

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOWINDEX SHEETCAUSE TITLE Review 539 of 1990 (U)
S.A. 90 of 89 (U)

Name of the parties

S. C. Agriwal

Applicant.

Versus.

Union of India

Respondents.

Part A.B.C.

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1. Order sheet A1 - A2
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Bench copy
C copy

C

Certified that no further action is required for return and the case is fit
for Consignment to the record room (D)

Check on
18/1/2012

SOL

Review No. 539/90 (L)

9/1

(A)

O. A. 90/89 (L)

O. R.

A.C.M. (Review) A.N.,
539 has been filed in
O.A. 90 of 1989 on

30/8/90.

The case bearing O.A.
was decided by

the Hon. Bench of
Hon. Mr. Justice K.
Nath, V.C. and

Hon. Mr. K. Obayy^{ATM},
on dated 9-8-90

The Author of
the Judgment is

Hon. Mr. K. Obayy^{ATM},

S.F.O.

sgm
31/8

Put up
before the Hon'ble
Bench on 8-10-90
for orders.
31/8
31.8.90

Put up
before the
Hon'ble members
2 concerned
Bench for
orders.
31/8
8.10.90

28/8/91

Q.A. 539 T 90 (i)

(A2)

D.A. No. 90/1983 (4)

The above revised application may be heard on
hearing, after notice to the parties.

B
28/8/91.

AN

11-3-91

Received today
from Allahabad.
Issue notice to
the parties for
5-8-91.

Q

11-3-91

Dist. 13p. before the Bench of
Hon'ble V.C. on 13-8-91

Bench

or
not recognised
Q
25/7/91

13-8-91 Hon'ble Mr. Justice K. Nath, V.C.
Hon'ble Mr. K. Obayya, A.M.

The decision sought
to be reviewed was given
by an available Bench.
It will, therefore, be
initially considered by
circulation.

Q
Notices were issued
to the parties.
No answer received
over the last been return
date.

12-8-91 12-8-91

A

A.M.

Q
V.C.

2
.....
CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH LUCKNOW.

A3

Review Petition No. 539 of 1990 (L)

IN

Registration O.A. No. 90 of 1989 (L)

S.C. Agrawal. Applicant.

Versus

Union of India and others Respondents.

Hon'ble Mr. Justice K. Nath, V.C.

Hon'ble Mr. K. Obayya, A.M.

(By Hon'ble Mr. K. Obayya, A.M.)

This review petition arises on the order and judgment dated 9.8.1990 in O.A. No. 90 of 1989 (L) S.C. Agrawal Vs. Union of India and others.

2. The applicant was an employee of the Northern Railway, Lucknow. He was proceeded with departmentally on a minor charge and awarded punishment of withholding of increments for a period of 2 years by order dated 31.12.1987. The applicant preferred an appeal which was rejected on the ground that it was not preferred within time.

3. Aggrieved by the punishment as also the appellate ~~order~~ orders, the applicant had moved O.A. No. 90 of 1989 alleging that the enquiry was not held in the case and that imposition of punishment was in violation of the principles of natural justice. He also contended that the punishment will run beyond the date of superannuation i.e. 31.10.1990 as such, the enquiry was necessary in such cases but he was awarded punishment without any enquiry.

R.K.
3/10/91

4. On behalf of the respondents, it was contended that the charge was for minor penalty and no enquiry was

AU

necessary and that the punishment has already been implemented and that the punishment order was served on the applicant and in any case, the applicant has preferred an appeal which he could not have done unless he was aware of the punishment and that he did not take up the plea that a copy of the punishment order was not served on him.

5. After considering the matter, we have dismissed the application as without any merit.

6. In this review petition, it is stated that in our order, there is error of fact and law. It is stated that we have presumed ~~the~~ knowledge of ~~the~~ punishment on the part of the applicant, though, the punishment order was not served on the applicant as laid down in the statutory Rules. It is also stated that we have not taken into consideration that the period of punishment will affect the pension of the applicant, as such enquiry was necessary in the disciplinary matter. It is also mentioned that in calculation of punishment period (para-7) we have made an error.

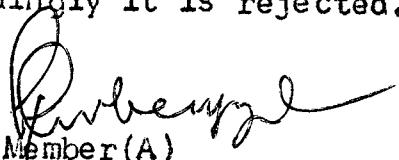
7. We have considered the averments in the review petition. We have carefully examined our order in the main petition dated 9.8.1990. The grounds raised in the review petition are similar to the grounds raised in the main petition. We have discussed the merits of the case in paras 6,7,8 & 9 of our judgment. Admittedly, the charge was for minor penalty and no enquiry is called for in such matters. The disciplinary authority proceeded to impose penalty after considering the representation of the applicant. This is in accordance with the Railway Servants (Discipline & Appeal) Rules, 1968. Regarding non service of the punishment order, in para-9 we have discussed the entire issue and held that the applicant was aware of the punishment or else, he would not have preferred an appeal.

AS

It was also observed that there were two or three disciplinary matters in which the applicant was punished. Some of these punishments were either reduced or set aside by appellate authorities. The order of punishment was awarded on 3.12.1987 and increments which fell due on 1.1.1988 and 1.1.1989 were withheld. The respondents had also stated that the punishment order had also been implemented. The applicant's retirement was on 31.10.1990 and the punishment order had been implemented well before the retirement of the applicant.

8. Regarding the quantum of punishment, we hold that the Tribunal can not go into that aspect.

9. For reasons stated above, we do not see that there is any error of either fact or law in our order dated 9.8.1990. We are of the view that there is no merit in the review petition and accordingly it is rejected.


Member (A)


49.91
Vice-Chairman

Dated: 4th September, 1991.
(n.u.)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD,
Circuit Bench, Lucknow.

Review Petition No.

539

of 1990. (L)

S.C. Agarwal

...Applicant/Petitioner

Versus

Union of India and others

...Respondents.

I N D E X

Sl.

No. Details of the documents

Pages:

1. P hotostat copy of the Judgment passed
by the Hon'ble Tribunal in O.A.NO.90/1989L 1 to 8

S.C. Agarwal
Signature of the applicant.

Lucknow

Dated: 29.8.90.

filed today
S.C. Agarwal
30/8/90
and today
8/9/90
R.M. 3091

Central Administrative Tribunal
Circuit Bench Lucknow
Date of Filing ... 30-8-90
Date of Receipt by Past.....

Deputy Registrar(J)
Le/8.9.
31/8

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

Circuit Bench Lucknow.

Review Petition Under Section 22F of C.A. Act read with
rule 17 of Central Administrative Procedure Rule 1987
and order 47 rule 1 of C.P.C.

.....

In Re:-

O.A. No.90 of 1989L

S.C. Agarwal

...Applicant/Petitioner

Versus

Union of India and others

...Respondents.

The applicant /petitioner most respectfully
filed the review petition against the judgment passed
by the Hon'ble Tribunal on 9.8.90 in O.A. No.90/ 1989L
on the following grounds:-

G R O U N D S:

- 1) That, there is a gross violation of statutory
rules embodied in the Railway Servants Discipline and Appeal
Rules 1968.
2. That, there is ^{glaring} ~~every~~ omissions or patent of grave
mistake / error/crept in the judgment pronounced by this
Hon'ble Tribunal.
3. That there is a important matter of evidence which
after exercise of due diligence could not be produced at
the time of passing of the decree.

S. Agarwal

4. That there is substantial point of law involved in the case, so the review petition is also sustained on this point.

5. That some mistake or error ~~is~~ apparent on the face of the record is found.

6. That the statutory rules laid down in rule 12 and 20 of the Disciplinary and Appeal Rules ~~is~~ exclusively meant for Railway servants which is reproduced below has not been complied by the respondents. In this way the respondents did not serve order of punishment on the applicant. The Hon'ble Tribunal has observed that knowledge is enough. This sort of thing is not provided in the statutory rules and this can not over right the statutory rules. The Hon'ble ^{Tribunal} has erroneously observed that knowledge is enough. ^{and presumption of punishment}

It shows that the Hon'ble Tribunal has observed presumption.

"12- Communication of orders: Clarification and Rly. Board's decision:

Service of the notice of imposition of penalty:

As far as possible the actual service of an order / notice which seeks to impose a punishment on the Railway servant concerned, is desirable and, therefore, with a view to ensuring actual service of the order/ notice on the railway servant concerned, the authority should explore all the possibilities of serving the orders / notices, as indicated below:-

(i) Where the Railway Servant is present in office the order/ notice should be served on him in person. If he refuses to accept the same or evades its service on him

Sub annual

(P)

on one plea or the other, the fact of his refusal etc. should be recorded in writing and signature of the witnesses in whose presence the order/ notice is attempted to be served on him, taken in support of such attempt. The order/ notice should be deemed to have come into ~~for~~ effect from the date on which it was so attempted to be served on the Railway servant concerned, unless it specifies any subsequent date from which it has to take effect, irrespective of whether he accepts it or not.

(ii) In case, the Railway servant is not present in office the order / notice should be communicated to him at ~~his~~ his last known address by registered post, acknowledgement due.

In case the Railway Servant accepts the order of the notice sent by registered post, A.D. it should be deemed to have come into effect from the date of such acceptance thereof, unless it specifies any subsequent date from which it has to take effect.

In case the Railway Servant concerned does not accept the order/ notice and the same is returned undelivered by the postal authority with the endorsement, such as "addressee not found", "refused to accept" etc, it should be pasted on the notice board of the Railway premises in which the employee concerned, was working last as well as in a place in the last noted local address of the Railway Servant. The order/ notice should be deemed to have come into effect from the date of issue thereof unless it specifies any subsequent date from which it has to take effect".

S. A. M. S.

▪ 26 = of Part VII Misc. Discipline and Appeal Rules
for Railway Servants 1968.

"Service of orders, notices etc. Every order, notice and other process made or issued under these rules, shall be served in person on the Railway servant concerned or communicated to him by registered post"-

* Orders of imposition of penalty under rule 6(IV) of the Railway Servants (Discipline and Appeal Rules, 1968).

NO.	Place of issue
	Dated:

Shri

(THROUGH.....)

I have carefully considered your representation dated in reply to the Memorandum of Charge sheet No.....dated I do not find your representation to be satisfactory due to the following reasons

• • • • • • • •

2. Under rule 18 of the Railway Servant (Discipline and Appeal) Rule, 1968, an appeal against these orders lies to provided....

SAunders

(Ail)

- (i) the appeal is submitted within 45 days from the date you receive orders and
- (ii) the appeal does not contain improper or disrespectful language .

3. Please acknowledge receipt of this letter.

Signature.....

Name

D.

Designation of the/authority --

7. That the respondents could not produce the signatures of the son of the applicant in token of the receipt of the punishment order when it was denied by the applicant that the same was not received b-yhis son when the counsel for the applicant asked the learned counsel of the respondents to show the signatures of the son of the applicant for receipt of the punishment order he said to the Hon'ble Tribunal that he can not produce the signatures of the son of the applicant . The Hon'ble Tribunal has wrongly presumed that it was received by the son of the applicant as he authorised for the same .Para 7 page 6 of the judgment is only based on presumptions .

8. That the compliance of rule 11 (2) of the Railway Servants Discipline and Appeal , 1968 was required to be complied with under the statutory rules when the punishment has adversely affected the pensionary benefits of the applicant .The Hon'ble Tribunal has ~~excessively~~ committed a grave error in calculating the period of punishment as is shown in the judgement on page 7 .The learned counsel for the applicant pointed out all these things during the course of arguments which were not observed by this

S. A. G. M. A. (Signature)

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Hon'ble Tribunal and entirely left the matter at the mercy of the applicant . The details of the punishment are as under:-

i) Increment stopped for two years Enforced from with effect from 1.1.88 vide and to 1.1.88 order NoTG/74/Misc//9UP/87 30.6.88

dated 11.9.87 which was reduced Quashed by this to 6 months by the appellate authority. Hon'ble Tribunal.

ii) As mentioned in last 3 lines 1.7.88 to 31.6.89 page 6 of the judgment, the punishment was to beoperative for a period of one year but left out that the "future increment was also stopped."

The punishment imposed by the disciplinary authority by reducing the applicant in rank to Guard Grade 'C' in grade Rs.1200-2040 at the bottom of the grade , so the punishment issued on 3.12.87 in the present case was not operated because of this punishment which was operated with effect from 7.12.87 . The punishment was further reduced to WIT one year by C.P.T.S./N.Rly., and the punishment enforced .

iii) The punishment order of with-holding of 1.7.89 increment was for two years was enforced 1.7.90 to 30.6.90 after 31.6.89.

In this way the applicant will be adversely affected at the time of retirement and the increment will not be earned by the applicant which will go beyond 31.10.90 the date of supernauation and the compliance of rule 11(2) was necessary . In this way the Hon'ble Tribunal has

S. K. Ganguly

committed an error which is apparent .

9. That it has been held by this Hon'ble Court on page No.7 that the punishment order has already been implemented . It does not mean that the punishment has been implemented and that can not be challenged either in appeal or before this Hon'ble Tribunal . The entry was made only in service record which can be altered by means of either appellate order or judgment of the Hon'ble Tribunal . This observation of the Hon'ble Tribunal is also erroneous .

10. That the respondents have charged the applicant for violation of rule 3(iii) of the Railway Servants Conduct Rules which defines (unbecoming of a railway servant) whereas the imputation of misconduct is not as such that it may declare the applicant as unbecoming of a railway servant so this also involves substantial point of law .

11. That in the appeal it has already been pointed out that an inquiry under rule 11(2) is necessary because it has adversely affected the retirement benefits so the inquiry was necessary . It also involves substantial point of law which the Hon'ble Tribunal has erroneously ignored .

12. That the application for enquiry was personally handed over to the Disciplinary authority for which the officer never grants a receipt and the denial of the respondents for receipt of the same is not to be trusted in view of the above . The applicant has filed orders of

S. L. Anand

P.M.

the Railway Board communicated vide letter No.E& A86RG-6-3 dated 11.2.86 (RBE-17/86) According to which if the disciplinary authority after due consideration come to the conclusion that any inquiry is not necessary he should say so in writing indicating its reasons instead of rejecting the request for holding inquiry summarily without any indication that it has applied its mind to the request as such , an action could be construed as denial of natural justice.The letter is reproduced below for ready reference:-

" A copy of the Department of Personnel and Trainings's Office memorandum No.11012/18-Estt: (A) dated 28.10-85 on the above subject is enclosed. The contents of the same may be brought to the notice of all concerned for compliance. Rule 16(1) and 16(1-a) of the CCS(CCA) Rules 1965 mentioned therein correspond to Rules 18 (1) and 11(2) respectively, of the R.S.(D & A) Rules 1968 regarding procedure for imposition of minor penalties. Extract from the Department of Personnel & Training Office Memorandum No.11012/18/85 -Estt. (A) dated 28th October, 1985.

1. The undersigned as directed to say that the staff side of the National Council (JCM) set up to consider revision of CCS(CCA) Rules 1965 and suggested that Rule 1961 should be amended so as to provide for holding an inquiry even for imposition of minor penalty, if the accused employee requested for such an inquiry.

2. The above suggestion has been given a detailed consideration.Rule 16 (1-A) of the CCS(CCA) Rules

Subhankar

(AIS)

1965 provides for the holding of an inquiry even when a minor penalty is to be imposed in the circumstances indicated therein. In other cases, where a minor penalty is to be imposed, Rule 16(1) ibid leaves it to the discretion of disciplinary authority to decide whether an inquiry should be held or not. The implication of this Rule is that on receipt of representation of the Govt. servant concerned on the imputations of Mis-conduct or Mis-behaviour communicated to him, the disciplinary authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding a detailed inquiry and form an opinion whether an inquiry is necessary ~~and~~ or not. In a case where a delinquent Government servant has asked for inspection of certain documents and cross servant has asked for inspection of certain documents and cross examination of the prosecution witnesses, the disciplinary authority should naturally apply its mind more closely to the request and should not reject the request solely on the ground that an inquiry is not mandatory. If the records indicate, that notwithstanding the points urged by the Government Servant the disciplinary authority could, after due consideration, come to the conclusion that an inquiry is not necessary, it should say so in writing indicating its reasons, instead of rejecting the request for holding inquiry summarily without any indication that it has applied its mind to the request, as such an action could be construed as denial of natural justice.

3. Ministry of Agriculture etc. are requested to bring these instructions to the notice of all disciplinary authorities under their control."

S. R. Ayyar

The Hon'ble Tribunal did not consider the statutory provisions laid down in the above orders of the Railway Board and committed a gross error in not considering the rules.

13. The respondents produced the records for the perusal of the Hon'ble Tribunal in the absence of my counsel so the applicant could not avail the opportunity in rebutting the same and thereby there is complete denial of principles of natural justice to the applicant.

14. The order of the appellate authority is not in speaking order and this point was also by-passed by the Hon'ble Tribunal .

15. The applicant has been charged and held responsible for utter apathy in violation of para 31 1) (ii) of the Railway Services Conduct Rules of 1966 .The para 3(1) (ii) of the Conduct Rules is laid down as such .

i) To maintain absolute integrity

ii) To maintain devotion to duty

16. The calculation of the progressive punctuality of Mail and Express Trains shown as 93.9% instead of 92.3% and the applicant showing his innocence about the same does not constitute the violation of the above paras and mis-conduct .Moreover the Railway administration has suffered no irreparable loss .This charge has nothing to do with the absolute integrity or devotion to duty .The applicant did not disregard any order of the authorities which was not brought to the notice of the applicant.

APR

- 11 -

17. That as per printed serial 8949 under which the ~~copybook~~ the letter No.ED& A 86RG 6-12 dated 17.2.86 was issued by the Dy. Director Establishment (D & A) Rly. Board ~~time~~, in case of imposition of minor penalties where no inquiry is held the disciplinary authority while passing orders should communicate to the employee concerned the brief reasons for the final decision regarding the guilt of the employee. ~~This~~ statutory rules have not been followed in any respect by the respondents.

Copy of the aforesaid letter is reproduced below:-

"Sub:- Discipline and Appeal Rules-Procedure for imposition of minor penalties.

.....

In Accordance with the instructions contained in para 3(1) of Board's confidential letter No.E(D&A) 69RG6-7 dated 30.6.69, which were reiterated vide Board's letter No.E (D & A) /70/RG6-17 dated 18-8-70, in cases of imposition of minor penalties, where no inquiry is held, the disciplinary authority, while passing orders should communicate to the employee concerned the brief reasons for the final decision regarding the guilt of the employee.

It has been represented to Board that the above instructions are not being followed by some Railway Administrations. It is therefore, desired that the Board's aforesaid instructions should be reiterated once again for strict compliance by all disciplinary authorities."

P R A Y E R

WHEREFORE, it is prayed that ~~time~~ under the facts and circumstances of the case, the Hon'ble Tribunal may be pleased to allow the Review Petition and quash the punishment order contained in the application.

Verification:

I, S.C. Agarwal, son of Shri S.L. Agarwal, aged about 58 years, ~~as~~ working as a Chief Controller do hereby verify that the contents of paras 1 to 17 of the Review Petition are true to my own knowledge and legal advice.

S. C. Agarwal
Applicant/Petitioner.

Lucknow:
Dated: 29.8.90

SL No 412

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH, ALLAHABAD

(A18)

NO CAT/ U9907

OFFICE MEMO

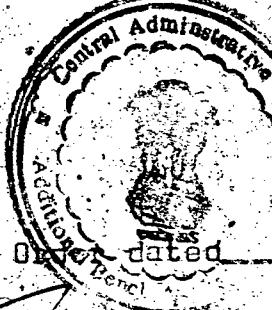
REGISTRATION NO. 20/D.A.

S.C. Agarwal

versus

Union of India

A copy of the Tribunal's Order
in the above noted case is forwarded for action.



Encl: Copy of Order dated 19.8.70

Section Officer

19.8.70

1. Smt K.P. Srivastava, Advocate
Black Field, Mati Ghera, Latur, Maharashtra
2. A.O.R.M-I, N.R. Hajar

Shiv Nath/

CIRCUIT BENCH

LUCKNOW

ATG

O.A. 90 of 1989(L)

S.C. Agrawal

..Applicant.

versus

Union of India & others

..Respondents.

Hon'ble Mr. Justice K. Nath, V.C.

Hon'ble Mr. K. Obayya, Adm. Member.

(Hon. Mr. K. Obayya, A.M.)

This application under section 19 of the Administrative Tribunals Act, 1985, has been filed by the applicant for quashing the order dated 31.12.1987 whereby his increment was withheld for a period of two years without cumulative effect and the order dated 11.1.1989 contained in Annexure A-5 rejecting his appeal.

2. The applicant, who is employed in the Northern Railway, Lucknow as Chief Controller, was served with a charge memo dated 23.7.1987 (Annexure A-1) ^{proposing imposition} ~~proposition~~ of a minor penalty. The applicant submitted his representation dated 13.8.1987 (Annexure A-3). The representation was considered and the disciplinary authority, vide order dated 31.12.87 imposed the penalty of withholding increment for a period of two years. The applicant preferred an appeal which was rejected on the ground that that was not preferred within time.

3. The case of the applicant is that he has requested for holding of enquiry in this case but no enquiry was held, consequently he was denied of opportunity to defend the case.



A20

The chargesheet was for wrong calculation of progressive punctuality of Mail and Express Trains. The applicant mentioned in the statement that the punctuality worked out to 93.9%. ~~Now~~, The contention of the applicant is that the changed system was not conveyed to him and he was not aware of the new method of calculation. He also contends that the charge-sheet was not accompanied by imputation of misconduct or misbehaviour and the punishment was imposed without considering his reply. The notice for imposition of penalty was not served on him in accordance with the rules. He alleges that the punishment is contrary to the Railway Servants (Discipline & Appeal) Rules, 1968 and in violation of principles of natural justice. He also further contends that the punishment imposed will run beyond the date of superannuation i.e. 31.10.90, and that this affects the pensionary benefits and in such cases enquiry is necessary. He had also been awarded punishment earlier of withholding increments for 1½ years which will expire on 30.6.89 and the present punishment will expire on 29.6.91.

4. The respondents filed a counter, in which they have stated that charge was for imposition of minor penalty and according to rule 9(ii) of D&A Rules, 1968 imputation of misconduct or misbehaviour on which action is proposed to be taken has to be indicated and that was done in this case. The disciplinary authority considered the reply and dispensed with the enquiry. Under the rules, it is left to the discretion of the disciplinary authority to hold or not to hold the enquiry taking into consideration the representation of the charged officer. It is a satisfaction



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of the disciplinary authority in such matters that is relevant. According to them, the procedure followed was in accordance with the rules and no notice is required to be served for imposition of penalty for minor charges. It is further stated that the applicant did not raise the ground of notice of punishment order not served on him in his appeal. The appeal did not challenge the order but they denied that the representation of the applicant for holding enquiry (Annexure -2) was received. It is further stated that the applicant could never have preferred an appeal without obtaining the copy of the order to seek condonation of delay. It is also stated that on the date of awarding the punishment, there was no other punishment continuing against the applicant. The present punishment will not affect the provisions of pension, to necessitate an enquiry. In the rejoinder, the applicant reiterated that his request for holding of enquiry was not acceded to and the reason was also not communicated and the notice of the punishment order is required to be served under Rules 20 and 12 of the Discipline and Appeal Rules in form 4 prescribed under the rules but that was not done. His knowledge of imposition of penalty is not material. The disciplinary authority, after consideration of the representation made by the government servant should record reasons for dispensing of that enquiry. He also reiterated that the punishment will extend beyond the period of his service and the punishment will be affected.

5. We have heard the learned counsel for the parties and perused the record.

6. The charge against the applicant for imposition of



minor penalty roads as follows:

(A22)

Shri S.C.Agrawal on duty as Dy. Chief Controller on 14.7.1987, wrongly calculated the progressive punctuality of Mail and Express trains and showed it as 93.9% wheroas it should have been 92.3%. This is extreme indifference towards work and gross dereliction of duty. Working in such responsible capacity, Shri Agrawal should have calculated the figures with precise exactitude before showing it in the relevant book. But he failed to exercise ~~practise~~ check and scrutiny with the result that the figures were wrong.

Shri Agrawal is therefore, held responsible for utter apathy in violation of para 31 (ii) & (iii) of Railway Service Conduct Rules, of 1966th.

The representation of the applicant to the above charge is Annexure A-3. While explaining that he was not aware of the changed in the system of calculating progressive percentage from 10 day to continuous month system, the applicant stated "I have done nothing ^{new} ignorance but innoconco of the charge, I beg to be pardoned for and ~~pitcher~~ had any intention not to be exact as required.

7. Admittedly, the charge-sheet was issued for imposition of minor penalty and the procedure is laid down in rule 11 of the Railway Servants Discipline & Appeal Rules, 1968. This rule provides for informing the charged officer in writing of the proposal to take ^{action} against him and of the imputation of misconduct of behaviour on which it is proposed to be taken, giving reasonable opportunity of making representation. Enquiry would be necessary only when the disciplinary authority is of the opinion that such an enquiry is necessary. Otherwise, where it is considered that enquiry is not necessary disciplinary authority can take further action on the basis of the record and explanation of the charged officer and after recording of the finding shall pass necessary order. Holding of enquiry is a matter of discretion of disciplinary authority and not pre-requisite before passing an order.

PL3

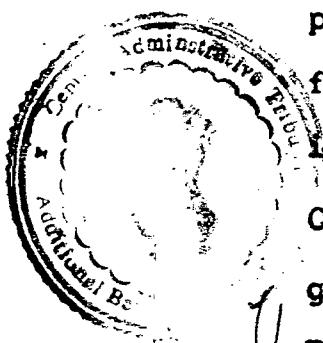
8. So far as the procedure in regard to minor penalty is concerned, it is on record that the charge memo was served on the applicant, his representation ^{was} considered and the impugned order of withholding of increment for a period of two years was passed. The request of the applicant that he has sought for an enquiry (Annexure -2) is not on record. The respondents also denied that they have received any such representation. Further, it is noticed that the representation made against the charge, the applicant has not made any request for holding an enquiry. The representation was the basis on which the punishment orders were passed. It is not known why the applicant has not sought for enquiry in this very explanation and this very issue ⁱⁿ wide his letter dated 18.8.1987. Having regard to the provision of Rule 11, under which the disciplinary case was dealt, it is seen that the requirements of the rule was to comply that we see no irregularity either in the conduct of the enquiry leading to award of impugned order of punishment.

9. The applicant has also assailed that the notice of the imposition of punishment was not served on him. The respondents' contention is that the rules ^{do not} had been provided for service of notice before imposing the penalty of withholding of increment. According to them, he has not taken up the plea of non-receipt of order in his appeal and that issue cannot be raised and questioned now. The rules do not lay down that notice should be served indicating the punishment ~~order~~ proposed to be awarded. The rule requires that the punishment order should be served in person and in case it is not possible, it may be communicated by post. The fact of refusal of the applicant to receive the punishment order should be recorded



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in case of punishment order is received back without service upon the delinquent employee and the same maybe pasted on the notice board. This will ensure the compliance of Rule relating to service of punishment order. The learned counsel for the respondents pointed out that the punishment order ^{was} ~~be~~ served as per rule. According to him, the applicant was on sick leave and he has authorized his son to receive the orders. It is further urged that the applicant would not have ~~givemup~~ come up with an appeal if he was not aware of the punishment. His appeal was rejected on the ground of delay. The applicant could have claimed that since he has not received the order, he should be provided with a copy of the order to prefer an appeal. This plea was not taken up by him in his appeal. From the record it is noticed that the applicant has mentioned in para ^{affidavit} that he has come to know of the punishment order through highly reliable source. The fact that he preferred an appeal against the punishment order and that he was aware of the punishment, is not in dispute. It would also appear that prior to the disciplinary proceedings in question, there were one or two more disciplinary proceedings against the applicant. On 11.9.87, his increment was withheld for a period of two years. This punishment was, however reduced to six months and the matter was further taken up by the applicant in the Central Administrative Tribunal/O.A. No. 320/89. The Tribunal quashed the punishment order. There was yet another disciplinary case for major punishment for which the punishment of reduction in rank to lower post for a period of five years was imposed. On appeal this punishment was reduced to reduction of one grade and the punishment was to be operative for one year. This punishment was imposed after a ^{an enquiry} punishment for a major penalty. In the present case before us, the punishment was



awarded on 3.12.87 and the increments which fell due on 1.1.88 and 1.1.89 was withheld and the learned counsel for the respondents stated that the punishment order has already been implemented. From this, it is evident that the contention of the applicant that the punishment will continue even beyond the period of his service i.e. 31.10.90 is not correct and the provision of rule 11(2) is not applicable in his case.

10. Taking the facts and circumstances of the case into consideration, we are of the view that no irregularities are established either in the conduct of the enquiry or in award of punishment. In any way, the Tribunal cannot go into the quantum of punishment. We see no merit in the application and it is accordingly dismissed. No order as to costs.

Sd/
Adm. Member.

Sd/
Vice Chairman.

Due to non availability of a Bench with one of us as the Member at Lucknow Circuit Bench for quite some time, this judgment is being delivered at Allahabad. Office will issue copies to the parties immediately and will despatch the record alongwith the copy of the covering letter to the Lucknow Circuit Bench.

Sd/
Hon'ble (A) /

Sd/
Vice Chairman

Dated the 9th Aug., 1990.

Sd/
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