

Reserved on 1.03.2012

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

ORIGINAL APPLICATION NO. 1051/2006

ALLAHABAD this the 6th day of March, 2012.

Present:

HON'BLE MR. JUSTICE S.C. SHARMA, MEMBER- J
HON'BLE MS. JAYATI CHANDRA, MEMBER -A

Lall Chand S/o Bipat working as confidential Stenographer under Chief Medical Superintendent Divisional Hospital North Eastern Railway Izzatnagar, P.O. Izzatnagar, District- Bareilly (U.P.).

.....Applicant

Present for the Applicant: Sri T.S. Pandey.

VERSUS

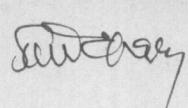
1. The Union of India through, The General Manager, North Eastern Railway, Gorakhpur, P.O. and District-Gorakhpur, U.P..
2. The Senior Divisional Medical Officer, North Eastern Railway, Izzatnagar, P.O. Izzatnagar, District-Bareilly (U.P.).
3. The Chief Medical Superintendent, North Eastern Railway Izzatnagar, P.O. Izzatnagar, District-Bareilly (U.P.).
4. The Senior Divisional Personnel Officer, N.E. Railway Izzatnagar, P.O. Izzatnagar, District-Bareilly (U.P.).
5. The Divisional Railway Manager, North Eastern Railway, Izzatnagar, P.O. Izzatnagar, District-Bareilly (U.P.).

.....Respondents

Present for the Respondents: Sri P.N. Rai.

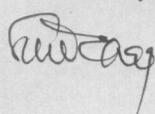
ORDER

(Delivered by Hon'ble Mr. Justice S.C. Sharma, J.M.)



1. Under challenge in the O.A. is the charge memo dated 10/28.4.2003 (Annexure -1), punishment as well as appellate orders (Annexures 2 and 3). Further prayer has also been made to restore pay and grade of the applicant at the stage from where his pay was illegally reduced and release all consequential benefits and refund the part of the salary and allowances deducted in pursuance of punishment and appellate order. Further prayer has also been made for directing the respondents for providing benefits of promotion to the applicant which was due to him and could not be given due to pendency of the disciplinary proceedings.

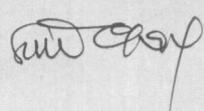
2. Facts of the case may be summarized as follows. It has been held by the applicant that he was appointed as Confidential Stenographer in the respondents organization on 29.12.89. Personnel Officer of the Division or Senior Divisional Personnel Officer are the appointing authorities and Cadre Controlling authorities of the applicant. The applicant was deputed under different departments but the Head of the Department remained the same. The applicant was transferred from Lucknow Division to Izatnagar Division by Senior D.P.O. Lucknow vide transfer order dated 28/30 March, 2001. Afterwards, he was transferred under the control of Chief Medical Superintendent (later on called as CMS) vide order dated 22/23 April, 2003 and it appears that the applicant is



working with the C.M.S. (Respondent No.3). All orders have been annexed with the O.A. That while the applicant was working in the Lucknow Division under C.M.S. Lucknow, a charge sheet was served on him for major penalty with the signature of DPO, Lucknow on 13th December, 1999. A representation was submitted against that charge sheet. That required documents were not supplied to the applicant. When the charge Memo dated 13.12.1999 was still pending, a second charge sheet was served on 10/28 April, 2001 issued by the Divisional Medical Officer, Lucknow, but he was not competent to serve the charge sheet. In the medical department applicant was only deputed whereas the cadre controlling authority was the Personnel department. It has been alleged in the earlier charge sheet as well as in the second charge sheet that the applicant was issuing some allegedly fabricated transfer orders of Gangmen of Engineering Department under the allegedly forged signature of Sr. DEN/II/ Lucknow. In both the charge sheets allegations were of identical nature. The applicant participated in the enquiry under protest and submitted application on 6th January, 2004 raising certain objections. As per direction of the enquiry officer application was also moved before the appointing authority and reply was given by the respondents of the application submitted by him and it was ordered that both the charge memos are in order and enquiry on the second charge memo is in order and the enquiry on the

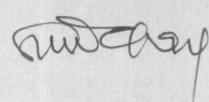
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second charge memo will continue and the decision on the earlier charge memo shall be taken later on. No action was taken on the first charge sheet. Enquiry proceedings were conducted on the second charge memo. The allegations against the applicant were based on suspicion and in view of the settled principle of law that nobody can be held guilty on the basis of suspicion. That the enquiry was not conducted by the enquiry officer impartially and the enquiry officer himself acted as prosecutor also and he cross-examined the witnesses. Written defence was submitted by the applicant to the enquiry officer and he denied the charges. However, it has been admitted that some of the alleged transfer orders were typed by him. But it was done at the request of the dealer of the transfer matters, as a normal practice. There was no regular typist in the office of DRM, papers were typed by the applicant or his colleagues but it was not sufficient for framing the charge against the applicant. The enquiry officer did not consider all these contentions and the enquiry report was submitted on 15th October, 2004 and the disciplinary authority considered the enquiry report arbitrarily and illegally and without any merits. The attitude of the respondents/disciplinary authority was biased. That the charge sheet was served by incompetent person and the enquiry was not conducted impartially by the enquiry officer. All the points raised by the applicant were not considered by the enquiry officer. The applicant was directed to



submit reply of the enquiry report, but the disciplinary authority passed a mechanical and unreasoned order imposing the penalty of reduction of pay of the applicant from Rs. 6350/- to Rs. 5750/- in the grde of Rs. 5000-8000 for 37 months without affecting future increments. The appeal was preferred by the applicant on 24.1.2005 and even the appellate authority did not consider the points raised by the applicant and mechanical order was passed by the appellate authority and appeal was rejected. As the appeal was rejected by a non-speaking order, hence it is liable to be quashed.

3. The respondents contested the case and filed the Counter reply and denied from the allegations made in the O.A. It has further been alleged that the applicant was appointed as Stenographer in the scale of Rs. 1200-2400 in NER on 29.12.1989 and posted in Lucknow Division. The applicant worked on different posts and different places and unit as Stenographer and Confidential Stenographer under CMS Lucknow. Allegation was made against him of his previous service activities of forgery. That a charge sheet was served on the applicant by the CMS Lucknow. After serving the charge sheet the applicant was transferred in Izatnagar Division. The charge sheet was served on the applicant in proper manner and an enquiry officer was appointed and the applicant submitted reply. Witnesses were examined and the



enquiry officer submitted the enquiry report. The disciplinary authority imposed the punishment of reduction of pay from the scale of Rs. 5000-8000 to Rs. 4000-6000 on a pay of Rs. 6000/- for 40 months with cumulative effect. It is wrong to allege by the applicant that only the Head of the Personnel Department in the Division could initiate the proceedings against the applicant. Cadre controlling authority and Controlling authority of the employed person are different. By definition, the authority under whom the employee is directly working is called the cadre controlling authority of the person and the controlling authority of the applicant was under whom he was working directly and not the cadre controlling authority i.e. the Personnel Officer. It is a fact that earlier a charge sheet was served on the applicant on 22nd December, 1999, but no action or no punishment was awarded on the basis of that charge sheet. The charge sheet which was served by CMS Lucknow is legal and operative, because at the relevant time the applicant was directly working under CMS Lucknow and disposing of his day today work under CMS Lucknow. As per rules, the controlling authority of the applicant was CMS Lucknow and he issued the charge sheet and it was in accordance with rules. That the charge memo dated 13th December, 1999 and 10/28.04.01 are not the same, but the charges are of similar nature, but it is more elaborate and specifically mentioned that which orders were fabricated.

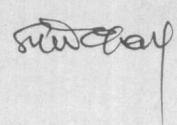


Applicant has been awarded punishment on the charge memo of 10/28.4.01. No punishment was awarded of earlier charge sheet. After considering all the evidence and the enquiry report, the disciplinary authority arrived at the conclusion that the applicant has indulged himself to get issued the forged transfer orders and on this conclusion the disciplinary authority awarded the punishment on 5/6.1.2005 and the punishment was enhanced in appeal. That the order passed by the disciplinary authority as well as the appellate authority shows application of mind and it is in accordance with law and rules. O.A. lacks merit and is liable to be dismissed.

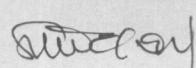
4. In response to the Counter reply of the respondents, the applicant filed R.A. and reiterated the facts which have been alleged in the O.A. and what has been alleged in the C.A. has been denied. One Supplementary Counter Affidavit has also been filed which shall be considered at the appropriate place.

5. We have heard Shri T.S. Pandey Advocate for the applicant and Shri P.N. Rai, Advocate for the respondents and perused the entire facts of the case.

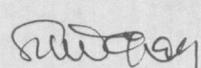
6. It is an undisputed fact that the applicant had been working as Confidential Stenographer in the respondents' organization and at the relevant period the applicant was

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working under CMS/respondent No.3. It is also admitted fact that a charge sheet was served on the applicant on 13.12.99 of major penalty. Subsequently, a second charge sheet was served on 10/28.4.2001 on identical allegations and it was unjustified on behalf of the respondents as alleged by the applicant. It is also admitted fact that enquiry was conducted against the applicant only in pursuance of the charge sheet dated 10/28.4.2001 and nothing was done on the first charge sheet dated 13th December, 1999, the punishment has also been awarded on the applicant on the second charge sheet. Under these circumstances, it will be presumed that the respondents are not intending to proceed with the first charge sheet dated 13.12.99. Enquiry officer was appointed and the enquiry officer conducted the enquiry and submitted enquiry report on 15.10.2004. It has been argued by the learned counsel for the applicant that the charge sheet was not served on the applicant by the competent authority. That the applicant was appointed on 29.12.89 by the Divisional Personnel Officer of the Lucknow Division. That only the Personnel Officer of the Senior Divisional Personnel officer was the appointing authority and cadre controlling authority of the applicant and it is only the head of the Personnel department of the division who was competent to initiate and finalize the disciplinary proceedings against the applicant, whereas in the present case the charge sheet was served on the applicant by CMS(respondent No.3)

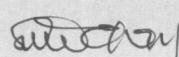


with whom applicant was working at the relevant time. The first charge sheet was served on the applicant under the signature of the Divisional Personnel Officer, Lucknow on 13.12.1999, but no enquiry was conducted against the applicant on the basis of first charge sheet and second charge sheet was not served by the competent authority. It has been alleged by the respondents in the C.A. that this contention of the applicant is not justified that only head of the Personnel Department of the Division could initiate and finalize the disciplinary proceedings against the applicant. Cadre controlling authority and controlling authority of employed persons are different authorities. The controlling authority is to be considered under whom the employee is directly working and the controlling authority is fully competent to serve the charge sheet. We have considered this aspect of the case and it is a fact that there are two authorities regarding the employees, one authority is called cadre controlling authority and the other is controlling authority. The cadre controlling authority is the authority who controls the cadre and whereas the controlling authority is the authority with whom the employee is working. Under these circumstances, it can be presumed that the controlling authority is fully competent to serve the charge sheet on the employee i.e. the applicant. We disagree with the argument that the charge sheet was not served on the applicant by the competent authority. It is regarding subsequent charge sheet dated 10/28



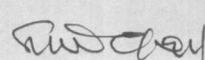
April, 2001 and it is not regarding the first charge sheet dated 22nd December, 1999. Because, undisputedly, no further proceedings were initiated on the basis of the charge sheet dated 22nd December, 1999, only the charge sheet was served without taking further action on the charge sheet and it is only in pursuance of the second charge sheet dated 10/28th April, 2001 that the proceedings were initiated and punishment has been imposed. Because, in connection with the first charge sheet, it has been alleged by the applicant himself that this charge sheet was served by the competent authority, the dispute is regarding charge sheet issued by the competent authority dated 10/28th April, 2001 and we are of the opinion that as the applicant was working at the relevant period under the control of CMS and hence controlling authority was CMS and he was fully competent to serve the charge sheet.

7. Much has been argued by the learned counsel for the applicant that regarding the same allegations two charge sheets cannot be served on an employee. When the charge sheet was served on 22nd December, 99, then a second charge sheet was also served on 10/28th April, 2001 on identical allegations. It is the rule position that the second charge sheet can also be served. But in that circumstances, the respondents are bound to cancel the first charge sheet, but it has been contended on behalf of the respondents that on the



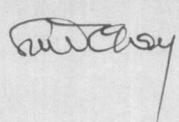
first charge sheet dated 22nd December, 99, no proceedings were initiated and that the respondents are not intending to proceed with the first charge sheet, hence now only the second charge sheet dated 10/28th April, 2001 is to be considered. We have perused the pleadings of the parties and we are of the opinion that as nothing was done by the respondents on first charge sheet dated 22nd December, 99, and action has been initiated only on the second charge sheet, hence it may be presumed that the first charge sheet is non-existent.

8. It has also been argued by the learned counsel for the applicant that enquiry was not conducted as per provisions of the Rule. Enquiry officer was biased and did not act impartially and fairly. That he himself called some of the prosecution witnesses and cross-examined them. Certain questions were put to the witnesses to fill up the case of the prosecution. But we disagree with this contention of the applicant that the enquiry was not conducted impartially. The enquiry officer is supposed to work like a quasi judicial authority and like a quasi judicial authority the enquiry officer can also cross-examine the witnesses if the statement is ambiguous of certain facts but for clarification of ambiguity cross questions can be asked by the enquiry officer and if certain questions were asked to the witnesses by the enquiry officer, then it cannot be said that the enquiry was not conducted by the enquiry officer impartially.



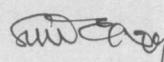
Nothing has been alleged against the enquiry officer that he did not conduct the enquiry in impartial manner and ultimately, after conducting the enquiry, report was submitted by the Enquiry officer on 15th October, 2004 and the disciplinary authority was required to submit the written statement on the enquiry report. It has been alleged in para 14 of the O.A. "A plain reading of the said report speaks volume about his unfair attitude. He had not considered the written statement, written brief and depositions of the defence witness with an open mind and impartiality." And in para 15 further it has been stated that "on receipt of copy of enquiry report, the petitioner summarized his defence points against the same and highlighted the points....." Hence it is admitted that the enquiry report was received by the applicant and reply was submitted by him of the enquiry when he was called by the disciplinary authority.

9. It has been argued by the learned counsel for the applicant that the enquiry report is based on surmises and conjectures. It has not been decided by the enquiry officer that the applicant is guilty of forging the signature of the competent authority and that the applicant used the documents treating the same as genuine. But even the disciplinary authority failed to consider the points raised by the applicant. The points raised by the applicant that the applicant typed the alleged forged transfer orders on the request of dealing clerk of the transfer



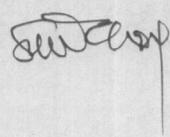
matter in routine way in administrative interest. That defence witnesses proved innocence of the applicant without reasonable doubt. That there is no evidence to suggest that the petitioner has ever forged signature of the authority concerned and none of the alleged transfer orders were cancelled. The disciplinary authority passed the order on 5/6.1.2005 (Annexure -2) and it has been specifically stated in the order that no such evidence was produced in the matter which establishes that on the disputed transfer orders, signature of the competent authority were put by the applicant Lal Chand. Hence, it has not been proved that forged signatures were put by Lal Chand, applicant. The learned counsel for the applicant argued that when disciplinary authority was convinced that there is no evidence to establish that it was the applicant who forged the signature of the competent authority, then it was not expected from the disciplinary authority that punishment order is awarded against the applicant. And in this connection the learned counsel for the applicant cited a judgment reported in AIR 1994, SC 1074, Managing Director, ECIL, Hyderabad, Etc. Etc. vs. B. Karunakar, Etc. Etc. and it has been held in para 25:

"The report did not indicate anything in addition to what was already supplied to him. Under those circumstances it was held that the principle of natural justice cannot be put into an iron cast or a straight jacket formula. Each case has to be considered and the principles applied in the light of the facts in each case. The effect of the violation of the principle of natural justice on the facts of the case on hand needs to be considered and



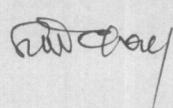
visualized. The effect of Tulsiram Patel's ratio was considered by my brother Sawant, J. and it needs no reiteration."

Hence, in view of the judgment of Hon. Supreme Court principle of natural justice cannot be put into an iron cast or a straight jacket formula. But, as the Hon. Apex court has held that each case has to be decided on the basis of facts of that case, we have to consider the nature of allegations in order to ascertain whether there had been any violation of principles of natural justice in the case of the applicant. As is evident from the charges framed against the applicant that it is alleged by the respondents that the applicant fabricated the forged transfer orders of certain employees and put forged signature of the competent authority. It has been admitted by the applicant in the O.A. in para 10 that "*He has categorically explained that, no doubt, he had typed some of the alleged transfer orders but he did so at the request of the dealer of the transfer matters, as a normal practice, only when he was free from his assigned duty. Because there was no regular typist posted in the office of the Divisional Rail Manager, (Engineering) office/Lucknow, hence the dealers used to get the important letters and office orders typed by the petitioner or his colleague Stenographers*" Hence it is an admitted fact that some of the alleged transfer orders were typed by the applicant but it has been alleged by the applicant that it was done on the request of dealing person,



dealing with the matter of transfers. But it has not been stated by the applicant that what has been done of these typed transfer orders. Because, undisputedly, forged transfer orders are the same which were typed by the applicant. It may be possible that the forged signatures were not put by the applicant in his own hand writing, but he cannot be absolved of the responsibility that he was not involved in the forged transfer orders. Burden lies on the applicant to explain that under which circumstances, transfer orders were typed by him and the disciplinary authority while considering these facts arrived at the conclusion that there appears involvement of the applicant. When the disciplinary authority arrived at the conclusion on the basis of evidence, then the Tribunal cannot sit as appellate authority over the decision of the disciplinary authority unless it is perverse and in view of the admitted fact, it cannot be said that the conclusion of the disciplinary authority was unfounded. There was some basis for that and considering this fact the disciplinary authority reduced the pay of the applicant in the scale of Rs. 5000-8000 from the pay of Rs. 6350/- to Rs. 5750/- for 37 months without cumulative effect.

10. The order passed by the disciplinary authority was challenged by the applicant before the appellate authority by filing appeal and order dated 26th June, 2006 was passed by the appellate authority is on record which is Annexure -3. It has

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been alleged by the learned counsel for the applicant that appellate authority did not consider the points raised by the applicant in appeal and the order was passed in mechanical manner from which it cannot be inferred that there is application of mind. We have perused the order Annexure-3, Although, it cannot be said that the respondent/appellate authority passed the order without application of mind. The overall facts of the case were considered by the appellate authority and considering the facts the appellate authority arrived at the conclusion that the applicant is guilty somehow for the charge of forging the transfer orders. It is also a fact that the appellate authority enhanced the order of punishment and applicant was reduced in rank from the pay scale of Rs, 5000-8000 to pay of Rs. 6350/- to the scale of Rs. 4000-6000 at the pay of Rs. 6000/- per month for a period of 40 months with cumulative effect. In this connection, it has been argued by the learned counsel for the applicant that the appellate authority followed specific provisions of the rules. If the appellate authority was of the opinion that the punishment awarded by the disciplinary authority was not commensurate with the charges levelled against the applicant, the appellate authority was required to follow the procedure as provided in Rule 22, sub rule 2, proviso V of Railway Servants (Discipline and Appeal) Rules, 1968. We have considered the relevant proviso in this connection and it has been provided in it "(v) *no order imposing an enhanced*



penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 11, of making a representation against such enhanced penalty."

11. Under these circumstances, it is mandatory provision of the rules that if the appellate authority was of the opinion that the punishment awarded by the disciplinary authority is not in proportion to the allegations made against the delinquent, then a show cause notice will be served on the employee so as to file representation regarding enhanced penalty. In the present case, we have perused the order passed by the appellate authority dated 26.6.2005 and we are of the opinion that the appellate authority has not applied the above mandatory provisions of rules. When a show cause notice was not served for awarding enhanced penalty, then it can be said that the order is not in accordance with rules. And as there is specific violation of above rule, hence it will be just and appropriate to direct the appellate authority to consider the appeal of the applicant and pass fresh order after following above provisions of the rule.

12. For the reasons mentioned above, we are of the opinion that the O.A. deserves to be allowed to this effect only that the order of enhancement of punishment of the appellate authority

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deserves to be quashed and a direction is to be given to the appellate authority to pass fresh order in the matter of appeal of the applicant as per provision of the above rules.

13. O.A. is allowed partly and the order of the appellate authority dated 26.6.2005 is quashed and the appellate authority is directed to pass a fresh order by following the proviso of Rule 22, sub rule 2, ~~proviso IV of the~~ proviso V of Railway Servants (Discipline and Appeal) Rules, 1968 considering the points raised by the applicant. For the rest of the relief, O.A. is dismissed. No order as to costs. The appellate authority shall pass fresh order in connection with the appeal of the applicant within a period of three months from the date a certified copy of this order is produced before the respondent/appellate authority. The applicant shall produce certified copy of this order before the appellate authority at the earliest.

T.Chandra

Member (A)

s.a

Smt. Savitri Raina

Member (J)