

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 82 of 2005

Wednesday, this the 31st day of January, 2007

C O R A M :

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

Manoj Narayanan,
Ex-Head Clerk, Bhavanagar Division,
Western Railway, Residing at
Chaprath House, Aliyoor P.O., Calicut

... Applicant.

(By Advocate Mr. Martin G. Thottan)

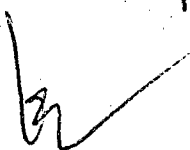
v e r s u s

1. Union of India, represented by
Secretary to the Government of India,
Ministry of Railways, Rail Bhavan,
New Delhi.
2. The Additional Divisional Railway Manager,
Western Railway, Bhavnagar Division,
Bhavnagar, Gujarat.
3. The Divisional Personnel Officer,
Western Railway, Bhavnagar Division,
Bhavnagar, Gujarat.
4. The Chief Personnel Officer,
Western Railway, Headquarters Office,
Church Gate, Mumbai - 20

... Respondents.

(By Advocate Mr. P. Haridas)

The Original Application having been heard on 17.01.07, this
Tribunal on 31.01.2007 delivered the following:

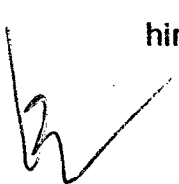


O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant was appointed as a Clerk in the pay scale of Rs. 950-1500 in Bhavnagar Division of Western Railway with effect from 18.9.1987. His initial appointment was on compassionate ground. Later on, the applicant was promoted as Senior Clerk and then as Head Clerk.

2. The applicant was on sanctioned leave for 61 days from 31.1.2000 to 31.3.2000. According to the applicant because of his illness he could not resume duty and applied for leave enclosing medical certificate from private Medical Practitioner.

3. The applicant was issued with a charge sheet dated 29.5.2000 by the Senior Divisional Personnel Officer. The charge levelled against him is unauthorised absence from duty from 1.4.2000 to 29.5.2000 which amounts to violation of Railway Servants Service (Conduct) Rules No. 3.1(ii) and (iii) of 1966. The applicant denied the charges and explained his inability to join duty because of his illness. Enquiry was conducted and the enquiry report was furnished by the enquiry authority who found the applicant guilty of misconduct levelled against him. The enquiry was held ex parte as the applicant did not



participate in the enquiry.

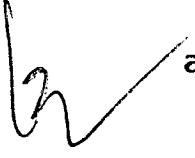
4. According to the applicant, he was not given an opportunity after the enquiry report was submitted. The disciplinary authority has passed the order of removal from service vide order dated 3.3.2003 (Annexure A/2). The said order reads as under:

"I have gone through the papers, article of charges, enquiry report, findings and also the defence submitted by the employee dated 21.12.2002.

In his final defence, Shri Manoj Narayanan states that he was undergoing treatment of private doctor continuously. However, the perusal of entire case reveals that a lot of opportunities were given to the employee but he has not cooperated. It looks highly impossible that Shri Manoj Narayanan was genuinely under private doctors sick continuously, since last two years. Rules/instructions clearly state that any case of sick for relatively large period must be certificated/authenticated by the Railway doctor. However, Shri Manoj Narayanan continued to send private doctors certificate even though he was informed by the administration regarding obtaining Railway doctors sick.

His total non-cooperation has led to conduct of ex parte enquiry. Initially he responded to charges but after the enquiry was ordered, nothing relevant to conduct of enquiry was heard from him. The fact that he did not bring/produce the papers regarding his so called 'illness', shows that the illness was all cooked up.

A detailed perusal of all the documents including his defence dated 21.12.2002 leads me to conclude that charge of unauthorised absence is proved beyond doubt and therefore the following penalty is imposed on him.

 'Removal from Railway Service with immediate effect and no compassionate allowance be paid'."

The aforesaid order was passed by the Divisional Personnel Officer.

5. The applicant filed A/3 appeal dated 19.05.2003 and he explained as to the reasons for absence from duty and taking treatment. This appeal was rejected by the appellate authority vide A/4 order dated 7.7.2003. The revision petition (A/5) dated 12.8.2003 submitted by the applicant also rejected vide A/6 order dated 5.3.2004.

6. The applicant has challenged the aforesaid order of removal, appellate order and revisional order. According to the applicant, the authority who passed the removal order is not competent to pass such an order as he was appointed on compassionate ground and the authority competent to remove him from service cannot be other than the appointing authority, which is General Manager in this case. Another ground raised by the applicant is that the other two authorities who passed the orders in appeal and revision petitions are also not competent. Yet another legal ground is non following of the procedure laid down in 9 (12), 9(19) , 9(20) and 9(21) of the DAR Rules which has caused substantial prejudice to the applicant.

7. Respondents have resisted the O.A. They have justified the

order of removal and have denied that the General Manager was the competent authority to appoint the person on compassionate ground during the period when the applicant was appointed. They have further stated that spot inspection was made to find out whether any Railway hospital was available nearby the applicant's residence so that treatment could be had from that hospital. According to the Chief Medical Superintendent, Palghat, the applicant could have either reported at Cannanore (30 k.m. away) or at Calicut (60 k.m. Away) for availing Railway Medical facility as per rules. The respondents have also denied the allegation that there are violations of Article 311 (2) of the Constitution. As regards passing of order by the 3rd respondent, it is submitted that as per the Schedule of powers circulated by the Railway Board by order (R/10) dated 11.10.99, appointing authority or an authority of equivalent rank or any higher authority is empowered to impose the penalty of removal from service and in this case, the Divisional Personnel Officer, Western Railway, Bhavnagar, is competent to impose the penalty. The penalty order cannot suffer from any incompetence.

8. The applicant has filed rejoinder reiterating his stand as contained in the O.A. especially in regard to legal issues.

9. Learned counsel for the applicant in the course of arguments

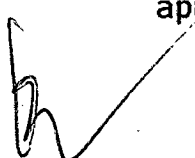
submitted that this case is identical to yet another case of Satyan Warriar (OA 848/04 decided on 6.11.06) in which case the proceedings were simultaneous, by the same Inquiry Officer and the main legal issues involved included the competence of authority who passed the penalty order, violation of Article 311 (2) of the Constitution and failure to follow the procedure laid down especially with reference to 9(12), 9(20) and 9(21) of the DAR Rules. According to the counsel, in the said case also the enquiry report was cryptic. To compare the same, he has referred to the critical analysis of documents in these two cases as under:

(a) In the case of the applicant: "After availing leave, Shri Manoj Narayanan did not turn up duty and remained unauthorised absence from 1.4.2000 and onwards."

(b) In respect of the applicant in O.A. 848/04: "It is evident that Shri Satyan Warriar and charged officer had proceeded on leave from 27.3.2000 to 3.5.2000 and thereafter, he did not report for duty nor inform to the Administration."

10. Per contra, learned counsel for the respondents justified the penalty order, appellate order and revisional order.

11. Arguments were heard and documents perused. Admittedly, the applicant was appointed on compassionate ground. Though the



respondents denied that the General Manager is the competent authority to make appointments on compassionate ground at the relevant point of time, they have not indicated as to who was the authority competent to make appointment on compassionate ground. In the case of one Harindra Kumar (O.A. No. 781/05 decided on 1.9.06), the applicant therein, was appointed under Sports quota wherein also when the applicant contended that the General Manager was the authority competent to make appointment, the contention of the respondents was that under the delegated orders the Chief Personnel Officer issued office order and as such the authority which passed the removal order was competent. In that case this Tribunal has held as under:

5. The respondents who have contested the O.A., and have, in reply to the aforesaid grounds, stated that, the General Manager is the authority competent to make appointment to group 'C' service in Railways against Sports Quota. With the approval of the G.M., CPO has issued the office order appointing the applicant in Group 'C' service against sports quota. The contention of the applicant that A-1 has been issued by a lower authority, since the office order appointing the applicant has not been signed by the GM, and A-2 in turn is not within the jurisdiction, is not correct.

6. The applicant has filed the rejoinder and also has annexed a copy of the Railway Servants in RBE No. 211/02 dated 25.11.02 which inter alia states as under:



"As the Railways are aware, in terms of Rule 2(1)(a) of RS (D&A) Rules, appointing authority in relation to a railway servant means the authority empowered to make appointment to the service of which the railway servant is, for the time being a member or to the grade of the service which the railway servant is, for the time being included or the authority empowered to make appointment to the post which the Railway servant for the time being holds or the authority which actually appointed the Railway servant to such service, grade or post as the case may be, whichever is the highest authority. It is advised that the authority empowered to make appointment, referred to in Rule 2(1)(a) above, means the authority empowered to make appointment to the grade or post which the railway servant is holding, at the time of imposition of penalty. This authority may be higher or lower in rank than the authority which was empowered to make appointment at the time of induction of the Railway servant to the relevant grade or post or the authority which actually appointed him to that grade or post. The intention of the rules is that the penalties of dismissal, removal or compulsory retirement from service on a Railway servant should be imposed only by the highest of these authorities i.e. either by the authority which actually appointed the railway servant to the relevant grade or post or the authority which is empowered to make appointment to that grade or post at the time of imposition of penalty, whichever is the higher authority. The penalty of dismissal, removal or compulsory retirement from service should obviously not be imposed by an authority which have merely issued the offer of appointment or order of promotion, with regard to the appointment or promotion ordered by a competent authority higher to that authority. "

7. Arguments were heard. The counsel for the applicant submitted that the impugned penalty order has been passed by an authority who is not competent to pass the order. According to him, as per the provisions of (Railway Servants (Disciplinary & Appeal) Rules, 1968, the penalty of compulsory retirement cannot be imposed by an authority other than the appointing authority and in this case since, even as per the averment of the respondents, it is the GM who is the appointing authority, the order of compulsory retirement passed by

the CPO is without jurisdiction.

8. The words **"I therefore, impose the penalty of COMPULSORY RETIREMENT from service on you with immediate effect"**, goes to show that there is no application of mind by the competent authority, viz., the General Manager. As such, the penalty order itself is vitiated due to lack of competence. The counsel for the applicant submitted that, on this ground itself the order of compulsory retirement is to be set aside. There is no need to go further into the merits of the case. And, according to the applicant, once the order of compulsory retirement is held vitiated, the order of the appellate authority also crumbles to the ground.

9. Counsel for the respondents attempted to justify the order passed by the Chief Personnel Officer imposing the penalty of compulsory retirement. Reference has been drawn to Personnel Branch Circular No.161/04 which refers to the Railway Board's order dated 25.11.02 (extracted above) and as per this circular No.161/04 certain guidelines have since been introduced with reference to the issue of appointment order and the same reads inter alia as under:-

"(1) When appointment papers are received from Headquarters Office by Divisions/Extra Divisional Offices against DR quota from RRBs., Sports quota, Cultural quota, CGA etc. only the Lowest Authority competent to issue appointment orders are to issue them under their own designation and signature. The order should not ambiguously indicate such as 'This has the approval of the Competent Authority,' Etc, not it should mention 'GM/CPO has accorded the approval etc. The approval in such cases is only for the list of candidates for being appointed. Actual appointment is to be ordered by the lowest authority as indicated in the table under para 3 of the circular. "

 10. Counsel for the applicant reiterated the above submission by

stating that the circular having been issued by an authority subordinate to the Railway Board, but the same cannot over rule by a Railway Board circular dated 25.11.2002. Assuming without accepting that the circular issued by the Subordinate authority may hold good, even then that shall have only a prospective effect. Thus, the learned counsel for the applicant argued that P.B.Circular No. 161/04 cannot be pressed into service in this case.

11. Yet another legal issue raised by the applicant is that, since the records relating to the appointment of the applicant are not available with the respondents, as per the Railway Board's order dated 21.8.1964 the G.M. alone is the competent authority to pass any order of removal or dismissal or compulsory retirement. The said order reads as under :-

"G.M. as appointing authority--General Manager shall be considered to be the appointing authority for staff in class III and IV categories as also semi-skilled, skilled and artisan staff where records or appointment letters to show the actual appointing authority of such staff are not available. Accordingly the punishment of dismissal/removal/compulsory retirement from service cannot be inflicted on such staff by an authority lower than the General Manager."

Reference to Full Bench judgement in the case of Gafoor Mia and others vs. Director, DMRL of Hyderabad Bench reported in Full Bench judgment of C.A.T. (1986-87) page 290, is appropriate at this juncture. It has been held therein as under:

"10..... "The Rules governing disciplinary proceedings and in particular the definition of "Appointing Authority" contained in the Rules and the limited extent of the delegation made by the General Manager, in our view, discloses a different intention that the delegate of the General Manager has only the power to appoint but not the

power to take disciplinary action.

11. The Schedule to the Railway Servants (Discipline and Appeal) Rules, 1963 vests the power to impose the punishment of compulsory retirement, removal and dismissal from service in the "appointing authority" or in an authority of equal rank or in the highest authority". That Schedule does not specify the appointing authority. The Schedule of Powers referred to above also does not specifically nominate the Heads of Departments as the appointing authority. The authorities mentioned therein merely exercise the power to appoint by virtue of the delegation made by the General Manager. The Schedule of Powers itself is referable to Rule 215 of the Railway Establishment Code which nominates the General Manager as the Appointing Authority for Group 'C' and Group 'D' posts and empowers him to delegate the powers vested in him to any lower authority. Therefore, in the strict sense of the terms of Section 16 of the General Clauses Act, these authorities are not "appointing authorities" at all they are delegates of the appointing authority. By virtue of the delegation, they are competent to make appointments. If it was the intention of the General Manager that by delegating his power to make appointment to Class III and Class IV posts, that authority would also have the power to initiate disciplinary proceedings and impose any penalty, there was no necessity to specifically delegate the power to dispose of cases involving breach of provisions in the Railway Service (Conduct) Rules regarding plural marriages. This limited power specifically conferred unmistakably discloses that the General Manager in delegating the power to appoint never intended to vest in these other authorities the power to exercise all the powers of an appointing authority, more particularly the disciplinary powers. Such an inference is all the more irresistible because the General Manager has not divested himself of the power to appoint; he continues to be the appointing authority in respect of Class III and Class IV Railway servants.

In Krishna Kumar Vs Div. Assistant Electrical Engineer, Central Railway and others, the Supreme court declared:

"Delegation of the power to make a particular appointment does not enhance or improve the hierarchical



status of the delegate. An officer subordinate to another will not become his equal in rank by reason of his coming to possess some of the powers of that another. The Divisional Engineer in other words does not cease to be subordinate in rank to the Chief Electrical Engineer merely because the latter's power to make appointments to certain posts has been delegated. "

Hence, even de hors the definition of appointing authority in our view any authority lower in rank to the General Manager may not merely by virtue of the delegation of power to appoint Class III or Class IV servants assume the power of a disciplinary authority also in respect of these classes of railway servants.

13. Any doubt that may linger in this regard is cleared by the definition of the appointing authority contained in Rule 2 (1)(a) of Railway servants (Discipline and Appeal) Rules. Any authority mentioned in sub clauses (i), (ii), (iii) and (iv) of Clause (a) of rule 2 (1) may be the appointing authority. But among them, for the purpose of these rules, unless the context otherwise requires, only the authority which is the highest authority would be the appointing authority. The definition takes note of the fact that at a given point of time, there may be only one Appointing Authority empowered to appoint to a post but in respect of another post, there may be several Authorities empowered to appoint. Where there is only one Authority, then undoubtedly the authority which appointed the Government servant to such service, grade or post would be the "appointing authority". But in a case where there are several authorities competent to make appointments, if all of them take disciplinary proceeding or none takes, hoping that the other would institute, it would create confusion, uncertainty and indiscipline in the service. Evidently, to make the position certain, where there is more than one appointing authority, the Rule Making Authority thought it necessary to define the term "Appointing Authority" as the highest among them. It is by virtue of delegation that appointment to Class III & Class IV posts may be made by an officer subordinate to the General Manager but the General Manager also continues to be competent to make these appointments, and amongst the officers competent to appoint, the General manager happens to be the highest authority. Hence, so far

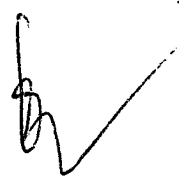


as Class III and Class IV Railway Servants are concerned, the General manager alone would be the "Appointing Authority" within the meaning of the definition of "Appointing Authority" contained in Rule 2(1)(a)."

12. It is trite law that the order of compulsory retirement can be issued only by the authority who is competent to make appointment. For, only he who has the power to appoint, has the powers to remove. In the instant case, admittedly, it is the G.M. who has competence to make appointment. As such, passing an order of compulsory retirement by an authority subordinate to the appointing authority, is violative of the provisions of Article 311 of the Constitution and it is also violative of Railway Servants (D&A) Rules 1968, wherein Schedule II clearly provides for the authority competent to pass an order of compulsory retirement. As such, the impugned order dated 20.10.2004 cannot be legally sustained. The point of disagreement with impugned order, report has not been raised by the appropriate Disciplinary Authority nor has the penalty order passed by the appropriate Disciplinary Authority (i.e. General Manager). Thus, this order of penalty having been passed by an authority who is not competent to pass the same, the said penalty order is non est in the eyes of law. As a logical corollary, appellate authority's order also becomes invalid."

12. Taking into account the above position, it is evident in this case that for compassionate appointment also the General Manager being the competent authority, the impugned penalty order of removal from service suffers from lack of competence in passing such an order.

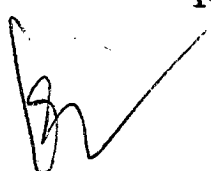
13. As regards non following of provisions of Rule 9(12), 9(20) and 9 (21) of DAR Rules, the same has to be dealt with with reference to certain dates and events. As the enquiry held was simultaneous both in the case of the present applicant and the applicant in OA 848/04, the details as given in the other order come handy for reference in



this case also. The same are as under:

- *20-03-2001: Request from applicant to postpone inquiry till his doctor issues fitness certificate and the applicant was also not in a position to appoint defence assistant.
- *16-04-2001: I.O's letter to the applicant indicating 30-04-2001 as date of hearing, along with pass.
- *24-05-2001: Inspection conducted to ascertain the availability of the applicant in his allotted quarter. The quarter was found locked and as ascertained from neighbour, the same was in locked condition since long.
- *05-06-2001: IO's letter to the applicant, fixing hearing on 25.06.2001 and also informing that that would be the last opportunity to attend the inquiry and in case of failure to attend the same, the inquiry would be proceeded ex parte. Pass was also issued.
- *03-10-2001: Change of I.O. as the earlier one was transferred. Information to applicant sent on 09-10-2001.
- *21-02-2002: The I.O. informs the applicant of the date of hearing as 07-03-2002 and also informing him that in case of failure to attend, the proceedings would be ex parte.
- *31-07-2002: Inquiry adjourned to 19-08-2002 and intimation sent to applicant.
- *11-10-2002: Inquiry adjourned to 24-10-2002 and intimation sent to applicant.
- *23-10-2002: Applicant's telegram to Sr. DPO stating "sick. Unable to attend the inquiry. Undergoing ayurvedic treatment.
- *18-11-2002: I.O. forwards his ex parte inquiry report, with his findings that the charges are proved.
- *27-11-2002: Copy of I.O's report sent to the applicant for filing representation, if any.
- *03-03-2003: Disciplinary authority passes the penalty order of removal from service with immediate effect and no compassionate allowance be paid.

14. In the aforesaid order, as regards non following of provisions of



Rule 9(12), 9(20) and 9(21) of DAR Rules, the following discussion was made :


"14. From the above, it is seen that there has absolutely been no cooperation from the applicant's side in respect of conducting the inquiry. Sufficient time had been given to the applicant. According to the respondents, it is sufficient compliance with principles of natural justice. But it is to be noted that all the opportunities were prior to examination of the witnesses of the prosecution.

15. The specific rules not followed, as contended by the applicant are as under:-

"Rule 9(12): *The inquiring authority shall, if the railway servant fails to appear within the specified time or refuses or omits to appear, 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 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 Administration but not mentioned in the list referred to in sub-rule (6).*

Rule 9(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 re-examine the witnesses on any points 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.*

Rule 9(21): *The inquiring authority may, after the 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."*

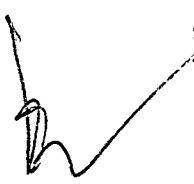


16. When the I.O. took all care to follow the stipulated rules till the stage of examining the witnesses of the prosecution, the I.O. had clean forgotten the requirement of complying with the provisions of Rule 9(12), 9(20) and 9(21) of the Rules. The effect of this omission is now to be seen. From perusal of the records, it is observed that none of the above provisions has been followed in this case. True, sufficient opportunity was given to the applicant but all of them were prior to production by the Presenting officer of evidence. Rule 9(12) mandates that in case of non appearance of the delinquent official, the IO shall give time to the Presenting officer to produce his evidence and *after recording an order that the railway servant may for the purpose of preparing his defence give a notice within ten days, of the orderor within such further time not exceeding ten days as the inquiring authority may allow for the discovery r production of any documents which are in possession of Railway Administration but not mentioned in the list referred to in Sub-rule (6).*

17. A look at the circulars, if any of the Railway Board and decisions of the Tribunal/other Courts, including the Apex Court in respect of omission to follow the above provisions would be useful at this juncture.

18. Vide R.B's No. E (D & A) 90-RG 6-34 dated 18-04-90 the inquiring authority should record the reasons why he is proceeding ex parte and what steps he had taken to ask the accused official to take part in the enquiry and avail of all the opportunities available under the provisions of Rule 9 of the Railway Servants (Discipline and Appeal) Rules. In such a case, the details of what has transpired in his absence, including depositions should be furnished to the accused officer. During the course of enquiry, the accused is free to put in appearance and participate in the inquiry. If the accused appears in the enquiry when some business has already been transacted, it is not necessary to transact the same business again unless the accused official is able to give justification to the satisfaction of the Inquiry Officer for not participating in the enquiry earlier. The competent disciplinary authority may thereafter proceed to pass final orders after following the procedure.

19. The above instruction clearly states that the inquiry officer shall furnish to the delinquent official the details of what has transpired in his absence, including depositions. This is in conformity



with the provisions of Rule 9(12). If the inquiry authority has complied with and the delinquent official makes an appearance to participate in the proceedings, he would be permitted by the inquiry authority to produce his own witnesses, documents etc, in accordance with the provisions of Rule 9(20) and in case after so participating, the delinquent official does not examine himself, the I.O. should pose questions on the circumstances appearing against him. In case, if the delinquent official fails to avail of the opportunity given to him under Rule 9(12), then also, a separate communication should be sent with a view to complying with the provisions of Rule 9 (21). Failure to comply with this would amount to a serious error, as held by the Tribunal in the case of S.B. Ramesh, as could be seen from the decision of the Apex Court in the case of *Ministry of Finance v. S.B. Ramesh*, (1998) 3 SCC 227 wherein, the Apex Court has held as under:-

"The Tribunal, after extracting in full the evidence of SW 1, the only witness examined on the side of the prosecution, and after extracting also the proceedings of the Enquiry Officer dated 18.6.1991, observed as follows:

After these proceedings on 18-6-1991 the Enquiry Officer has only received the brief from the PO and then finalised the report. This shows that the Enquiry Officer has not attempted to question the applicant on the evidence appearing against him in the proceedings dated 18-6-1991. Under sub-rule (18) of Rule 14 of the CCS (CCA) Rules, it is incumbent on the Enquiry Authority to question the officer facing the charge, broadly on the evidence appearing against him in a case where the officer does not offer himself for examination as a witness. This mandatory provision of the CCS (CCA) Rules has been lost sight of by the Enquiry Authority. The learned counsel for the respondents argued that as the inquiry itself was held ex parte as the applicant did not appear in response to notice, it was not possible for the Enquiry Authority to question the applicant. This argument has no force because, on 18-6-1991 when the inquiry was held for recording the evidence in support of the charge, even if the Enquiry Officer has set the applicant ex parte and recorded the evidence, he should have adjourned the hearing to another date to enable the applicant to participate in the enquiry hereafter/or even if the Enquiry Authority did not choose to give the applicant an opportunity to cross-examine the witness examined in support of the charge, he should have given an opportunity



to the applicant to appear and then proceeded to question him under sub-rule (18) of Rule 14 of the CCS (CCA) Rules. The omission to do this is a serious error committed by the Enquiry Authority."

20. In the following cases also, the non adherence to the provisions of Rule 9(12) of the Railway Servants (Discipline and Appeal) Rules, has been held to have vitiated the ex parte inquiry:-

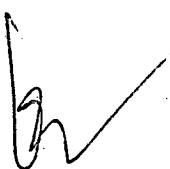
(a) Moti Singh vs Union of India, (1987) 2 ATC 334 (Jab).

(b) Hari Prasad Billore vs Union of India (1987) 4 ATC 554 (Jab)

21. In the former, of course, the very inquiry report was rendered within ten days of the recording of the prosecution evidence. Yet the ratio in that order is that there should be a specific notice to the delinquent official before proceeding with the analysis of the evidence of the prosecution. In the latter case, the observations of the Tribunal vide para 5 and 6 are as under:-

5. We find that Rule (12) in a way is supplementary to Rule 9 (23). This Rule 9(12) is neither contrary nor repugnant to Rule 9(23) of the Railway Servants (Discipline and Appeal Rules) 1968. Both these rules of procedure have to be kept in view by the inquiry authority in any ex parte. Rule 9(23) regulates the procedure of ex parte enquiry at the time after the communication of the charge sheet while Rule 9(12) is that in a case where the delinquent railway employee initially participated in the enquiry by replying to the charge sheet, etc, but subsequently for any reason he failed to appear, he should be given at least 10 days time after the Presenting Officer has produced his evidence. It is to give him time to consider if he would participate in it and prepare his defence.

6. Similar provisions are in the Central Civil Servants (Classification, Control and Appeal) Rules, 1965. (CCS(CCA) Rules) also. Rule 9(12) of the RS (DA) Rules, 1968 is similar to Rule 14(11) of the CCS(CCA) Rules, 1965. Rule 9(23) of the RS (DA) Rules, 1968 is similar to Rule 14(20) of CCS(CCA) Rules, 1965. Therefore, we find that the compliance with this provision i.e. Rule 9(12) of the RS(DA)Rules, 1968 is not merely a formality, but is mandatory to afford sufficient opportunity to the delinquent officer to disprove the charges



levelled against him. Not giving such an opportunity to the delinquent officer will amount to denial of justice to him and it is against the well established principles of natural justice also."

15. As regards Enquiry Officer's report also, the order passed in other OA holds good and the same is as follows:

"22. A look at the I.O's report relating to appreciation of evidence is also essential at this stage. Critical analysis of the documents has been made as per the inquiry report, which says:-

'Critical analysis of the documents:

It is evident that Shri Satyan Warriar and charged officer had proceeded on leave from 27-03-2000 to 3-5-2000 and thereafter he did not report for duty nor inform to the administration.'

The above is hardly any 'critical analysis of the documents.' It appears that the I.O. had presumed that in the absence of the participation by the delinquent official, nothing much is required to arrive at the finding of fact on the basis of documents and witnesses and a mono-syllable Charges are proved would suffice. The inquiry report, to comment the least, is cryptic and insipid."

16. From the above, it is evident that the inquiry has not been conducted as per the provisions of the DAR and the same has vitiated the proceedings beyond the recording of the witnesses of the prosecution. The applicant is entitled to be given opportunity to proceed from that stage and vindicate his stand. The order of penalty is therefore, liable to be quashed and set aside.

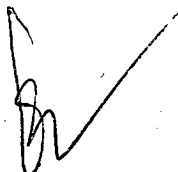
The Tribunal passes this order purely on legal grounds without going into the merits of the case.



17. Thus, while the contention of the applicant that there is no competence of the disciplinary authority to pass the order of penalty of removal is rejected and so is his contention that when the authority which initiated the proceedings happens to be higher than the authority which passed the order of penalty of removal, the order of penalty is invalid is also rejected, the last contention, i.e. the proceedings were not conducted in accordance with the provisions of Rule 9 of the Railway Servants(Discipline and Appeal) Rules, 1966 is accepted. In this context, the observation of the Apex Court in the case of Lakshmi Ram Bhuyan vs. Hari Prasad Bhuvan, (2003) 1 SCC 197, as under is relevant.

" An inadvertent error emanating from non-adherence to rules of procedure prolongs the life of litigation and gives rise to avoidable complexities. The present one is a typical example wherein a stitch in time would have saved nine."

18. The OA is thus, allowed. The impugned order dated 03-03-2003, imposing penalty of removal from service (Annexure A-2), Order dated 07.07.2003 of the Appellate authority (Annexure A-4) and Order dated 5.3.2004 of the Revisional authority (Annexure A-6) are hereby quashed and set aside. The respondents shall reinstate the applicant back in service. They however, have the liberty of proceeding with the inquiry from the stage beyond evidences of the prosecution i.e. from the provisions of Rule 9(12) of the DAR. The applicant shall be deemed to have been placed under



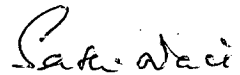
suspension by the competent authority from the date of removal and shall continue to remain under suspension until further orders. This is in conformity with the Railway Board's letter No. E (D & A) 61 R-G 6-43 dated 28-04-65. Inquiry from the stage as mentioned above, shall be commenced within a period of three months and concluded at the earliest. Needless to mention that in the event of the respondents deciding to go ahead with the inquiry, they shall apart from passing necessary orders of reinstatement, would also provide for payment of subsistence allowance etc.

19. Under the circumstances, there shall be no order as to costs.

(Dated, the 31st January, 2007)



Dr. K B S RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

CVR.