

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 14/2006

Date of order: 07.04.2010

CORAM:

**HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER
HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER**

Idana Ram son of Sh. Girdhari Ram, presently working as Head Khalasi, North-West Railway, Barmer - R/o Madpura, Baytu, Barmer.

...Applicant.

Mr. K.D.S. Charan, proxy counsel for
Mr. Kuldeep Mathur, counsel for applicant.



VERSUS

The Union of India through the General Manager, North West Railways, Jaipur.

The Upper Divisional Railway Manager, North-West Railways, Jodhpur.

3. The Senior Divisional Electrical Engineer, North-West Railways, Jodhpur.

4. The Divisional Electrical Engineer, North-West Railways, Jodhpur.

... Respondents.

Mr. Manoj Bhandari, counsel for respondents.

ORDER

(Per Hon'ble Dr. K.B. Suresh, Judicial Member)

The applicant seems to have misbehaved and abused his senior and thereupon it appears that one Shri Brajvashi Meena, the affected officer, had filed a First Information Report against the applicant on 10.06.2002. Following such incident, on

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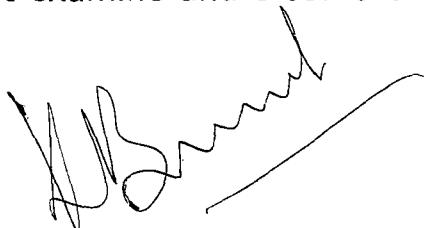
11.06.2002, 4th respondent placed the applicant on suspension. A month later, the applicant submitted a detailed representation to the respondents but before that on 09.07.2002 itself, the suspension order was revoked but it was made clear that disciplinary proceedings will be initiated against the applicant. Thereafter on 02.08.2002, a charge-sheet was served on the applicant and applicant had submitted a detailed representation in response to the charge-sheet.

2. In the meanwhile, the applicant in his wisdom, sought permission under Section 320 to compound the offence by an application. Such application was heard by the Chief Judicial Magistrate (Railway), Jodhpur. He was permitted to compound the offence. Thereafter, he was convicted and sentenced to fine of Rs. 300/- which apparently he had paid. The applicant had raised certain challenges to the proceedings and processes adopted by the respondents which apparently resulted in an order dated 06.02.2004 of the Disciplinary Authority which has imposed a penalty of reduction to the lower grade of Rs. 2550-3200 from grade of Rs. 2650-4000 until he was found fit after a period of two years from the date of order. He filed an appeal against the same, which was also dismissed and the revision petition filed by him also seems to have been dismissed and thereafter he had come before this Tribunal.

3. The applicant has contended that the disciplinary enquiry initiated against him is illegal as the same was conducted in



utter violation of the procedure given under rules. The respondents did not follow principles of natural justice. They also did not extent reasonable opportunity of defence to him as available under law. He would complain that the specific words used in hot exchange of words between him and Shri Brijvashi Meena and indisciplined behavior with Shri Brijvashi Meena were not clearly and distinctively spelled out / specified in the charge-sheet. He seems to think that the degree to which he has extended insult to the senior officer was not clearly spelled out. He would think that the Inquiry Officer committed gross illegality by examining the applicant first and then prosecution witnesses, which he claims are against the rules of enquiry. He would allege that the Enquiry Officer did not hold preliminary enquiry and also did not ask charged officer as to whether he wanted to produce any defence witness and also whether he wanted to produce any order/defence documents and if so, list of such documents and witnesses. He complains that the denial of this right vitiates the entire disciplinary proceeding. He would say that only two witnesses Chuna Ram and Rameshwar Lal figures in Annexure A/3 attached to the charge-sheet whereas two more witnesses Shri Rohitash Meena and Shri Brijvashi Meena were also examined. He would say that the name of Shri Meena was not in the list of prosecution witnesses earlier but to prove the charges against the applicant he was also examined. He would think that the testimony of Shri Rohitash Meena and Brijvashi Meena cannot be given any weightage. He would say that enquiry officer did not examine and cross examine the applicant



and prosecution witnesses on very day and immediately the next day but gave a long time in between which is against the disciplinary rules and therefore it had prejudiced the case of the applicant. He also complains that neither Disciplinary Authority, Appellate Authority nor Revisional Authority could detect all these irregularities in conducting disciplinary enquiry and supply of a copy of the enquiry report to the charged officer. He would also say that the order passed by the appellate authority nowhere had stated that it has accepted the Enquiry Officer's report. He would also say that the revisional authority had passed the order, which was not bearing his signature. He would also say that the charged officer's signature was not taken

on the statement of Shri Rohitash Kumar, Chuna Ram and Rameshwarlal, therefore, they are not trustworthy.

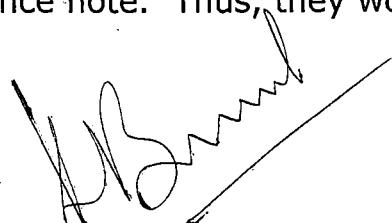


4. In reply, the respondents would say that the applicant had committed a very serious offence, but he was treated very leniently. He had misbehaved with his senior. The respondents would also say that the Chief Judicial Magistrate (Railway), Jodhpur had convicted and sentenced the applicant on the very same ground and the applicant had never denied the offence alleged against him. It is a very same offence that is the crux and subject matter of the enquiry as well.

5. The respondents would say that the memorandum served to Rameshwar Lal and Shri Chunna Ram for committing perjury and i.e. unbecoming of a Govt. servant and therefore they

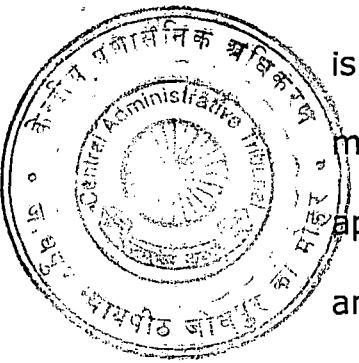
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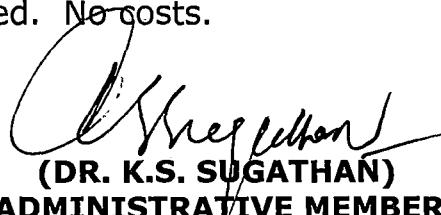
should maintain consistency while giving their statement and the memorandum issued to them is legal and justified. They would aver that proper opportunity was given to the applicant to prove his case and proper procedure was followed by the Enquiry Officer. In fact all the statement of the applicant was taken in the presence of the defence assistant and the statement of other witnesses were also taken in the presence of the applicant and defence assistant. They would say that if the applicant did not want to produce any defence witness and then it cannot be considered as a virtue in him and as the fault on their side. It is for the applicant to decide to produce the defence witness in order to support his case and the respondents cannot ask the applicant to produce the same. The responsibility of proving his case lies on the shoulder of the applicant and not on the Enquiry Officer. They would say that Shri Brijvashi Meena is the actual complainant and when he was summoned and examined, the applicant had participated in the enquiry and no objection was ever raised and therefore, no new plea can be allowed to be taken at this juncture. They would further say that applicant and his defence helper both were present before the Inquiry Officer for final hearing on 15.10.2003, but on said date applicant's defence helper requested that he wants to submit a defence note. After that when applicant's defence helper did not submit the defence note before the Enquiry Officer then the Enquiry Officer vide letter dated 11.11.2003 and 28.11.2003 requested from the defence helper to submit the defence note, but he did not submit a defence note. Thus, they would say that



only after giving him a fair chance to the applicant for defending himself, the Enquiry Officer prepared the enquiry report.

6. Having considered this matter from all angles and prospects, we are of the considered view that proper opportunity which was adequate and in accordance with law and statutory parameters, were accorded to the applicant. It is an admitted fact that the disciplinary proceeding which was initiated against the applicant were on the same charges for which he already faced a criminal trial. The applicant sought permission under Section 320 IPC to compound the offence by an application. He had admitted the charges and only requested for leniency in the matter of sentence and fine of Rs. 300/- was imposed on him. It is seen that lenient attitude has been taken after application of mind by the Chief Judicial Magistrate (Railway), Jodhpur, on the application of the applicant. Therefore, this issue is settled now and in any case the matter cannot be reopened again. After examining this matter, we are convinced that the applicant was visited with lenient censure relating to the quantum of punishment as stated above. Therefore, this Original Application lacks merit and is, therefore, dismissed. No costs.


(DR. K.B. SURESH)
JUDICIAL MEMBER


(DR. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER

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