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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A.NO. 23 of 1987 ✓

Date of Order: 06/03/1990 ✓

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T.L.S.Narayana Rao

..Applicant ✓

Versus

The Divisional Railway Manager (Commercial)
Broad Gauge, SCR, Secunderabad &
2 others

..Respondents ✓

.....

For Applicant: Mr.K.S.R.Anjaneyulu, Advocate ✓

For Respondents: Mr.N.R.Devaraj, SC for Railways ✓

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C O R A M:

HON'BLE SHRI B.N.JAYASIMHA: VICE CHAIRMAN ✓

HON'BLE SHRI D.SURYA RAO: MEMBER (JUDICIAL) ✓

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(Judgment delivered by Hon'ble Shri B.N.Jayasimha, Vice Chairman

1. The applicant herein is a Travelling Ticket Examiner, South Central Railway, Kazipet. In this application he seeks ~~Setting aside~~ the order No.Con/SC/C/13/84, dated 11-7-85 dismissing him from service. He also seeks to question the orders passed by the 2 and 1 respondents in appeal and revision dated 11-12-85 and 3-1-1986 whereby they modified the punishment of dismissal to one of compulsory retirement.

2. We have heard the learned counsel for the applicant and Shri N.R.Devaraj, Standing Counsel for the Railways.

3. In his application, the applicant has urged several grounds challenging the impugned orders, viz., that the General Manager was/actual appointing authority and he alone could have imposed the major penalty of dismissal, that the Enquiry Officer had failed to scrutinise the charges and the evidence adduced

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10/8/90

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In coming to the conclusion that the charge had been proved, that the disciplinary authority failed to apply his mind to the facts and circumstances of the case and to the enquiry report together with the evidence adduced during enquiry, etc. However, Shri Anjaneyulu, learned counsel for the applicant states that the Disciplinary Authority order is vitiated because the Disciplinary Authority did not furnish a copy of the enquiry officer report to the applicant before passing the penalty order. The applicant ought to have been given an opportunity to submit his representations assailing the findings given by the enquiry officer in his report. This is in violation of the principles of natural justice. In support of this contention he relies upon the full bench decision in Premnath K.Sharma Vs. Union of India (1988) 6ATC 904, where it was held that in a case where the Disciplinary Authority is different from the Enquiry Officer, the order passed by the Disciplinary Authority without furnishing a copy of the Enquiry Report to the delinquent officer and giving an opportunity to the delinquent officer to represent against the report is illegal.

4. We have considered this contention. In Premnath K.Sharma's case, The Bombay Bench of the Tribunal held as follows:

"Even after the amendment of Article 311(2) by the 42nd Amendment, the Constitution guarantees a reasonable opportunity to show cause against the charges levelled against the charged officer during the course of the enquiry. In order to fulfil the constitutional requirement he must be given an opportunity to challenge the enquiry report also. The Enquiry Officer enquires into the charges, the evidence is


recorded and the charged officer is permitted to cross-examine the witnesses and challenge the documentary evidence during the course of the enquiry. But the enquiry does not conclude at that stage. The enquiry concludes only after the material is considered by the Disciplinary Authority, which includes the Enquiry Officer's report and findings on charges. The enquiry continues until the matter is reserved for recording a finding on the charges and the penalty that may be imposed. Any finding of the Disciplinary Authority on the basis of the Enquiry Officer's report which is not furnished to the charged officer would, therefore, be without affording a reasonable opportunity in this behalf to the charged officer. It, therefore, follows that furnishing a copy of the enquiry report to the charged officer is obligatory".

Applying the above decision, we hold that the enquiry is vitiated and the order of penalty of dismissal dated 11-7-1985 passed by the 3rd respondent and confirmed in appeal and revision by orders dated 11-12-85 and 8-1-1986 passed by 2nd and 1st respondents are quashed. This, however, will not preclude the respondents from supplying a copy of the enquiry report to the applicant and give him an opportunity to make his representation, and proceeding to complete the disciplinary proceedings from that stage. If the respondents choose to continue the disciplinary proceedings and complete the same, the manner as to how the period spent in the proceedings should be treated would depend upon the ultimate result. Nothing said herein would affect the decision of the Disciplinary Authority. At the same time, we hasten to add, that this order of the Tribunal is not a direction to necessarily continue the disciplinary


proceedings. That is entirely left to the discretion of the Disciplinary Authority.

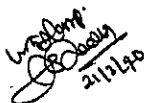
5. In the result, the application is allowed to the extent indicated above. No costs.


(B.N. JAYASIMHA)
VICE CHAIRMAN


(D. SURYA RAO)
MEMBER (JUDL.)

Dated 6th March, 1990.

(Dictated in open Court)  21/3/90.
DEPUTY REGISTRAR(J)


21/3/90

sqh/vcr.

TQ:

1. The Divisional Railway Manager(Commercial Branch) Broad Gage, south central railway, sec'bad.
2. The senior divisional commercial superintendent/BG south central railway, Sec'bad.
3. The Divisional commercial superintendent/BG south central railway, Secunderabad.
4. One copy to Mr.K.S.R.Anjaneyulu, Advocate, 1-1-365/A, Jawaharnagar, Bakaram, Hyderabad.
5. One copy to Mr.N.R.Devaraj, SC for Railways., CAT, Hyd.
6. One spare copy.

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kj.