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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 976/89 198
~~Tax~~ ~~Nox~~

DATE OF DECISION 19/10/90

Shri V.G.Ahuja **Petitioner**

Shri G.S.Walia **Advocate for the Petitioner(s)**

Versus

Union of India & Ors. **Respondent**

- **Advocate for the Respondent(s)**

CORAM

The Hon'ble Mr. M.Y.Priolkar, Member(A),

The Hon'ble Mr. D.K.Agrawal, Member(J).

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓

D.K. Agrawal
(D.K.AGRAWAL)
MEMBER(J).

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.976/89.

Shri V.G.Ahuja. ... Applicant.

V/s.

Union of India & Ors. ... Respondents.

Coram: Hon'ble Member(A), Shri M.Y.Priolkar,
Hon'ble Member(J), Shri D.K.Agrawal.

Appearances:-

Applicant by Mr.G.S.Walia.
None present for the
respondents.

JUDGMENT:-

¶ Per Shri D.K.Agrawal, Member(J) ¶ Dated: 19-10-1990

This application is directed against an order of removal from service passed by the Disciplinary Authority on 2.11.1989. The facts, in short, are that the applicant holding the post of Coach Attendant under the Commercial Department in the Western Railway was charge sheeted vide charge sheet dt. 20.5.1988 for mis-conduct and negligence of duty under Rule 3 (ii) & (iii) of Railway Service (Conduct) Rules, 1966. The Inquiry Officer returned a finding on 25.8.1988 wherein he held that the delinquent employee was negligent in discharge of his duties, but he still came to a conclusion at the end of his report that the charge was not proved against him. The Disciplinary Authority taking into account the report of the Inquiry Officer on the whole concluded that the delinquent employee was liable to be punished and therefore awarded the punishment of removal from service by an order dt. 2.11.1989. The applicant did not prefer an appeal to the appellate authority and instead rushed to the Tribunal. The respondents in their counter affidavit have alleged that since the applicant was held responsible for misconduct and negligence of duties violating provisions of Rule (ii) and (iii) of Railway Service (Conduct)

D.K. Agrawal

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Rules, 1966, the disciplinary authority was justified in awarding the punishment.

2. We have heard the learned counsels for the parties and perused the records. It may be mentioned at the outset that by an order dt. 17.11.1990 the Bench of the Tribunal granted a stay order by virtue of which the applicant continues to be in service, the respondents have also pleaded likewise in para 8 of their counter affidavit. The main ground focussed in this case is that the delinquent employee was not furnished with a copy of the inquiry report prior to the impugned order of punishment was passed. As such it would tantamount to not affording reasonable opportunity to defend himself within the meaning of Article 311 of the Constitution. In view of the decision in the case of P.K.Sharma V/s. Union of India & Ors. we cannot over rule the said ground taken by the applicant. If so, it is of no avail to record findings on other issues nor we are inclined to make observations on other points, lest it may prejudice the disciplinary authority. We are of the opinion, that the case should be remanded to the disciplinary authority for the purpose of taking into account the representation, if any, by the delinquent employee ~~*****~~ and thereafter pass the punishment order afresh. For this purpose we may mention that the copy of the inquiry report is already available ^{with} the applicant, inasmuch as, the same has been filed by him on record. Therefore, it is not necessary to direct the disciplinary authority to undergo the procedure of serving copy of the inquiry report again on the applicant. In the circumstances, we can safely presume that the applicant is in a position to make a representation to the disciplinary authority against the report of the inquiry officer to enable the disciplinary authority to come to a conclusion.

DK Agrawal ...3.

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3. In the result we hereby set aside the impugned order of punishment dt. 2.11.1989 and direct the applicant to submit his representation to the disciplinary authority against the report of the inquiry officer within 30 days hereof. We further direct the disciplinary authority to pass a speaking order awarding punishment to the applicant or exonerating him as he considers proper within two months of the receipt of the copy of this order. We further direct the applicant to avail the remedy of appeal before approaching the Tribunal, if need be. The parties will bear their own costs.

D.K. Agrawal
19.X.90
(D.K. AGRAWAL)
MEMBER (J)

M.Y. Priolkar
19.10.90
(M.Y. PRIOLKAR)
MEMBER (A).