

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 375/2001.

Thursday, this the 28th day of February, 2002.

Hon'ble Shri Justice Ashok Agarwal, Chairman,
Hon'ble Smt. Shanta Shastry, Member (A).

U.G. Agarwal,
Railway Quarter No. RB/111/SS/988(B),
Railway North Colony,
Fort Blocks Area,
Bhusaval - 425 201.
(By Advocate Shri A.I. Bhatkar)

...Applicant.

v.

1. Union of India through
The Additional Divisional Railway
Manager,
Central Railway,
Divisional Office,
Bhusaval - 425 201.
2. The Sr. Divisional Mechanical
Engineer, Central Railway,
Divisional Office,
Bhusaval - 425 201.
(By Advocate Shri S.C. Dhawan)

...Respondents.

: O R D E R (ORAL) :

Smt. Shanta Shastry, Member (A).

As a result of Disciplinary Proceedings initiated against the applicant vide charge sheet dt. 3.9.1990, the applicant was removed from Railway Service by order dt. 27.1.2000 of the Disciplinary Authority. On an appeal made against the aforesaid order, the appellate authority reduced the penalty by giving an opportunity to the employee by allowing him back in the service, but by reverting to the lower post of Senior Clerk in the grade of Rs.4500-7000 for a period of five years with cumulative effect fixing his pay at the initial stage of the grade i.e. at Rs.4500 vide order dt. 8.9.2000. Aggrieved by the aforesaid

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orders, the applicant has knocked the doors of this Tribunal to quash and set aside the aforesaid impugned orders dt. 27.1.2000 and 8.9.2000 of the Disciplinary Authority and the Appellate Authority respectively and to grant all consequential benefits.

2. Amongst the several grounds taken by the applicant for quashing and setting aside the Disciplinary Proceedings and penalties imposed thereof, the applicant has mainly pressed two grounds one is that the Enquiry Officer is supposed to generally question the delinquent on the circumstances, appearing against him in the evidence enabling him to explain any circumstances appearing in the evidence against him. The applicant submits that the Enquiry Officer had failed to do so. He is referring to Rule 9 (21) of the Railway Servants (Discipline & Appeal) Rules, 1968. The Rule reads as follows :

"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."

Further, the Learned Counsel for the applicant submits that the relevant documents were not made available to him till the end and his cross-examination of some of the Prosecution Witnesses had remained in-complete on account of this. Therefore, the enquiry is vitiated and needs to be quashed and set aside. The applicant has also raised a point that the Disciplinary Authority has not passed any speaking orders in the sense that he has not dealt with some of the points raised by the applicant so also the appellate order.

3. In support of his stand that he was not provided with all

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the relevant documents, the applicant's counsel has taken us through some of the statements recorded by the Prosecution Witnesses in examination-in-chief, as well as, in cross-examination which had to be postponed on account of non-availability of the relevant documents. The Enquiry Officer also had given the Ruling that the document was not available. In this connection, he has referred to the examination of Shri M.T.Shinde on pages 50 to 52 of the OA. On page 52 the ARE has made a submission that in the absence of the documents demanded, it is not possible to effectively re-cross-examine the P.W. Shri P.T.Shinde further and the evidence may be concluded on date. The E.O. has given the ruling that "as the C.E. / A.R.E. is unable to re-cross-examine without the assistance of the documents demanded which cannot be supplied due to the reasons stated hereinabove and as such the evidence on the Prosecution Witness is concluded hereto. Similarly, in the case of P.W. Shri C.R.Survade, Senior Clerk, there is a ruling on page 60 of the paper book which reads as "A reference is already made to D.A. for supply of the documents stated, but the same has not been supplied to us as yet. However, C.E./A.R.E. is requested to proceed with the enquiry on date with the assurance that an opportunity will be given to cross-examine the witness Shri Survade on supply of the documents, if necessary". There is a further note from the Presenting Officer on page 62 in connection with the evidence of Shri C.R.Survade which says that the documents cited at Ex. P-3 i.e. supply order register available now is covering only the period from 1.1.1987 to 13.7.1987. Efforts will be made to make available the supply

order register covering the period from 14.7.1987 to 3.9.1987". There is a further submission by the A.R.E. that in the preliminary enquiry held on 17.2.1997. We requested the Enquiry Officer to arrange to supply the documents and additional documents, but after five months have passed, we have not received the documents in answer to Question No. 7 Sl. Nos. 1, 2, 4 and 5 due to which cross-examination could not be done further and reasonable opportunity to cross-examine the witnesses is denied to him". There is a ruling given by the Enquiry Officer that "the documents demanded by the C.E. on 17.2.1997 at Sl. Nos. 1 and 2 of Question No.7 of the preliminary enquiry were not received by the Disciplinary Authority. As such, the same will not be supplied. As regards documents at Sl. No.4, the available statement of Shri K.B.Singh recorded on 21.7.88 and 25.7.1988 were supplied to C.E. /A.R.E. and the statement recorded on 27.4.1988 was not available in his file". Some more similar rulings have been given by the E.O. Further in the written brief submitted by the applicant, he has mentioned on page 114 that on behalf of the Disciplinary Authority were presented and assigned Exhibit Numbers. This list included the Supply Order Register, Ex. P-3, for the period from 23.1.1987 to 3.9.1987 and the Register for panel of registered firms of DCOS BSL Exhibit - P-4. However, at the end he has pointed out the legal flaws in the charge sheet and the enquiry proceedings. The applicant has stated that only part of the supply order register was made available and not the full register. It was never made available during the entire enquiry proceedings. The applicant

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has submitted in the written brief that the register from 14.7.1987 to 3.9.1987 contains many entries of supply orders placed against the firms. It is a listed document and not making it available during the course of enquiry is deviation from the procedure laid down in D.A.R. enquiry.

4. The Learned Counsel for the Respondents, however, submitted that all the documents which were listed in Annexure 3 to the charge sheet were supplied. He drew our attention to page 131 to state that all the documents were made available and the applicant had been asked to take inspection whenever necessary. The Learned Counsel for Respondents also showed us the statement recorded in the case of another P.W. Shri G.S.Shinde wherein cross-examination was continued after making available the necessary documents. The applicant has given a list of documents that were not supplied along with the statement regarding the Enquiry Officer's Ruling on different dates which all go to show that the applicant had not received certain documents particularly the supply order register and the panel of registered firms. Even after considerable time was spent, the Learned Counsel for the Respondents could not produce any material or draw our attention to any relevant mention in the enquiry proceedings to show that the applicant had been provided with all the relevant documents as listed in Annexure III of the charge sheet. In the circumstances, we have to hold that the enquiry is vitiated on account of non-supply of relevant documents. In fact, even before the enquiry commenced, as per rules, the applicant had to be provided with all the documents that are listed along with the charge sheet and he has

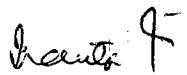
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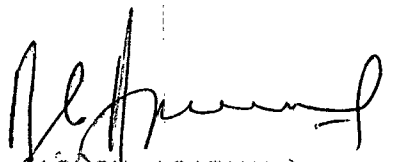
to be given either copies of the documents or allowed the inspection of documents. Instead, we find that there is frequent postponing on the part of the Enquiry Officer of the cross-examination on account of non-availability of the documents. The C.E./A.R.E. have been asked to proceed with the cross-examination and have been told that they would be allowed to cross-examine further on availability of documents. This is a very slip shod manner of conducting an enquiry for a major penalty proceedings. Accordingly, we quash and set aside the impugned orders dt. 27.1.2000 and 8.9.2000 on the ground of violation of the principles of natural justice. The applicant has also alleged that the enquiry officer failed to adhere to Rule 9(21) of the Railway Servants (Discipline & Appeal) Rules, 1968. We find that after the prosecution witnesses were heard, the enquiry officer recorded a statement on 15.2.1999 under the heading clarification given from Competent Authority. He has asked the applicant that having heard the prosecution side and having received the documents relevant to the case, please state do you plead guilty of the charges? The applicant pleaded not guilty and when asked whether he wanted any additional documents or witnesses to be produced in his defence, he once again harped to arrange for supply of attendance register, T.A. Bill, documents with reference to the transfer etc. which were not supplied and ruling by the E.O. that the same was not available with the DAR. Strictly speaking, it cannot be said that the enquiry officer failed to adhere totally to the provision under Rule 9 (21) as the title itself shows that the intention of the Enquiry Officer was clear to give an opportunity to the

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applicant by generally questioning him on the circumstances appearing against him in the evidence to enable him to explain those circumstances. However, the questions are not quite specific or not worded accordingly. All the same, this again goes to show that the enquiry was incomplete in that the relevant documents had still not been made available to the applicant. Therefore, without going into the merits of the other grounds, on the very ground of non-supply of documents, we quash and set aside the impugned orders with a direction to restore the applicant to his original post with consequential benefits and if it is decided to proceed further from the stage of cross-examination after providing the relevant documents, then the enquiry shall be completed within a period of six months from the date of receipt of copy of this order.

5. The OA is disposed of accordingly. The present order disposes of OA No.376/2001 also. No costs.


(SHANTA SHASTRY)
MEMBER(A)


(ASHOK AGARWAL)
CHAIRMAN

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