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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR

Original Application Nos.307/2003

Date of decision: 18-2-2010

Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.

Hon'ble Dr. K.S.Sugathan, Administrative Member.

Hari Ram S/o Sh. Taru Ram caste Nayak, Ex. Khalasi, T. No. 71 Stores Depot, Northern Railway Now North West Railway, Bikaner resident of Gogagate Nayakon Ka Mohalla, Behind Hero Honda Agency, Ganga Shahar Road, Bikaner (Rajasthan)

: Applicant.

Rep. By Jaidev Singh Bhati : Counsel for the applicant.

Versus

1. The Union of India, through General Manager, North West Railway, Headquarter, Old Loco Colony Area, Jaipur (Rajasthan).
2. The Senior Material Manager, North West Railway, Stores Depot, Bikaner, (Lallgarh) Rajasthan.
3. The Assistant Controller of Stores, now Assistant Material Manager, North West Railway Stores Depot, Bikaner (Lallgarh) Rajasthan.

: Respondents.

Rep. By Mr. Kamal Dave : Counsel for the respondents.

ORDER

Per Mr. Justice S.M.M. Alam, Judicial Member

Applicant Hari Ram, Ex Khalasi, bearing token No. 71/Stores Depot, Northern Railway, now North West Railway, Bikaner has preferred this O.A claiming the following reliefs:

> " i) That Hon'ble Tribunal may quash and set aside punishment order No. 728 E/ HR/G/BKA/2000-02 dated 07.10.2002 (Annex. A/1) and appeal order No. 728 E/ Hariram/ Gopniya /Bika/2000-03 dated 14.10.2003/29.11.2003 (Annex. A/2) with consequential benefits, being illegal un-constitutional and in violation of principles of natural justice and untenable in view of facts and circumstances of the case.

ii) That the Hon'ble Tribunal may direct respondents to reinstate applicant in Railway Service with full back wages and all service benefits.

iii) Any other relief as may be considered just and proper may be given to the applicant.

iv) Cost may be awarded to the applicant.

2. The brief facts of the case are as follows:

Applicant was appointed as Khalasi in Northern Railway in the year 1978 in Stores Depot, Bikaner (Lallgarh). On 26.07.2000, he was served with a charge sheet issued by the Assistant Controller of Stores, Northern Railway, [Assistant Material Manager, North West Railway, Bikaner (Lallgarh)]. As per the charge sheet annex. A/3, the applicant was firstly charged that during life time of first wife namely Raju Devi he had married second time to Smt. Naina Devi and secondly that when explanation was called from him in this regard he submitted incorrect facts and thereby he was found guilty of violating Rule 3 (i) (ii) and (iii) of Railway Servants (Conduct) Rules, 1966. It has been stated in para 4.8 of the O.A that the applicant had submitted his explanation and reply to the query with regard to his marriage with Raju Devi, but that explanation was not considered and in the very charge sheet the applicant was held guilty of having second wife during the life time of first wife. At. Para 4.9, the applicant has stated that he had submitted explanation on 20.07.2000 that Raju Devi is not his married wife and the complaint of Raju Devi in this regard is incorrect and baseless. The said explanation has been annexed as Annex. A/4. At para 4.10 of the application it has been alleged that the applicant submitted an explanation on 18.12.2002 that Raju Devi is not his married wife and he demanded relevant documents from the respondents with regard to the allegation, but the same

were not supplied and thereby the applicant was denied reasonable opportunity to defend his case. At para 4.16 it has been alleged that Annex. A.4 with the charge sheet dated 26.07.2000 shows that no name of any witness has been shown and no voluntary statement of any witness in support of the charge was recorded. It has further been stated that in any disciplinary inquiry reasonable opportunity of cross examination of witness has to be given to the delinquent official but in this instant case the applicant was not given any such opportunity and in fact the disciplinary inquiry has been conducted in the absence of the applicant and as such it is a case of no evidence against the applicant. At paras 5.4, 5.5, 5.6 and 5.7, the applicant has stated that the inquiry report has been submitted without recording voluntary or oral statement of any witnesses and without giving any opportunity to the applicant to cross examine the witnesses and therefore the inquiry report is based on no evidence. The inquiry report is arbitrary, cryptic and non-speaking. It has also been alleged that the applicant was not given opportunity to defend himself.

3. After filing of the O.A notices were issued to the respondents. In response to the notices issued, Respondents have appeared through their lawyer and filed a detailed reply. In the reply the respondents have stated that the inquiry was conducted in accordance with rules and the applicant had failed to participate in the inquiry on his own although the charge sheet was served upon him and even number of communications were sent to the applicant by the inquiry officer in consonance with the principles of reasonable

opportunity. But the applicant failed either to participate in the inquiry or to respond to the communications and therefore the department cannot be blamed for not giving opportunity to the applicant to defend his case. It has further been stated that the technicalities cannot over ride the overall finding in respect of misconduct and the findings are based upon the perusal of the documents submitted by the applicant himself in connection with his service. The documents, which were perused are (i) attestation form (ii) family details supported by affidavit and (iii) medical identity card. The respondents have also stated that the explanation submitted by the applicant to the authorities (Annex. A/4) and on careful perusal of the above documents it was established that the applicant had taken second wife namely, Smt. Naina Devi when his first wife Raju Devi was still alive. It has also been stated that the punishment imposed on the applicant is according to law and as such the applicant has got no case in his favour.

4. During course of the arguments it has been pointed out by the learned counsel of the applicant that in the reply respondents themselves admitted that the applicant had not participated in the alleged disciplinary inquiry. He further submitted that the respondents have stated in reply to para 4.16 of the O.A (page 54 of the paper book) that the applicant failed to respond to any of the communication of the inquiry officer and also failed to respond to the charge sheet hence at this stage he cannot take advantage of his own wrong. The learned counsel of the applicant further submitted that the respondents have failed to prove that communications were sent

by the inquiry officer to the applicant asking him to participate in the inquiry. They have not annexed any such communication with the reply. He submitted that the applicant has categorically stated in para 5.12 of the O.A that no notice of disciplinary inquiry was given to the applicant and the disciplinary inquiry was not conducted in the presence of applicant but even then the respondents did not bring on record any chit of paper to show that any such notice was ever served upon the applicant asking him to participate in the inquiry. He submitted that non production of such notice establishes beyond doubt that no notice was given to the applicant prior to the initiation of disciplinary proceedings. He further submitted that the Tribunal could draw inference that before initiation of disciplinary proceedings no notice was given to the applicant.

5. The learned counsel of the respondents submitted that the applicant did not participate in the inquiry in spite of notices sent to him and so the inquiry officer after perusal of the documents submitted by the applicant himself in connection with his service came to the conclusion that the charge stands proved and accordingly submitted his report to the disciplinary authority. Therefore, no fault can be found in conducting the disciplinary inquiry.

6. We have heard the learned counsel appearing for both the parties. From the available materials on record it is established that the disciplinary inquiry was conducted in the absence of the applicant although it is claimed by the respondents that notice had been given

to the applicant by the inquiry officer for holding the departmental inquiry.

7. A perusal of the inquiry report further reveals that the conclusion of the inquiry officer that the charge stands proved is based on the perusal of some documents which were filed by the applicant in connection with the preparation of his service record. The documents are (i) Attestation form dated 07.09.79 (Annex. R/1) (ii) an affidavit dated 21.01.85 giving family details (annex. R/2) (iii) Railway Medical Attendance Identity Card dated 01.08.90 (annex. R/3).

8. It is admitted position that on the basis of the inquiry report, a major penalty of removal from service was imposed on the applicant. Rule 9 appearing at part IV of Railway servants (Discipline and Appeal) Rules, 1968 (in short RSDA Rules 1968) deals with procedure for imposing major penalties. The relevant Rules and sub-rules are being quoted below:-

Rule **9. Procedure for imposing major penalties:**

(1) No order imposing any of the penalties specified in Clauses (v) to (ix) of Rule 6 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and Rule 10 or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850) where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a railway servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries Act, 1850, as the case may be, [a Board of Inquiry or other authority] to inquire into the truth thereof

(3) Xx xx xx xx

(4) Xx xx xx xx

(5) Xx xx xx xx

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(6) Where it is proposed to hold an inquiry against Railway servant under this rule and rule 10, the disciplinary authority shall draw up or cause to be drawn

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge which shall contain:

(a) a statement of all relevant facts including any admission or confession made by the Railway servant;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(7) The disciplinary authority shall deliver or cause to be delivered to the Railway servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witness by which each article of charge is proposed to be sustained and shall require the Railway servant to submit a written statement of his defence within ten days or such further time as the disciplinary authority may allow.

Xx xx xx xx

Xx xx xx xx

(11) The Railway Servant shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of receipt by the inquiring authority of the order appointing him as such, as the inquiring authority may, by a notice in writing specify in this behalf or within such further time not exceeding ten days, as the inquiring authority may allow.

(12) The inquiring authority shall, if the Railway servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer, if any, to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days after recording an order That the Railway servant may for the purpose of preparing his defence give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow for the discovery or production of any documents which are in possession of Railway Administrative but not mentioned in the list referred to in sub rule (6)

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(17) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer, if any, and may be

cross examined by or on behalf of the Railway servant. The Presenting Officer, if any, shall entitled to reexamine the witnesses on any points on which they have been cross examined, but on any new matter without the leave of inquiring authority. The inquiring authority may also put such questions to be witnesses as it thinks fit.

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(19) When the case for the disciplinary authority is closed, the Railway servant shall be required to state his defence orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the railway servant shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer, if any.

(20) The evidence on behalf of the Railway servant shall then be produced. The Railway servant may examine himself in his own behalf, if he so prefers. The witnesses produced by the Railway servant shall then be examined by or on behalf of him and shall be cross examined by or on behalf of the Presenting Officer, if any. The Railway servant shall be entitled to reexamine the witnesses on any point on which they have been cross examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(21) The inquiring authority may, after Railway servant closes his case, and shall, if the Railway servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Railway servant to explain any circumstances appearing in the evidence against him.

(22) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, and the Railway servant, or permit them to file written briefs of their respective cases, if they so desire.

(23) If the Railway servant, to whom a copy of the article of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex parte.

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25 (i) After the conclusion of the inquiry, a report shall be prepared and it shall contain

a. the articles of charge and the statement of imputations of misconduct or misbehaviour;
b. the defence of the Railway servant in respect of each article of charge
c. assessment of the evidence in respect of each article of charge; and
d. the findings on each article of charge and the reasons therefore.

9. Thus the above provisions of RSDA rules, 1968, clearly lays down that in the cases warranting imposition of major penalties, a full fledged inquiry based on oral as well as documentary evidence is required to be conducted. Sub rule 23 of Rule 9 of RSDA Rules, 1968 further lays down that in cases where a delinquent employee fails to appear before the inquiry officer, it is mandatory for the inquiry officer to hold ex parte inquiry by bringing all the oral as well as documentary evidences on record. Le us see whether the disciplinary inquiry was conducted as per Rule.

10. It is admitted case of the applicant that he had received the Memorandum dated 26.07.2000 (Annex. A/3) containing charge as well as article of charges through which a departmental inquiry for imposing major penalty was proposed against him. However, the applicant had already denied the allegation in his representation dated 20.7.2000 (Annex. A/4). It appears that after the receipt of Memorandum of charges the applicant did not participate in the departmental enquiry proceeding as such inquiry was proceeded ex parte. The applicant has taken a plea that he had not received any notice for initiation of enquiry from the said of enquiry officer and so he was unable to participate in the enquiry. The learned advocate of the respondents while rebutting the plea of the applicant has produced the entire file of disciplinary proceeding which shows that on 22.11.2000, 14.05.2000 and 10.06.2002, the enquiry officer gave notices to the applicant to file defence reply but the applicant neither appeared nor filed defence reply hence as per the provision under sub-rule 23 of Rule 9 of RSDA Rules, 1968, the enquiry officer

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proceeded to hold ex parte enquiry. We are of the view that the enquiry officer rightly proceeded for ex parte enquiry when the applicant in spite of issuance of notice failed to appear in person to participate in the enquiry.

11. It has been submitted by the learned advocate of the applicant that during the ex parte inquiry, the inquiring officer neither examined any witness nor tried to bring all those documents on record by marking exhibits as such the enquiry officer was not entitled to use all those documents which were not exhibited documents against the applicant while preparing enquiry report holding that the charge of bigamy against the applicant stands proved. It is true that the enquiry officer while coming to the conclusion has taken into consideration some documents which were not exhibited documents but merely on technical grounds it cannot be said that the enquiry officer was not legally entitled to use all the information entered in those documents were definitely supplied by him. Moreover, the enquiry records shows that on 12.08.2001 the inquiry officer had recorded the statement of applicant Hari Ram and he was confronted by the enquiry officer that he himself had entered the name of Raju Devi as his wife in affidavit dated 02.07.1981, Family members declaration from dated 07.03.90, medical identity card and family planning certificate. Thus we are of the view that the enquiry officer had rightly used the above mentioned documents in preparing his enquiry report. Moreover it appears that on 06.11.2001 the enquiry officer had taken the statement of complainant Raju Devi, the first wife of the applicant and she fully

supported the allegation levelled in the complaint. It is also transpires that the enquiry officer had also examined the second wife of the applicant namely, Naina Devi on 15.12.2001 and so it cannot be said that the enquiry report is perverse and based on no evidence. The law is very clear on the point which prohibits the Tribunal in interfering with the findings of the enquiry officer in a disciplinary proceeding unless the Tribunal finds it arbitrary, perverse or based on no evidence. Thus we are of the view that the applicant has failed to make out any case calling for any interference with the enquiry report.

12. One of the grounds taken by the applicant is that copy of the enquiry report has not been given to him. We have examined this ground with reference to the relevant rules as well as with the judicial pronouncement on the subject. Rule 15 (2) of the CCS (CCA) Rules as well as Rule 10 (2) RSDA Rules 1968 stipulates that the disciplinary authority shall forward a copy of the enquiry report to the Government servant along with tentative reasons for any disagreement, if any. As per the said rule, it is mandatory for the disciplinary authority to send a copy of the enquiry report to the employee. However, there are judicial pronouncements to the effect that the Courts/Tribunals should not mechanically set aside the order of punishment on the ground that the enquiry report was not furnished. In the case of **Managing Director, ECIL, Hyderabad and Others vs. B. Karunakar & Others** [(1993) 4 SCC 727] in para 31, the Hon'ble Supreme Court has observed as under:

> "31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming

to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

In the case of **Haryana Financial Corporation and Another vs. Kailash Chandra Ahuja** - (2008) 9 SCC 31 - in para 44, the Hon'ble Supreme Court has observed as under:

"44. From the aforesaid decisions, it is clear that though supply of report of the inquiry officer is part and parcel of natural justice and must be furnished to the delinquent employee, failure to do so would not automatically result in quashing or setting aside of the order or the order being declared null and void. For that, the delinquent employee has to show "prejudice". Unless he is able to show that non-supply of report of the inquiry officer has resulted in prejudice or miscarriage of justice, an order of punishment cannot be held to be vitiated. And whether prejudice had been caused to the delinquent employee depends upon the facts and circumstances of each case and no rule of universal application can be laid down."

We have considered the facts of this case from the angle of prejudice caused to the delinquent employee as a result of non-furnishing of the enquiry report. We are of the view that even if the

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copy of the enquiry report had been furnished, it could not have made any difference to the finding of the disciplinary authority since the charges of bigamy has been proved on the basis of official records, which are not contradicted during the course of the enquiry.

13. Now the question is whether this Tribunal can interfere with the punishment awarded by the competent authority even if it has arrived at a finding that the disciplinary enquiry was conducted in accordance with the rules and the principles of natural justice was not violated. The answer is definitely in negative. We are of the view that if the penalty can lawfully be imposed and is imposed on proved misconduct, the Tribunal has no power to interfere or to substitute its own decision for that of the authority. To support our view we place reliance upon the following decisions:

(i) **Union of India and others vs. Narain Singh** [(2002) 5 SCC 11]; **(ii)Regional Manager, UPSRTC Etawah and ors vs. Hotiall and Another** [(2003) 3 SCC 605];

14. In view of the discussions made above, we hold that the applicant has not made out any case for our interference and accordingly the O.A is dismissed with no order as to costs.

{Dr. K.S. Sugathan }
Administrative Member.

{ Justice S.M.M. Alam }
Judicial Member.

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दिनांक 17/11/15 के आदेशानुसार
मेरी उपस्थिति में दिनांक 9/2/16
को भाग-II व III नष्ट किए गए ।

अनुभाग अधिकारी
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर न्यायपीठ, जोधपुर