

CENTRAL ADMINISTRATIVE TRIBUNAL

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ORIGINAL APPLICATION No. 180/92

NIAZ AHMAD

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Applicant

versus

Union of India & others

Respondents.

HON. MR. S.N. PRASAD, JUDICIAL MEMBER.

The applicant has approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985 for quashing the exparte punishment order passed by the Senior DSO/MB(Annexure -4) and also for quashing the appellate order passed by A.D.R.M./MB(Annexures 5 and 6).

2. Briefly stated, the facts of this case, interalia, are that the applicant was selected as Traffic Apprentice by Railway Service Commission in the year 1980; and after successful completion of training, he was allowed Moradabad Division by the Chief Passanger Traffic Superintendent and was initially appointed as Leave Reserve Traffice Inspector with Headquarter Moradabad; and later on the applicant was posted as Traffic Inspector, Chandausi in the year 1985. It has further been stated that subsequently, transfer and postings were done by the Senior D.O.S. because ~~the~~ ^{is the} appointing and controlling authority of the applicant which is evident from the letter of appointment and posting and transfer letters of the applicant dated 13.6.90(Annexure 12). It has further been stated that the applicant was issued minor penalty charge sheet under Rule 11 of the D&A Rules, 1968 alleging

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therein that some of the staff were due vision test and competency as per the annexure attached with the charge sheet and quoting therein the violation of para 3(ii) and (iii) of the Railway Service Conduct Rules, 1966 showing his gross negligence and slack supervision (vide Annexure 1). The applicant submitted ~~as~~ ^{the interim} reply on 23.4.90 demanding time as the applicant was busy in connection with D.R.M's inspection ~~of~~ Sitapur-Balamau section and no information was received from the Senior D.S.O. ~~about~~ ^{the} grant of time in response to ~~interim~~ reply dated 23.4.90. The applicant submitted the detailed defence reply on 15.5.90 under rule 11 to the dealing clerk Shri Sukhram Singh, after D.R.M's inspection on 10.5.90 but the aforesaid Shri Sukhram Singh did not issue the acknowledgement of the ~~receipt~~ ^{Defence} receipt of the applicant's ~~reply~~ assuring the applicant to have faith in him. It has further been stated that the applicant had also submitted his defence reply of charge sheet in question through Railway Free Service-H.R.I under clear acknowledgement of staff on duty on 25.5.90 (Annexure No. 3), which is photostat copy thereof). The impugned order was passed by the Senior D.S.O. without considering the matter and without affording reasonable opportunity and the disciplinary proceedings were initiated and the charge sheet was issued and penalty was imposed ~~ex parte~~ by the authority who was not competent to do so ; ~~as~~ the disciplinary authority of the applicant is Senior Divisional Operating Superintendent and not Senior Divisional Safety Officer ; and ~~also~~ there has

been violation of principles of natural justice and as such the impugned order being illegal and invalid should be quashed.

3. In the counter reply filed by the respondents it has been contended, interalia, that the applicant was issued memo No. 11 under Railway Servants Discipline and Appeal Rules, and most of the staff working under the applicant was due for vision test; and the applicant was ~~sending~~ ¹⁹⁶⁸ ~~responsible for~~ the staff working under him for vision/competency test, but the applicant did not do so, and as such the applicant infringed safety measures. It has further been contended that the applicant received Memo No. 11 on 9.4.90 ^{and} despite the fact ~~the fact~~ that the applicant failed to submit his reply within 10 days as specified in the Memo dated 9.4.90 and the applicant submitted ~~another~~ ^{any} reply on 23.4.1990. The applicant did not submit/reply on 15.5.90 as alleged. It has further been contended that the information was sought for from the aforesaid Sukhram Singh in regard to the averment made by the applicant in his Original Application and the aforesaid Sukhram Singh replied that the applicant's defence reply dated 15.5.90 has not been given to him. (Vide Annexure C-1 which is copy of letter dated 31.8.92 alongwith the reply of the aforesaid Shri Sukhram Singh). It has further been stated that the applicant had not submitted his defence reply through Railway Free Service Hardoi. According to the Chief Parcel Clerk, Hardoi, there is no facility under Railway free Service Hardoi for sending reply to the Memorandum/chargesheet; and no reply was delivered

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by the applicant through such mode (vide Annexure C-2). It has further been contended that the impugned orders were passed properly, validly and legally and there is no illegality and invalidity therein and in view of the above circumstances the application of the applicant is liable to be dismissed.

4. I have heard the learned counsel for ~~the parties~~ and have perused the papers.

5. The learned counsel for the applicant while drawing my attention to the contents of application and papers annexed thereto has argued that the disciplinary proceedings were initiated, charge sheet issued and penalty was imposed *ex parte* by the authority who was not competent to do so, as the disciplinary authority of the applicant is Senior Divisional Operating Superintendent (Sr. DOS) and not the Senior Divisional Safety Officer; and has further argued that the impugned order imposing penalty on the applicant was passed by Senior Divisional Safety Officer (Sr. DS.O)/MB; and as such there is violation of provisions contained under rule 7 of Railway Servants (Discipline and Appeal) Rules, 1968 and a violation of the directions contained in Railway Board Letter No. E (D&A) 72 RG 6-13 dated 16.10.73 and in derogation and violation of directions contained in General Manager (P) N. Railway letter No. 52 E/O/26/VII/E (D&A) dated 5.6.92 and this ground alone vitiates the entire proceedings and the impugned order. The relevant portion of the letter dated 5.6.92 is reproduced below:

"Few references have been received in this office regarding disciplinary action against staff working in various departments. In this connection, it is clarified that Board's instructions contained in their letter No. E (D&A) 72 RG 6-13 dated 16.10.73 circulated under P.S. No. 6047

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and re-iterated under P.S.No. 7200 should be followed strictly. A Railway Servant essentially belongs to one department and he may violate certain rules/regulations administered by some other department while performing his day today duty. The disciplinary authority shall be ~~know~~ from the department to which the staff belongs.

The disciplinary action should be initiated and finalised by the authorities under whose administrative control the delinquent employee may be working as an employee cannot be treated under the administrative control of more than one department."

6. It is also noteworthy that a perusal of Annexure A-8-A also makes mention that in respect of operating staff working in division the Senior D.O.S. will continue to be the disciplinary authority in respect of offences committed by the Operating staff including the offences relating to observance of safety rules.

7. This fact should not be lost sight of that Annexure A-4, which is the impugned order dated 26.6.90, was passed by Shri V.K.Jaiswal , Senior Divisional Safety Officer/M.B. and not by the Senior Divisional Operating Superintendent.

8. The learned counsel for the respondents has argued that the Senior D.S.O./MB is the competent authority and the impugned order was passed validly and legally.

9. From the foregoing discussions and after considering all aspects of the matter I find that the impugned order dated 26.6.90 passed by Senior DSO/MB is not a valid and

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reasoned order, as Senior D.S.O./MB is not competent authority but Senior Divisional Operating Superintendent/ MB is the competent/disciplinary authority; and as such ^(Annexure 4) also the impugned order dated 26.6.90 and the appellate orders contained in Annexures ~~5~~ and 6 being not valid and legal orders are liable to be quashed and the same are hereby quashed.

10. Consequently, the application of the applicant is allowed and the impugned orders contained in Annexures 4, ~~5~~ and 6 are quashed. However, it shall be open for the disciplinary authority concerned to proceed against the applicant in accordance with law.

11. Application of the applicant stands disposed of as above. No order as to costs.

LUCKNOW: Dt. 28.5.93.
Shakeel/-


JUDICIAL Member.

28.5.93