

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 236
T.A. No.

1988

DATE OF DECISION 3.5.94

Mani Ram

Petitioner

Mr. P.D. Khanna

Advocate for the Petitioner (s)

Versus

Union of India & Others

Respondent

Mr. S.S. Hasan

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Gopal Krishna, Member (J)

The Hon'ble Mr. O.P. Sharma, Member (A)

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? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

(O.P. Sharma)
Member (A)

G.K.
(Gopal Krishna)
Member (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

DA No. 236/88 : Date of order 3.5.94

Mani Ram : Applicant

v/s

Union of India and Others : Respondents

Mr. P.D. Khanna : Counsel for the applicant

Mr. S.S. Hasan : Counsel for the respondents

CORAM

Hon'ble Mr. Gopal Krishna, Member (J)

Hon'ble Mr. O.P. Sharma, Member (A)

PER HON'BLE MR. O.P. SHARMA, MEMBER (A)

Shri Mani Ram has filed this application u/s 19 of the Administrative Tribunals Act, 1985, wherein he has prayed that the Memorandum dated 15.10.86 by which he has been charge-sheeted under Rule 9 of The Railway Servants (Discipline & Appeal) Rules ("Rules", for short) be declared illegal. He has further prayed that the findings of the Enquiry Officer dated 12.1.87 contained in Annexure A-11 may be quashed. He has also prayed that orders dated 30.1.87 (Annexure A-12) by which a penalty of reduction of pay was imposed on him, the order dated 27.7.87 (Annexure A-13) by which the penalty was enhanced to that of removal from service and the communication dated 13.12.87 (Annexure A-13) by which his representation against the penalty imposed was rejected, all be quashed. He has also prayed for reinstatement in service and grant of arrears of pay from the date of removal to the date of reinstatement be paid to him.

2. A charge-sheet under Rule 9 of the Rules dated 15.12.86 was issued to the applicant on the charge of assaulting a superior authority. On his denying the charge, an Enquiry Officer was appointed to hold enquiry. During the enquiry, the applicant as per document Annexure A-8 dated 23.12.86 reportedly admitted the charge and asked for mercy. However, on 24.12.86, the applicant addressed a letter to the Enquiry Officer (Annexure A-9) wherein he stated that he desires that a formal enquiry

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charges should be held in the presence of his Defence Assistant. In this letter he also obtained signature of someone, who was willing to act as his Defence Assistant. The Enquiry Officer took the view that the applicant had already admitted the charges before him and in spite of opportunities given to him, he did not co-operate in providing the lists of witnesses, documents etc. nor did he mention the names of his Defence Assistant. Principally on the basis of the admission of charge by the applicant, the Enquiry Officer held the applicant as guilty of the charge. Thereupon, the Deputy Chief Mechanical Engineer (Carriage), who was the Disciplinary Authority imposed on him the penalty of reduction in pay for a period of one year which shall affect his future increment. The Chief Works Manager, Ajmer on a review of the case was of the view that the charges proved against the applicant justified imposition of a more serious penalty on the applicant. He accordingly issued Memorandum dated 23.5.37 to the applicant (Annexure A-13) calling upon him to explain, why the higher penalty of dismissal from service could not be imposed upon him. After observing that the applicant had not submitted any reply to the memorandum (Annexure A-13) issued to him, the Chief Works Manager enhanced the penalty to that of removal from service by order dated 20.7.37 (Annexure A-14). The applicant is aggrieved by the orders of the Disciplinary Authority and the Chief Works Manager as also rejection of his representation against the penalty imposed against him by order dated 13.12.37 (Annexure A-13).

3. During the arguments, the learned Counsel for the applicant advanced various grounds to urge that once the applicant had denied the charge in his written statement of defence submitted to the Disciplinary Authority, it was incumbent on the Enquiry Officer, appointed for the purpose, to hold enquiry. The rules, according to him, do not provide that the Enquiry Officer can dispense with the enquiry on the ground that the Charged Officer had admitted the charges before the Enquiry Officer. Therefore,

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according to him, the report of the Enquiry Officer and the subsequent orders passed by the Disciplinary Authority and the Revisionary/Appellate Authority, which are based on the report of the Disciplinary Authority, are all vitiated. He has also raised several other grounds to suggest that the action taken against the applicant was not at all justified.

4. The respondents in their reply have denied the averments of the applicant. During the arguments, the learned counsel for the respondents was asked to go through various provisions in Rule 9 of the Rules to show whether once the charged official had denied the charge before the Disciplinary Authority, the enquiry could be dispensed with by the Enquiry Officer on the ground that he had admitted the charge before the Enquiry Officer. He was unable to point out any provision in the Rules in this regard. But he added that since the applicant had made an unqualified admission of the charge before the Enquiry Officer, there was no need for enquiry. Therefore, the subsequent proceedings taken by the Disciplinary Authority and the Revisionary Authority on the basis of the report of the Enquiry Officer were in order and the penalty imposed on the applicant was justified in view of the gravity of the charge held as established against the applicant. Where according to him, the rules are silent, the principles of natural justice should apply and since there was an unqualified admission of the charge by the applicant, the Enquiry Officer was fully justified in dispensing with the enquiry and returning a verdict of guilty.

5. We have heard the learned counsel for the parties and have gone through the records.

6. In Annexure A-5 dated 8.12.86 which is addressed, amongst others, to the Enquiry Officer shows that he did not admit the charge and wanted ~~for~~ a further opportunity to

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explain the circumstances in which the charge has been framed against him. The applicant stated before the Enquiry Officer on 23.12.86 (Annexure A-8) in reply to a question by the Enquiry Officer that he admitted the charge and sought pardon from all the authorities including Shri Jalota whom he was alleged to have assaulted. But immediately thereafter on 24.12.86, the applicant submitted a letter (Annexure A-9) in which he stated that he wanted a formal enquiry in the presence of his Defence Assistant. The name of the Defence Assistant and his willingness to assist the applicant were also recorded in this communication. However, the Enquiry Officer submitted his report on 30.12.86 (Annexure A-10) in which he relied upon the admission made by the applicant in Annexure A-8 dated 23.12.86 and held the charge against the applicant as proved. There are ofcourse other reasons also in the report of the Enquiry Officer which suggest that the applicant did not cooperate during the enquiry and also did not furnish the lists of his documents and witnesses and the name of his Defence Assistant.

7. In Rule 14(9) of the Central Civil Services (CCS) Rules, there is a specific provision that a Government Servant who has not admitted the charge before the Disciplinary Authority may admit the charge before the Enquiry Officer and if he does so, the Enquiry Officer shall record the plea and thereafter submit his report, returning a finding of guilt in respect of the charges admitted by the Government Servant as per sub-rule (10) of Rule 14. There is no such provision in the Railway Servants (D & A) Rules. The plea of the learned counsel for the respondents that the principles of natural justice should prevail where the rules are silent, will not be applicable in the circumstances of the present case. If there is a specific provision in this regard in the CCS (CCS) Rules and there is no such provision in the Railway Servants (D & A) Rules, the implication is that the omission in the latter Rules was deliberate and intended. In

other words, it was the intention of the Government that once a Railway Servant denies the charges, an enquiry must be held. Enquiry is not some formality which can be dispensed with lightly. It can be dispensed with only in the circumstances specified in the Rules. It cannot be dispensed with by invoking principles of natural justice, on the ground that the Charged Official had admitted the charges before the Enquiry Officer. Article 311(2) of the Constitution grants a protection to Government Servants without that penalties like dismissal, removal etc. cannot be imposed ~~after~~ holding enquiry and this protection is further regulated by the Rules framed under Article 309. When the Rules do not provide for dispensing with enquiry it is not for the Enquiry Officer to dispense with it. It is pertinent to note that after the admission dated 23.12.86 (Annexure A-8) on the very next day i.e. on 24.12.86, the applicant wrote a letter to the Enquiry Officer stating that he wanted a formal enquiry in the presence of his Defence Assistant. The Enquiry Officer had not yet submitted his report. In view of the absence of the provision in the Rules to the effect that enquiry may be dispensed with if the Charged Official pleaded guilty before the Enquiry Officer and in view of the applicant's letter written on 24.12.86 (Annexure A-9), it was incumbent on the Enquiry Officer to hold a formal enquiry, particularly, when he had not yet submitted his report. ~~The~~ ^{If} The applicant was not cooperative during the enquiry, as noted by the Enquiry Officer in his report, there was nothing to prevent the Enquiry Officer from holding ~~ex parte~~ enquiry as per specific provisions in the Rules.

3. Another aspect to be noted is that there are two stages at which the Charged Official may make admissions of this nature during the enquiry proceedings. One is when he offers himself as a witness in his own defence and the other is when he is examined by the Enquiry Officer on the circumstances appearing against him during the enquiry, provided he had not offered himself as a witness in his own defence during the enquiry. The statement

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Annexure A-8 dated 23.12.86, in which the applicant is reported to have admitted his guilt, does not appear to have been recorded at any of these two stages. It is, therefore, not clear why the Enquiry Officer thought it necessary to record ^{his} statement dated 23.12.86 (Annexure A-13) rather than hold enquiry, if necessary, ex parte. Thus, it appears that Enquiry Officer even otherwise did not follow rules and the procedure for holding enquiry as laid down in Rule 9 of the Rules. This is another reason why the enquiry proceedings are vitiated. It is not a case where there has been some failure on the part of the Enquiry of the Enquiry Officer to follow some technical rule regarding holding of enquiry. There has been a substantial failure on the part of the Enquiry Officer in not holding the enquiry at all when the Rules and the circumstances of the case required that enquiry should have been held.

9. In the result, the findings of the Enquiry Officer and subsequent orders of the Disciplinary and the Revisionary Authority and rejection of the applicant's representation cannot be sustained. These are, therefore, quashed. The applicant is entitled to reinstatement in service with all consequential benefits. We, however, make it clear that the respondents are entitled to hold a fresh enquiry against the applicant. It may proceed from the stage after the service of the charge-sheet on the applicant and denial of charges by him vide Annexure A-5 dated 3.12.86. If a fresh enquiry against the applicant is initiated from the stage mentioned above, the entire disciplinary proceedings of which enquiry from a part, shall be concluded by 30.11.94 i.e. the date on which the applicant according to his counsel is to retire on normal superannuation.

10. The OA is disposed of accordingly, with no order as to costs.

O.P. SHARMA
Member (A)

Gopal Krishna
(GOPAL KRISHNA)
Member (J)