

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 5/98

Date of Decision : 8th Feb, 2002

A.M.Kanpurwala Applicant

Shri T.D.Ghaisas Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri R.R.Shetty Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Shri S.K.Agarwal, Member (A)

(i) To be referred to the reporter or not ? yes

(ii) Whether it needs to be circulated to other old Benches of the Tribunal ?

(iii) Library yes

P.S.J.
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.5/98

Dated this the 8th day of Feb., 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Shri S.K.Agarwal, Member (A)

A.M.Kanpurwala,
Chief Permanent Way Inspector
(Safety), R/at 88, Khairati Bazar,
Near Khan Bhai's House,
Burhanpur (M.P.). . .Applicant

By Advocate Shri T.D.Ghaisas

vs.

1. Union of India through
The General Manager,
Central Railway,
Mumbai CST.
2. Divisional Railway Manager,
Central Railway,
Bhusawal.
3. The Chief Track Engineer,
Central Railway,
Mumbai CST.
4. Sr.Divisional Engineer (East),
Central Railway,
Bhusawal.

. . .Respondents

By Advocate Shri R.R.Shetty

. . .2/-

P.L.SR

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 to quash and set aside the order passed by the disciplinary authority, appellate authority and revising authority dated 15.12.1995, 2.9.1996 and 21.8.1997 respectively with a declaration that the applicant is entitled to all the pay and allowances, as if no penalty was imposed upon him with all consequential benefits which he would have ^{been} entitled but for the above penalty along with the interest at the rate of 18% p.a. till realization.

2. The applicant was working as Chief Permanent Way Inspector (Safety) on Bhusawal Division on Central Railway at Bhusawal and belongs to Engineering Department. While working as such, he was served with charge Memo for major penalty by the disciplinary authority, i.e. Senior Divisional Engineer (East), Bhusawal, Respondent No. 4 vide Memo bearing No.BSL/W/STF NPDA/E/AMK/03 dated 26.7.1994 together with the documents. After an enquiry, the applicant was "reduced to time scale by four stages for a period upto 30.6.1998" vide order dated 15.12.1995. The applicant preferred an appeal against the said order which was partly allowed by the appellate authority vide order dated 2.9.1996 by modifying the penalty - "reduction in pay for four stages from Rs.3050/- to Rs.2750/- in the same time scale of pay

Sd/-

(Rs.2375-3500) for a period of one and half year with cumulative effect". The applicant preferred the revision against the said order which is also partly allowed vide order dated 21.8.1997 by modifying the penalty "reduction" by four stages, i.e. from Rs.3050/- to Rs.2750/- in the grade of Rs.2375-3500 (RS) for a period of one and half year without cumulative effect".

3. The grievance of the applicant is that immediately after the accident, a Fact Finding Enquiry consisting of three members, i.e. Sr.Divisional Mechanical Engineer, Bhusawal as President, Sr. Divisional Engineer (East), Bhusawal and Divisional Safety Officer, Bhusawal as Members was constituted for finding out the cause of derailment and fixing of the responsibility of Department as well as an individual. The applicant was not supplied with the copy of the said Fact Finding Enquiry with a dissenting note and supplied with a copy of the Fact Finding Enquiry only. As no dissenting note was supplied, he claims that he is deprived of the reasonable opportunity of being heard. The Sr. Divisional Engineer (East), Bhusawal who was one of the Member of the Fact Finding Enquiry being the Disciplinary Authority issued the chargesheet and after the enquiry penalised the applicant which is against the principle of natural justice. The enquiring authority has without recording the statement of the witnesses arrived to a conclusion on the basis of the said report that it is for the applicant to prove his innocence and not for the respondents to establish the guilt against him. Hence, this OA. for the above said relief.

REJN

4. The claim of the applicant is resisted by the respondents and it is being argued that as the dissenting note of Fact Finding Enquiry was not a relied upon document, the non supply of the same in noway prejudices the case of the applicant. The learned counsel for the respondents further argued that in view of Railway Board Circular R.B's No.E(D&A) 59 RG 6-42 dated 27.1.1960, there is no error on the part of the respondents to issue the charge-sheet by Senior Divisional Engineer (East), Bhusawal who was a Member of the Fact Finding Enquiry and also to act as a disciplinary authority. The enquiry is conducted as per rules and the applicant has been held guilty of the charges levelled against him, the penalty awarded is proportionate rather lenient to the charges established. Hence, prayed for dismissal of the OA. along with the cost.

5. The learned counsel for the applicant relied on III. L.L.J. (Supp.) 1998 Narayan Dattatraya Ramteerthakhar vs. State of Maharashtra & Ors.. On perusal of the same, we are of the considered opinion that the ratio laid down by the Apex Court is that preliminary enquiry has nothing to do with the enquiry conducted after the issue of the chargesheet. The former action would be to find out whether disciplinary enquiry should be initiated against the delinquent. After the full-fledged enquiry was held, the preliminary enquiry had lost its importance. In such circumstances, the fault in preliminary enquiry is of no basis. The matter in issue is not the defect in preliminary but when there is a preliminary enquiry, whether the copy of the report should be supplied to the applicant in full or not.

6. AIR 1982 SC 937, State of Uttar Pradesh vs. Mohd. Sharif (dead) through L.Rs. lays down the proposition that in case copy of preliminary enquiry and statement of witnesses recorded therein not furnished, the delinquent was denied reasonable opportunity to defend himself at disciplinary proceedings. The present case is even on better footing for the applicant for the reason that he is not demanding the statement of witnesses but he is demanding only the report of Fact Finding Enquiry in full. In our considered view, failure of the respondents to supply the said report in full certainly amounts to denial of reasonable opportunity of being heard:

7. The learned counsel for the respondents relied on the Railway Board Circular RB's No.E (D&A) 59.RG 6-42 dated 27.1.1960 which lays down about the member of the disciplinary Committee and not where the disciplinary authority is one and the sole individual. In the present case, an individual who was the Member of the Fact Finding Enquiry has issued the chargesheet and has also acted as disciplinary authority, accepted the report of the enquiry officer and penalised the applicant. The facts clearly reveals that a material witness has acted as a Judge. The principle of administration of justice clearly forbids it on the principle that the justice is not to be done but it must also appear to have been done?

8. The learned counsel for the respondents argued that as the said disciplinary authority has given the dissenting note, therefore the applicant is in no way prejudiced. We are unable to agree with the submission of the learned counsel for the respondents for the reason that so many facts are narrated in his dissenting note, in absence of which the applicant was not able to defend his case properly. Whether the facts which brings home the guilt or the facts which assists the applicant, is of no consequence, as even it helps the applicant, the applicant was entitled to use them in his favour and if it was which brings home the guilt, the applicant was to rebut the same. In both the cases, supply of full fact finding report was essential one and failure to supply the same, prejudices the case of the applicant.

9. In view of AIR 1967 M.P. 91, Ramshakal Yadav vs. Chief Security Officer, Railway Protection Force, Bombay V.T. & Ors., it has been laid down that enquiry officer should not rely on the statement of a person not examined at the enquiry, even though the delinquent officer has no strained relationship with the person giving the statement. Report of an enquiry officer or a Fact Finding Enquiry cannot be used in evidence unless and until the officers who have conducted the enquiry are being examined as witnesses. Thus, the enquiry is also vitiated on this count.

Plg/-

..7/-

10. It is true that the appellate authority has modified the penalty and is reduction in pay by four stages, i.e. from Rs.3050 to Rs.2750 in the same time scale of pay Rs.2375-3500 for a period of one and a half year with cumulative effect and the revising authority has further modified the punishment and the penalty awarded was reduction by four stages, i.e. from Rs.3050/- to Rs.2750/- in grade Rs.2375-3500 for a period of one and half year without cumulative effect. It is true that in case of Railway accident if a person is found guilty, he should not be spared but only on the basis of a fact that an accident has occurred without arriving to a finding that the applicant is guilty of the same, a punishment whatsoever it may be, even a minor punishment, cannot be inflicted against the applicant. Only on the basis of the Railway accident, the official cannot be held guilty or the penalty awarded is lenient one, the disciplinary proceedings cannot be examined on merits.

11. Keeping in view the non-supply of the Fact Finding report in full, acting of a Member of Fact Finding Enquiry as disciplinary authority, enquiry being in violation of principles of natural justice, we are of the considered view that order passed by the disciplinary authority, appellate authority and revising authority dated 15.12.1995, 2.9.1996 and 21.8.1997 deserves to be quashed and set aside and ^{as such} are quashed and set aside. The matter shall go to the disciplinary authority for further proceedings in the matter. To be specific, if the same

J.CM/-

..8/-

disciplinary authority - Shri R.S. Dubey continues on the said post as the Senior Divisional Engineer (East), Bhusawal, the senior official after seeking instructions appoint some another authority of the same rank as disciplinary authority for deciding the matter after a due enquiry as per law after supply of copy of Fact Finding Enquiry report in full. It is a fit case where the applicant is entitled to a cost amounting to Rs.1,000/- payable by the respondents. It is expected that the enquiry shall be concluded within a period of six months from the date of receipt of a copy of this order.



(S.K.AGARWAL)

MEMBER (A)

P(-81) --

(S.L.JAIN)

MEMBER (J)

mrj.