, Switchman,
Eastern Railway, Malda Town,
Now residing at Village and Post
Kamal Sagar, district Azamgarh *at present*
Newly created district Mau.

.....Applicant

VERSUS

1. Union of India through General Manager, Eastern Railway, Calcutta.
2. Divisional Railway Manager, Eastern Railway, Malda, Calcutta.
3. Enquiry Officer, T.I. (HQ), Malda, Calcutta.
4. Addl. Divisional Railway Manager, Eastern Railway, Malda Calcutta.

.....Respondents

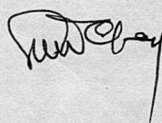
Advocate for the Applicant:- **Sri P. C. Pandey.**

Advocate for the Respondents:- **Sri K. P. Singh.**

ORDER

Instant O.A. has been instituted for the following
reliefs:-

"i. To issue a suitable order or direction quashing the orders dated 7/12th May, 2003 passed by the Addl. Divisional Manager, Eastern Railway, Malda; and 3.4.2003 passed by Sr. Div. Opn. Manager,



ii. To issue a suitable order or direction directing the respondents to reinstate the petitioner on the post of Switchman and to pay the arrears of salary and continue to pay the current salary as and when falls due;

iii. To issue any other such order or direction which may deem fit and proper under the circumstances of the case;

iv. Award costs to the applicant."

2. The pleadings of the parties in brief are as follows:-

It has been alleged by the applicant that he had been working as Switch Man. That all of a sudden the applicant was suspended vide order dated 08th October, 2001 and the charge sheet was served on the same day on the applicant. According to the charge sheet the main charge of suspension was that on 28th September, 2011 applicant abused the Controller, Malda on phone and the other part of the charge shows says that the applicant manhandled with controller and others. Hurriedly respondents conducted the inquiry and the respondent No.3 who was the inquiry officer submitted his report on 26th April, 2002 holding the applicant guilty of the charges. The Sr. Divisional Railway Manager issued a notice ^D to show ^{cause} on dated 03rd April, 2003 as to why the applicant may not be dismissed from service, annexure-3 is the copy of the notice. In response to the show cause notice applicant submitted the

[Signature]

reply and requested for setting aside the proceedings, but the punishment order was passed against the applicant for removal from service. Aggrieved from the ^{order of} disciplinary authority applicant moved an appeal before the Divisional Railway Manager, Malda and the appellate authority modified the order of punishment of dismissal from service to that of compulsory retirement with 75% pension w.e.f. 04th April, 2003. The act of the respondents is arbitrary, illegal and against the procedure prescribed for conducting the inquiry. That the copies of the document relied by the department were not supplied to the applicant and the Inquiry Officer performed the role of the presenting officer and thus, he has become the Judge of his own cause. That the Inquiry Officer has not considered the fact, that there was no witness who was on duty and the staff who was relieved was shown as a witness, who were the own men of the administration. The entire exercise of the respondents is mala-fide and cannot be justified in the eye of law. There was no complaint against applicant and falsely charge sheet has been served and there has been inordinate delay on the part of the respondents in imposing the punishment against the applicant and thus, the order is liable to be quashed on this ground alone. Certain

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facts have also been alleged which are argumentative. That as the respondents awarded the harsh punishment, hence the O.A..

3. Surprisingly, on behalf of the respondents no Counter Affidavit has been filed despite allowing several opportunities, hence the case proceeded with the presumption that the respondents have nothing to say, and in this connection learned counsel for the respondents argued that this O.A. was dismissed several times in default of the applicant and due to this there had been some confusion.

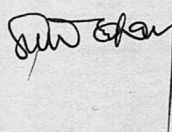
4. We have heard Sri P. C. Pandey, Advocate for applicant and Sri K. P. Singh, Advocate for respondents and perused the entire facts of the case.

5. We have mentioned above that as no Counter Affidavit has been filed on behalf of the respondents hence the case is proceeded *ex parte*, but we have to see ^{that whether there is} the substances in the _π allegations made in the O.A., if no Counter has been filed on behalf of the respondents then it does not mean that the case is to be allowed *ex-parte*. While deciding the case *ex-parte* we have to see that whether there is any substance in the

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contention of the applicant. From perusal of the documents filed on behalf of the applicant it is evident that a charge sheet was served on the applicant on dated 08th October, 2001 regarding misconduct committed by the applicant with the fellow railway employees. It has been alleged in the memo of charges "on 28th September, 2001 at 16:50 hrs. Shri J. N. Chaturvedi, Sw. Man/KTJ started abusing section controller, Malda using unparliamentarily languages, when on duty ASM/KTJ tried to stop him he manhandled with ASM/KTJ Shri S. K. Kanth.

This shows that gross misconduct and violation of rules of GR 2.06 (a) & (b), 210 (b) and service conduct Rule 3(1) (iii)." Further applicant has also ^{been} charged that he quarreled with Sri Gupta. It has further alleged in the charge memo that Sri Gupta ASM tried to intervene in the incident, but during the incident Sri Gupta got hurt on his hand as a result of quarrelling of the applicant and Sri Promod Kumar was the witness, hence serious charges were levelled against the applicant of abusing the controller as well as manhandling and thrashing the ASM Mr. Kanth. Inquiry Officer was appointed and the Inquiry Officer duly conducted the inquiry, annexure-2 is the copy of the inquiry report and from perusal of the inquiry report it is evident that the statement of the witness were recorded during




the inquiry proceedings and the witness supported the case of the department and the witness stated that the firstly, the applicant abused the controller on phone and he also manhandled and quarreled with the ASM when he tried to intervene in the incident and Mr. Gupta got hurt during the inquiry proceedings and the witnesses were cross examined.

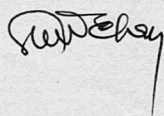
6. The law had been laid down by the Hon'ble Supreme Court and in view of law the Tribunal has got limited jurisdiction to interfere in the departmental proceedings. The Tribunal has got jurisdiction to interfere when serious lapses have been committed by the inquiry officer during the inquiry. It has been argued by the learned counsel for the applicant that during the inquiry copies of the documents relied by the prosecution were not served to the applicant and no opportunity was provided to the applicant to produce defence witness and these are serious lapses and illegality has been committed. Learned counsel for the respondents argued that there is no circumstances evident from the inquiry report that the applicant has submitted an application for obtaining the copy of the documents relied by the prosecution. It shows that the documents relied by the prosecution were supplied.

Antony

Moreover, in the present case the documents were only the reports of the victimized fellow employees, Controller, S.M., Mr. Kanth and Mr. Gupta. Hence there appear no substances in the arguments of the learned counsel for the applicant that the copies of the documents which have been relied by the prosecution have not been supplied to the applicant. From perusal of the inquiry report it is evident that the witnesses produced by the prosecution were cross examined by the applicant and his Counsel, hence full opportunity was provided during the inquiry proceedings. From perusal of the inquiry report it is evident that applicant was directed to produce the defence witness and only one witness was cited by the applicant, ^{even 12} but that witness was not ~~cross~~²-examined. Learned counsel for the respondents argued that the full opportunity was provided to the applicant to defend himself during the inquiry and the opportunity was provided to the applicant to produce defence, but the applicant was failed to produce any defence and the inquiry officer commented that the applicant ^R is also agreed, hence the inquiry may be closed and, thereafter, inquiry officer submitted report to the effect that the charges levelled against the applicant were proved and the applicant is guilty. After receipt of the inquiry report

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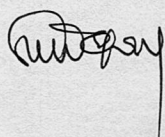
disciplinary authority issued the show cause notice to the applicant along-with copy of the charge sheet, but according to the disciplinary authority no reply was submitted by the applicant in response of the show cause notice and as the disciplinary authority was convinced that the gross misconduct has been committed by the applicant with the fellow employees and discipline of high degree is required in order to ensure the smooth working of the Railway. Allegations were that the applicant firstly abused the Controller on phone and when SM Mr. Kanth intervene in the incident then he was manhandled and when Mr. Gupta ~~was~~  tried to intervene in the incident then he also manhandled and got injured in scuffle, hence the applicant was responsible for committing serious nature of offence and misconduct. It has been argued by the learned counsel for the applicant that no F.I.R. was lodged by the victimized persons and no medical examination was conducted and no medical report was submitted, we are not sitting in the criminal jurisdiction so as to punish the applicant for imprisonment, but we are sitting in the civil jurisdiction in order to see that whether the punishment awarded by the respondents is adequate or not and whether the inquiry was conducted properly or not, but



there are sufficient evidence available on record to *prima facie* hold the applicant guilty to the charges framed against him and he was guilt of gross misconduct and disciplinary authority ordered for dismissal of the applicant from service.

7. Learned counsel for the respondents argued that the applicant being aggrieved from the order of the disciplinary authority preferred an appeal before the appellate authority vide order dated 07th December, 2003 modified the order of removal from service to that of compulsory retirement with 75% pension w.e.f. 04th April, 2003 A.N. which was the date of removal from service, hence learned counsel for the respondents stated that a lenient view was adopted by the Appellate authority in order to modify the order of punishment of removal from service to that of compulsory retirement with 75% pension and the pension has been curtailed only to the extent of 25% and no other order has been passed for retention of other retiral benefits.

8. Learned counsel for the applicant argued that the charge sheet was served on the applicant in the year 2001, but the order of punishment was passed on 03rd April, 2003 and appellate authority passed the order on 07th December, 2003



and there is inordinate delay in concluding the inquiry and hence the inquiry due to delay stands vitiated and liable to be quashed, he also argued that there is judgment of the Hon'ble Apex Court, but there is no such ground on which alone the inquiry report is to be quashed. The applicant should have agitated the matter by filing the O.A. so that direction might have been given to the respondents to conclude the inquiry at the earliest, hence in our opinion inquiry report cannot be quashed on this ground as there is gross misconduct was committed by the applicant with fellow employees it was gross indiscipline on the part of the applicant and when there is gross indiscipline then it is difficult to run the railway administration and there must be discipline in smooth running of the railway administration.

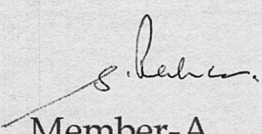
9. Learned counsel for the applicant argued that although the appellate authority has modified the order of removal from service to that of compulsory retirement with 75% pension but even then the 75% of the pension has not been paid to the applicant and the retiral benefits which was due to the applicant were not paid. Nothing has been shown on behalf of the respondents that as to why 75% pension along-with retiral

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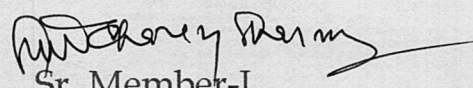
benefits have not been paid to the applicant and the applicant is entitled for 75% pension w.e.f. 04th April, 2003 and other retiral benefits along-with interest 9% pa.

10. For the reasons mentioned above we are of the opinion that the O.A. lacks merits and liable to be dismissed.

11. O.A. is dismissed, however it is ordered that as the appellate authority modified the order of punishment to that of compulsory retirement with 75% pension w.e.f. 04th April, 2003, hence the respondents are directed to ensure the payment of pension to the extent of 75% of the pay drawing w.e.f. 04th April, 2003 along-with all pensionary benefits admissible to the applicant along-with 9% interest per annum.. Respondents shall comply with this order within a period of three months from the date when the copy of this order is produced before respondent No.2. Applicant shall produce a copy of this order before the respondents No.2 at the earliest. No order as to costs.


Member-A

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Sr. Member-J