

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. OA 1418 of 1997

Present: Hon'ble Mr.B.V.Rao, Judicial Member
Hon'ble Dr.A.R.Basu, Administrative Member

JALALUDDIN ANSARI

VS

UNION OF INDIA & ORS.

Include
the name
of Mr. N. Kar.
Ld. Counsel
for recorded
advocate for
applicant
vide order Heard on : 10.7.06
dt 1.9.06
in OA No.
1418/97.

For the applicant : Mr. M.S.Banerjee, counsel
Mr. N. Kar, counsel
For the respondents : Mr.M.K.Bandyopadhyay, counsel

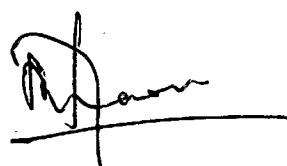
Order on : 24.8.2006

O R D E R

Per Dr.A.R.Basu, A.M.

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 for quashing the order of removal passed under memo No. DRM/E.Ely./Asansol No. SE-6/JA issued by the Divisional Signal & Telecom Engineer, E.Rly., Asansol and appellate orders dated 16.9.97 and 24.10.97 by which the applicant was removed from service.

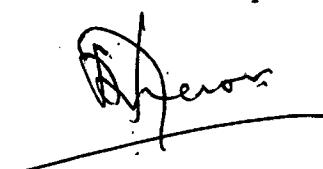
2. The brief facts of the case is that the applicant was appointed as Khalasi and was later promoted to the post of E.S.M. (Gr.-I). The applicant states that the allegation against him is in-connection with the charge dated 20.8.96/28.8.96 that the applicant while functioning as E.S.M. Grade-I/K.A.O. during the period of his duty on 1.6.95 was responsible for making green signal aspect to appear in home-signal 20 of K.A.O. at 16-22 hours by giving a false feed manually through relay of Home Signal 20 housed in relay room of K.A.O. (Kalubathan) making entry of Up-Jammu Tawai Express on loop line of K.A.O. against Up-BKSC Goods Train resulting immense damage to the trains involved and heavy casualties and sufferings of innumerable passengers and few Railway men. The applicant states that the charge has been made on the report of Justice



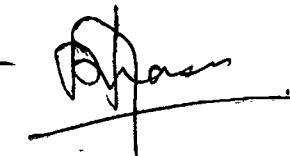
Venkatachalia Commission on Inquiry for Railway Accidental and Remedial Measures. The enquiry was conducted under the provisions of Rule 9 of RS (D&A) Rules, 1968. The enquiry proceedings were conducted and the report of the same was submitted whereby the charges framed against the applicant were established. The Disciplinary Authority after giving reasons imposed the penalty of removing the applicant from service (Annexure 'F'). The applicant thereafter filed an appeal. The Appellate Authority also upheld the decision of the disciplinary authority (Annexure 'H'). Being aggrieved by the order of the Disciplinary Authority and the Appellate Authority the applicant has filed this OA praying for the following reliefs :

"to quash the removal order dated 13.8.97 by Disciplinary Authority and order of Appellate Authority dated 16.9.97 and 24.10.97 being Annexures 'F', 'G' and 'H' and reinstate the applicant with immediate effect and pay the entire salary and other allowances."

3. The respondents have filed a reply and disputed all the claims made by the applicant in the OA. They have, however, stated that the applicant was imposed penalty after providing due opportunity and also following the procedure laid down in the RS (D&A) Rules. The Disciplinary Authority as well as the Appellate Authority have passed their detailed orders before imposing the penalty and upholding the same. They have prayed that the OA being devoid of merit should be dismissed.
4. The ld. Counsel for the applicant Mr.M.S.Banerjee has argued that the entire enquiry was based on the findings of the report of Justice Venkatachalia Commission on Inquiry for Railway Accidental and Remedial Measures. Ld.counsel has argued that the procedure laid down for enquiry in the RS (D&A) Rules have not been followed. The applicant has not been provided with due materials needed by him to defend his case.
5. Ld.counsel appearing on behalf of the respondents Mr.M.K.Bandyopadhyay has stated that the charge had been framed as per the report of Justice Venkatachalia Commission on Inquiry for Railway Accidental and Remedial Measures by which the involvement of the applicant was established. Due procedure had been followed and as such this OA is not maintainable.

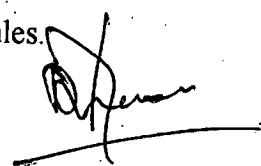


6. We have heard the ld.counsel for both sides and have gone through the application and the pleadings. It is true that the scope of judicial scrutiny in the Disciplinary Proceeding is limited. An order passed, imposing a punishment on an employee consequent upon the Disciplinary Enquiry in violation of the rules /regulations /statutory provisions governing such enquiry is liable to be set aside; if there is a violation of the provisions prescribed in the rules. The Court or the Tribunal should enquire as to whether (a) the provision violated is of substantive nature or (b) where it is procedural in character. The substantive provision has normally to be complied with and the theory of substantive compliance of the test of prejudice would not be applicable in such a case. In the case of violation is of the procedural provisions, the position is that the procedural provisions are generally made for affording a reasonable and adequate opportunity to the delinquent employee. They are generally speaking conceived in his interest. Violation of every procedural provision cannot be said to be automatically vitiate the enquiry held or the order passed. Except cases falling under "no notice", "no opportunity", "no hearing" categories the complaint of violation of a procedural provision should be examined from the point of view of prejudice i.e. where such violation has prejudiced the delinquent employee in defending himself properly and effectively. If it is found that he has been so prejudiced appropriate orders are to be made to repair and remedy the prejudice including the setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. There are certain procedural provisions which are of a fundamental character and whose violation is by itself a proof of prejudice. In the instant case we find that from the memorandum of charge sheet that the applicant was charge sheeted and was proceeded against as per the provisions of Rule 9 of RS (D&A) Rules, 1968. The article of charge has also been communicated. The list of documents by which the list of article framed against the applicant which was to be relied upon by the respondents was on the report of Justice Venkatachalia Commission on Inquiry for Railway Accidental and Remedial Measures. The report was thus the preliminary enquiry on the basis of which the proceeding under Rule 9 of the RS (D&A) Rules was initiated against the applicant. The witnesses who

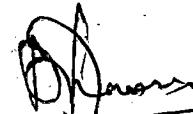


were to be examined on behalf of the prosecution has also been communicated to the applicant. On perusal of the record it appears that the applicant after receiving the memorandum had requested for the copy of the evidence given by the witnesses to be provided to the applicant (Annexure 'B'). The Disciplinary Authority informed the applicant (Annexure 'D') that "it is pointed out that the evidences of all the referred witnesses have been taken in presence of you and your defence helper before judicial commission of inquiry. As a result, you had sufficient access to the statement made by the witnesses as well as enough opportunity to cross examine the witnesses. In view of this, the undersigned does not deem it necessary to submit the evidences given by the witnesses as asked by you". It has also been mentioned in the said letter "as the report of Commissioner of Railway Safety is not a relied upon document in the subject memorandum for major penalty, the statements made by the witnesses in front of Commissioner of Railway Safety are not required to be submitted". It therefore appears that though in the memorandum it has been mentioned that list of documents by which the article of charge framed against the applicant is to be sustained on the report of Justice Venkatachalia Commission on Inquiry for Railway Accidental and Remedial Measures whereas in the reply submitted is contradictory stand has been taken.

7. The 1d.counsel for the applicant has argued that the when Justice Venkatachalia Commission on Inquiry for Railway Accidental and Remedial Measures was initiated the applicant was not aware that he would be proceeded against under Rule 9 of RS (D&A) Rules and as such the question of taking note of evidence being led, etc. was not possible. The departmental enquiry was initiated after the submission of the preliminary enquiry report submitted on the basis of the report of Jusitce Venkatachalia Commission on Inquiry for Railway Accidental and Remedial Measures. The procedure to be followed for initiating the departmental enquiry has been prescribed under the provisions of RS (D&A) Rules. It is necessary that all documents which are to be relied upon is to be given to the delinquent so that he can defend his case. In the instant case the same had not been done and as such it has violated the substantive provision of the rules.



8. In view of the facts mentioned above both the orders passed by the Disciplinary Authority and the Appellate Authority are set aside. The applicant will be eligible for all consequential benefits. The respondents, however, are at liberty if so advised, to initiate fresh proceedings after complying with the provisions of the rules. No order as to costs.



MEMBER (A)



MEMBER (J)

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