

CENTRAL ADMINISTRATIVE TRIBUNALPATNA BENCHO.A.NO.: 274 OF 2006[Patna, this Thursday, 4th Day of December, 2008]C O R A MHON'BLE MR. SHANKAR PRASAD, MEMBER [ADMN.]
HON'BLE MS.SADHNA SRIVASTAVA, MEMBER [JUDL.]Banarsi Prasad, son of Late Sarjug, resident of Chainpur, P.S.:Manjhi, District
-Chapra, Head Trolleyman in the office of Assistant Divisional Manager,
Chapra.APPLICANT.By Advocate :- Shri D.N.Pandey.

Vs.

1. The Union of India through the General Manager, N.E.Railway,
Gorakhpur.
2. The Divisional Railway Manager, North Eastern Railway, Varanasi.
.....RESPONDENTS.

By Advocate :- Shri N.K.Sinha, ASC.O R D E R [ORAL]

Shankar Prasad, M[A] :- Aggrieved by the orders dated 12.01.2005 of the Disciplinary Authority imposing the penalty of reducing the pay to the lower stage of Rs.2750/- per month for 36 months with cumulative effect and that of Appellate Authority modifying the same to stoppage of increment for 24 months, the applicant has preferred the present OA. He has sought quashing of these orders.

2. The applicant was working as a Senior Trolleyman under the respondents. He was served with the charge-sheet dated 11.07.2003 on the article of charges enclosed with the said memo. The charges were sought to be proved on the basis of the report of the Joint inquiry Committee consisting of Sr. DSTE, Sr. DOM & Sr. DEN-III. No witnesses were cited. The applicant submitted his reply to the charge-sheet demanding various documents for filing proper reply. These are the statements recorded during preliminary inquiry. The Inquiry Officer submitted that there was existing practice of

operating motor trolleys on oral orders of the Station Master and that the applicant has not deliberately violated the respondents' order. He held that the applicant was not fully guilty. No disagreement note was served. The Disciplinary Authority after considering the reply passed the impugned order dated 12.01.2005. The applicant submitted a detailed appeal raising a number of points including the fact that the distance between gate no.47 to MG platform is 2 Km and the trolley cannot be carried ^{and} ~~out~~ physically, hence after obtaining the oral orders of the Station Master, East Cabin, Chapra, the trolley was being taken on track. It was also indicated that even though the Inquiry Officer has ^{exonerated} ~~excluded~~ the applicant, the Disciplinary Authority has imposed the punishment. It was further submitted that the applicant is going ^{to} ~~superannuate~~ after a short time. The Appellate Authority thereafter passed the impugned order. It was stated at the time of argument that the applicant superannuated on 31.01.2006.

3. The respondents have not filed any reply defending their action. The Tribunal vide its order dated 20.12.2006 granted a last chance to the respondents for filing written statement failing which the pleadings would be treated ^{as} ~~as~~ complete and the case would be heard and disposed of. The said order was recalled on 30.04.2007 and respondents were permitted to file written statement subject to payment of cost of Rs.350/- which was condition precedent. A statement was made on 27.09.2007 that the instructions received were scanty and hence delay has been caused in filing reply. A last opportunity was given on 27.09.2007 with the further cost of Rs.500/-. It being made clear that if written statement is not filed by the next date, the matter will be heard on the basis of materials available on record.

4. We have heard the learned counsel for the parties.

5. The Apex Court in Punjab National Bank Vs. Kunj Bihari Mishra [1998 (7) SCC 84] has held that where the Disciplinary Authority disagrees with the findings of the Inquiry Officer, a disagreement note has to be served. This decision has been reiterated in Yoginath D. Bagde Vs. State of Maharashtra [1997 (7) SCC 739].

The Apex Court in Ram Chandra Vs. Union of India [AIR 1988 SC 1173]

has explained as to what does the expression 'consideration of appeal by the Appellate Authority' mean. On going through the records we find that the Appellate Authority has failed to consider ^{As per the} ~~the various aspects, namely, [a]~~ Whether the inquiry was conducted in accordance with rules. He has also not considered the various aspects raised in the appeal petition.

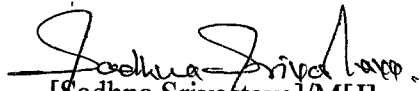
The Constitution Bench of the Apex Court in S.N.Mukherjee Vs. Union of India [AIR 1990 SC 1984] has ^{emphasised} ~~modified~~ the need for recording reasons even by the quasi-judicial authorities so that the same could be scrutinized at the time of appeal or at the time of judicial review.


6. In view of the above legal position, the orders passed by the Disciplinary Authority and the Appellate Authority cannot be sustained and are quashed and set-aside. Normally, in such cases the matter is remitted back to the Disciplinary Authority to proceed from the stage at which the defect has occurred. However, in the instant case we find that the applicant has superannuated from service. Besides this, we find that the report of the Joint Enquiry Committee holds the Motor Trolleyman primarily responsible. Apart from the applicant two other Trolleyman have also been found guilty. The Gateman has also been found guilty. Nothing is brought on record about the punishment imposed on these persons. The Apex Court in M.Raghavelu Vs. Govt. of Andhra Pradesh & Anr. [1997 SCC (L&S) 1743] has held that if the primary person is not punished, then the supervisory person cannot be punished. The respondents have not brought on record any order to show that the Motor Trolley Driver was punished.

Because of these circumstances, we are not remitting the matter back to the Disciplinary Authority.

7. In the conclusion, the orders passed by the Disciplinary Authority and the Appellate Authority are quashed and the OA is allowed. The applicant will be entitled to arrears of salary and the ^{re-computation} ~~commutation~~ of terminal benefits on the basis of his revised pay. All these amounts should be paid within three months of the receipt of this order. Interest @ 8% per annum shall also be payable on these arrears. In case these arrears are not paid within this period, interest ^{at the rate of 9%} ~~on the arrears together with the computed~~ interest shall be

4.
In beyond this three month period In
payable till the date of actual payment. Cost payable by the respondents
quantified to be Rs.1000/- [One Thousand] only.


[Sadhna Srivastava]/M[J]


[Shankar Prasad]/M[A]

skj.