

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

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Date of Decision: 23.11.2001

OA 245/99

Chaturbhuj s/o Shri Hari Ram r/o Traffic Colony, Merta Road, Distt.Nagour, last employed as Goods Driver at Merta Road Railway Station, Northern Railway.

... Applicant

V/s

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Mechanical Engineer (Power), Northern Railway, Jodhpur Division, Jodhpur.
3. Additional Divisional Railway Manager, Northern Railway, Jodhpur Division, Jodhpur.

... Respondents

CORAM:

HON'BLE MR.JUSTICE O.P.GARG, VICE CHAIRMAN

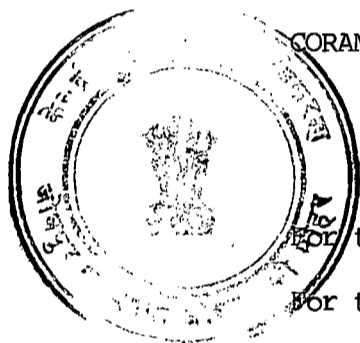
HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

For the Applicant

... Mr.J.K.Kaushik

For the Respondents

... Mr.S.S.Vyas



O R D E R

PER HON'BLE MR.JUSTICE O.P.GARG, VICE CHAIRMAN

By means of this Original Application u/s 19 of the Administrative Tribunals Act, 1985, the applicant, who was employed on the post of Goods Driver at Merta Road Railway Station, has challenged the order dated 30.12.97 (Ann.A/1), whereby a major penalty of compulsory retirement has been inflicted upon him, as well as the order dated 14.7.98 (Ann.A/3), rejecting his appeal, and has prayed that the said orders being illegal be quashed and the applicant be reinstated in service, with all consequential benefits.

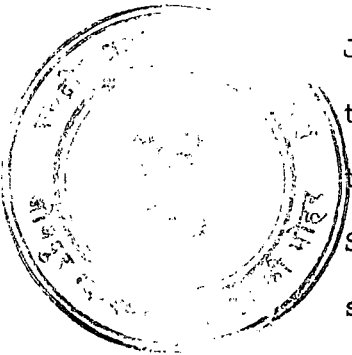
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2. Reply as well as rejoinder to the reply have been brought on record.

3. Heard Mr.J.K.Kaushik, learned counsel for the applicant, as well as Mr.S.S.Vyas, appearing on behalf of the contesting respondents.

4. Briefly stated, the facts of the case are that the applicant, at the relevant time, was a Goods Train Driver. On 5.5.96, he was detailed for duty to take Goods Train No.E/Box from Phulera to Rai-ka-Bag. The applicant stopped the train at Banar Railway Station, even though there was a through signal, and informed PRC Jodhpur that he cannot proceed further as he has completed 10 hours of duty. The applicant was directed to take the train upto Rai-ka-Bag, which would have taken about 15 minutes to reach. The applicant did not comply with the said direction and, accordingly, a relief was sent from Jodhpur with the result there has been disruption in the movement of the railway traffic. A departmental inquiry was initiated against the applicant. He was served with a charge-sheet. Shri Shyam Lal Sharma, Loco Inspector, was appointed as Inquiry Officer and submitted his inquiry report dated 13.7.97 (Ann.A/5) exonerating the applicant of the charges framed against him. The disciplinary authority took a view contrary to the findings of the inquiry officer and found the applicant guilty of violation of Para-3(i),(ii) & (iii) of Railway Servants (Conduct) Rules, 1966 and inflicted the major penalty of compulsory retirement upon him. The applicant preferred an appeal, which was dismissed on 14.7.98 by a cryptic order.

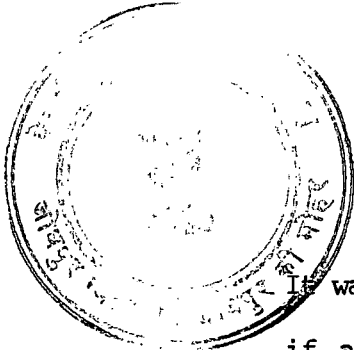


5. The main thrust of Mr.Kaushik, appearing on behalf of the applicant, is that the disciplinary authority though was within his jurisdiction to disagree with the findings of the inquiry officer, could not have taken a different view unless he has afforded an opportunity of hearing to the applicant. In support of his

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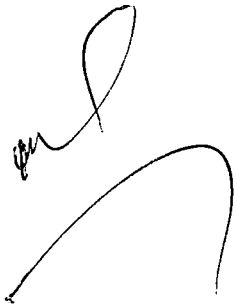
contention, Mr.Kaushik placed reliance on a circular letter issued by the Railway Board [No.E(D&A)87 RG 6-151, dated 4.4.1996], para-5 of which reads as follows :-

"5. It has also been decided that where the Inquiring Authority holds a charge as not proved and the disciplinary authority takes a contrary view, the reasons for such disagreement must be communicated, in brief, to the charged officer alongwith the report of Inquiry so that the charged officer can make an effective representation. This procedure would require the Disciplinary Authority to first examine the report as per the laid down procedure and formulate its tentative views before forwarding the Report of Inquiry to the Charged Officer."



It was further argued that it is well settled proposition of law that if a disciplinary authority proposes to take a different view, it must give an opportunity of hearing to the delinquent employee before recording his conclusions and if he does not do so, the principles of natural justice shall stand violated. In this connection, a reference was made to the decision of Hon'ble the Apex Court in the case of Punjab National Bank & Ors. v. Kunj Behari Misra, AIR 1998 SC 2713.

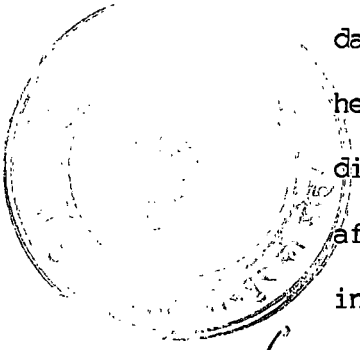
6. It is accepted at all hands that the disciplinary authority while disagreeing with the report of inquiry did not give any opportunity whatsoever to the applicant before passing the order of punishment of compulsory retirement. Undoubtedly, the order of disciplinary authority, retiring the applicant compulsorily from service, is in flagrant violation of the principles of natural justice. It is also in contravention of the departmental instructions. The order of punishment, therefore, is bad in law and



cannot be sustained. The appellate authority also does not appear to have applied its mind to the facts of the case and we are constrained to observe that the appeal was dismissed in a most cursory, perfunctory and mechanical manner.

7. In the result, the OA succeeds and is allowed. Accordingly, we pass the order as under :-

The order dated 30.12.97 (Ann.A/1), imposing major penalty of compulsory retirement on the applicant, as well as the order dated 14.7.98 (Ann.A/3), rejecting applicant's appeal, are hereby quashed. It is, however, made clear that the disciplinary authority shall be at liberty to pass orders afresh after giving an opportunity of hearing to the applicant in accordance with law. No order as to costs.

  
*Gopal Singh*  
(GOPAL SINGH)

MEMBER (A)

*O.P. Garg*  
23.11.2001  
(JUSTICE O.P.GARG)

VICE CHAIRMAN

Received  
Deacon  
4/12/2001

Part II and III destroyed  
in my presence on 2-1-5-07  
under the supervision of  
section officer (1) as per  
order dated 13/3/07  
Neale  
Section officer (Records)

Re  
Order  
24/11/06