

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

O.A. No.1097 of 1996

Date of order:03.1.2001

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. M.P. Singh, Administrative Member

Chanchal Kumar Guha, S/o Late Dr.  
Kalipada Ghosh, working as Head Clerk,  
Metallurgical Laboratory, Eastern  
Railway, KPA, residing at Qr.No.Q/14A,  
Dangapara, Kanchapara, 24-Parganas

... Applicant

VS

1. Union of India, through the General  
Manager, Eastern Railway, Calcutta-1

2. The Deputy Chief Mechanical Engineer  
(G), Eastern Railway, Kanchapara,

3. The Works Manager (M), Eastern  
Railway, Kanchrapara, West Bengal

... Respondents

For the Applicant : Mr. B.P. Saha, counsel

For the Respondents: Mr. P. K. Arora, counsel

Heard on 03.01.2001

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O R D E R

D. Purkayastha, JM

Applicant, Shri Chanchal Kumar Guha working as Head Clerk, Metallurgical Laboratory, Eastern Railway, KPA has challenged the impugned order of penalty imposed upon him vide order dated 24.1.1996, Annexure 'A/1' to the application reducing his pay to the stage of Rs.1720/- in the time scale of Rs.1400-2300/- from the present stage for a period of two years which will not affect his future increments. According to the applicant, the respondents issued memo of chargesheet on 20.11.93, Annexure /A/4' alleging that while the applicant was dealing with the tender case No.19/14C/93-94/L9-306 dated 10.3.93 in his capacity as the dealing clerk deviated from the standing practices by not preparing the briefing note in the standard proforma and instead adding comments beyond his purview in order to influence the Tender Committee members. This action

him beyond any doubt by the Enquiry Officer. Thereafter the Enquiry Officer's report was accepted by the Disciplinary Authority and copy of the same was sent to the applicant as per extant rules. The Disciplinary Authority on going through the entire case records including the report imposed the punishment upon the applicant by an order dated 24.1.96. The applicant preferred an appeal against the said order of punishment passed by the Disciplinary Authority and that has been rejected. But the applicant did not challenge the same in the application. So, the enquiry conducted in accordance with the rules has been confirmed and hence the application ~~has been~~ liable to be dismissed.

3. Mr. Saha, learned advocate appearing on behalf of the applicant contended that the procedure adopted by the Enquiry Officer in holding the enquiry against the applicant is violative of the provision of Rules 17, 18, 19 and 20 of the RS(D&A) Rules, 1968. Mr. Saha, learned advocate also submits that the applicant was not given reasonable opportunity to defend his case before the Enquiry Officer by producing the relevant evidence in support of his case as required under <sup>Sub</sup> Rule 19 of the RS(D&A) Rules, 1968 and the Enquiry Officer did not bring the evidence in record, rather he acted on the evidence which is not admissible and not proved by the prosecution establishing the charges and hence the finding of the Enquiry Officer is cryptic in nature and devoid of any legally admissible evidence produced before him. So, the applicant was punished on the basis of the enquiry report which was not sustainable. Therefore, the entire action of the respondents including the order of the appellate authority is liable to be quashed.

4. Mr. Arora, learned advocate for the respondents contended that no infirmity has been committed by the Enquiry Officer in this case. The Enquiry Officer acted in accordance with the

rules and reasonable opportunity has been given to the applicant to defend his case and the applicant did not challenge the appellate order passed by the Appellate Authority for which the applicant is not entitled to get any relief and the application is liable to be dismissed on these two grounds alone and he further submits that the Enquiry Officer is empowered to put question to the witness and he is vested with the power to put question for the purpose of clarification. Accordingly, he has drawn our attention to the comments at page 225 of Bahri's Compilation of the Railway Servants (Discipline and Appeal) Rules, 1968, 4th Edition, 1991 wherein it is mentioned that the foundation of Discipline and Appeal Rules based on Article 311 is the natural justice and reasonable opportunity. This requires that the EO should be impartial person and cannot act as a judge as well as a prosecutor. The department is free to appoint a presenting officer to present their case. However, since the rules permit that where the Presenting Officer is not there the EO has to proceed alone, to this extent, there may be no irregularity. But during such an enquiry the EO cannot cross examine any witness. He may, however, ask clarificatory questions wherever and as many as he likes. If he cross-examine the witnesses it may be a violation of the principles of natural justice and may be set aside by the Tribunals/Courts. Similarly if the EO is himself the complainant, he should not function as an Enquiry Officer.

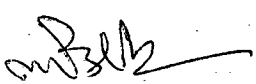
5. We have considered the submissions of the learned advocates of both the parties and perused the records. The main question before us is whether the applicant was given reasonable opportunity to defend his case during the enquiry proceeding conducted by the Enquiry Officer. We have gone through the proceedings of the enquiry held on 6.2.95 for major penalty chargesheet issued to the applicant on 20.11.93. From the said proceedings dated 6.2.95, it is found that in the instant case,

no presenting officer has been appointed by Disciplinary Authority to represent his case before Enquiry Authority so appointed by him for holding enquiry. From the said proceedings we do not find that any order has been passed by the Enquiry Officer relating to the closing of the evidence from the side of the presenting officer or disciplinary authority before putting question to <sup>Employee</sup> him. Without recording any order regarding closing of evidence for and on behalf of the disciplinary authority, the enquiry officer started to put question and he also did not allow the applicant to produce evidence. He did not allow any opportunity to the applicant to examine himself on his own behalf or examine any witness in support of his case. Here from the note it is found that the enquiry officer did not act in accordance with the Sub-rules 19 and 20 of Rule 9. Thereby he (EO) flouted the provisions of Sub-rules (19), (20) and (21) of the said Rules. In view of the aforesaid circumstances we are of the view that the applicant was denied the reasonable opportunity to lead his evidence in accordance with the provisions prescribed by Sub-Rules 19 and 20 of Rule 9. We are of the view, that right of the Govt. servant to produce his evidence was denied in this case. In this case we have also gone through the report of the Enquiry Officer produced by the Railway respondents along with the reply. We find that the said finding of the Enquiry Officer is cryptic in nature and devoid of application of mind. He relied on some documents which were not proved as evidence in accordance with the Rules in this case. Since, we are of the view that the Enquiry Officer has blatantly flouted the provision as well as he denied the reasonable opportunity to defend the case. So, the report of the Enquiry Officer is not sustainable.

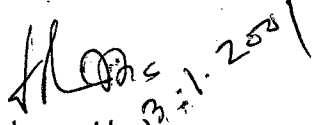
6. In view of the aforesaid circumstances we are of the view that the order passed by the disciplinary authority imposing punishment upon the applicant on the basis of the

enquiry report is not sustainable and all subsequent orders either passed by the disciplinary authority or the appellate authority are also not sustainable. In this case admittedly the applicant did not challenge the appellate order. We are of the view that when the enquiry report is found arbitrary and violative of the principle of natural justice, therefore, all actions of the respondents basing on the illegal and irregular <sup>order</sup> order are not sustainable. Order which is basically found illegal cannot be held to be valid due to affirmation by the appellate authority.

7. In view of the aforesaid circumstances we quash the enquiry report as well as the order of punishment imposed upon the applicant which has been affirmed by the appellate authority vide order dated 30.4.96, Annexure 'R/VII'. The applicant is entitled to get all consequential benefits along with a cost of Rs.1000/- to be paid by the respondents. Accordingly the case is disposed of.

  
(M. P. Singh)

MEMBER (A)

  
(D. Purkayastha)

MEMBER (J)