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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. 1264 OF 1996

Dated, the 25th January, 1999.

BETWEEN :

Mohd. Arifuddin

.... Applicant

A N D

1. Union of India, rep. by Chairman,
Railway Board, New Delhi.
2. South Central Railway, rep.
its General Manager, Rail
Nilayam, Secunderabad.
3. Divisional Railway Manager/BG/SC Division,
SC Railway,
Commercial Branch,
Rail Nilayam,
Secunderabad.

... Respondents

COUNSELS :

For the Applicant :: Mr. Nand Kishore

For the Respondents :: Mr. K.Siva Reddy

CORAM :

THE HON'BLE MR. R. RANGARAJAN, MEMBER (ADMIN)

THE HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (JUDL)

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O R D E R

(PER: HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (JUDL))

1. Heard Mr. Nand Kishore, Learned Counsel for the applicant and Mr. K. Siva Reddy, Learned Standing Counsel for the respondents.

2. This is an application under Section 19 of the Central Administrative Tribunals Act, 1985. The application was filed on 4.10.96.

3. Brief facts :

a) The applicant joined South Central Railway on 14.7.74 as Parcel Porter. He was promoted as Commercial Clerk in 1981. He was transferred to Kothapalli Railway Station effective from 2.8.94. In the meanwhile, he was promoted as Senior Booking Clerk.

b) While the applicant was working at Kothapalli, the Divisional Commercial Manager, Secunderabad issued a major penalty charge/memo vide his proceedings No.C/C/518/P/29/54 dt.16.11.94.

The misconduct alleged against the applicant reads as under :

"That the said Shri Mohd. Arifuddin, BC/KYOP has committed serious misconduct and behaved in a manner unbecoming of a Railway Servant in that while working as CNC at KYOP Station on 12.10.94 he has kept Booking Office closed without performing legitimate duties. Again on 17.10.94 he was not available at the Booking Office instead an outsider was issuing tickets as detailed in the statement of Imputations.

He thus violated rule 3(I(ii) (iii) of Railway Services Conduct Rules 1966."

The applicant denied the charges through his letter dt. 2.12.94.

c) A detailed inquiry was conducted into the charge by one B.B. Somayajulu, SCI/HQRS/SC. The Enquiry Officer submitted his report recording his findings as follows :

"The first charge against the delinquent employee Shri Md. Arif Arifuddin that while working as CNC/KYOP on 12.10.94 he kept the booking office closed without performing his legitimate duties at the time of Sr.DCM's inspection along with CCI/WL on HSP-PDPL Section stands proved, since he himself admitted that he left the booking office (after the departure of 324 Passenger) and he came to know later that Sr.DCM has

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observed the same when the train stopped after starting while answering Q.No.75 and also substantiated by listed witness No.1 during his examination.

As regards to the other charge charge that Shri Md. Arifuddin, the delinquent employee was not available at KYOP Station (his headquarters) on 17.10.94, when Shri M.L. Bhagat Singh, LRCC/WL was sent to KYOP Station to relieve Shri Md. Arifuddin, placed under suspension (subject to posting of reliever) also stands proved, since the defence counsel failed to substantiate the presence of delinquent employee at KYOP Station on 17.10.94, except with the strength of muster copy of the delinquent employee, which is being maintained by himself only, and not certified by any Supervisor and was substantiated by listed witness No.2 during examination."

d) A copy of the report of the Enquiry Officer was furnished to the applicant. The applicant submitted his representation against the findings of the Enquiry Officer. His copy of the representation is at Annexure V (Pages 21 to 30).

e) The respondent No.3 after considering the explanation of the applicant and records of the inquiry accepted the findings of the Enquiry Officer and by his proceedings of even number dt. 18.10.95 imposed penalty of removal of the applicant from service with immediate effect. A copy of the order passed by the respondent No.3 is at Annexure-AVI (Pages 31 and 32) of the OA

f) Against the said punishment order, the applicant preferred an appeal dt. 10.4.95 to the Senior Divisional Commercial Manager, Secunderabad. The appellate authority by its proceedings of even number dt. 29.11.95 observed as 6.12.95 under :

"(2) The arguments put forth by the delinquent employee in his appeal in respect of procedural irregularities committed during the course of the enquiry are not acceptable since does not stand to any reason. The witnesses are called again to record the statements because the earlier deposition made by them on 7.5.95 was in the absence of the delinquent employee. I am therefore satisfied that all the reasonable opportunities-

has been given to the delinquent employee to defend his case and there is no violation of Principles of natural justice.

The charges framed against the employee got established and the punishment of removal has been served on the employee by the Disciplinary Authority. Though the offence committed by the employee is serious in nature but purely on humanitarian grounds. I decide to modify the penalty of "Removal" imposed by the Disciplinary Authority to that of "REVERSION" from the post of Sr.BC in the grade Rs.1200-2040(RSRP) to the post of BC in grade Rs.975-1540(RSRP) fixing his pay at the bottom of the grade i.e. Rs.975/- for a period of ONE (1) year with cumulative effect."

On the above reasoning the Appellate Authority

modified the punishment from that of removal from service to reversion of the applicant from the post of Senior Booking Clerk in the scale of pay of Rs.1200-2040(RSRP) to the post of Booking Clerk in the scale of pay of Rs.975-1540(RSRP) fixing the pay of the applicant at the minimum of the scale i.e. Rs.975/- for a period of one year with cumulative effect. The order of the appellate authority is at Annexure-A-VII to the O.A. (Pages 33 and 34) of

g) The applicant preferred a revision petition to the ADRM-I, Secunderabad. The Revisional Authority by his proceedings of even number dt. 22.3.96 confirmed the punishment imposed by the appellate authority and rejected the revision petition.

4. The applicant has filed this O.A. challenging the order dt. 18.10.95 passed by the disciplinary authority, the order dt. 29.11.95/6.12.95 passed by the appellate authority and the order dt. 29.11.95 passed by the revisional authority, praying to quash the said orders as illegal, arbitrary, violative of principles of natural justice and Article 14 and 24 of the Constitution of India.

5. The applicant has challenged the impugned orders on the following grounds :

a) The Disciplinary Authority appointed the Enquiry Officer without giving notice to him.

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b) The Inquiry Officer had not issued the notice in advance while fixing the date of of inquiry on 7.5.95.

c) The Inquiry Officer rejected the request of the applicant for perusal of the statement of witnesses recorded on 7.5.95 and for production of certain documents.

d) The Inquiry Officer recalled the witnesses and recorded fresh statements.

e) No witness from Kothapally was examined during the enquiry as ^{the} alleged misconduct had occurred at the said Railway Station.

f) The Inquiry Officer failed to summon the Chief Booking Supervisor, Warangal as a witness on behalf of the applicant, though requested.

g) The respondents failed take note of the fact that the tickets were being sold ^{at} Kothapally Railway Station on 12.10.94 and 17.10.94.

h) The Disciplinary Authority imposed the penalty on mere surmises and conjectures.

i) The impugned orders are passed without following the procedure.

6. The respondents have filed the reply, stating that the applicant in the first instance had nominated one Mr.N.Narayana Rao as his defence assistant, that subsequently the said defence assistant withdrew ^{and hence} from the case/an opportunity was given to the applicant to engage another assistant that the applicant did not appear for the inquiry fixed on 7.5.95; that on 23.5.95, the applicant attended the inquiry with his new defence ^{had} assistant that the applicant/adopted delayed tactics; that the applicant requested to summon the following documents :

"1. Memo served to Sri Bhagat Singh to work at KYOP by CCI/WL.

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2. Movement Diary of CCI/WL for the period 10.10.94 to 19.10.94.
3. Duty roster of KYOP station.
4. Musters of KYOP
5. DTC on 12.10.94 at KYOP Station, and
6. Copy of TA bills of Sri M.L.Bhagar Singh for the date 17.10.94."

7. The Inquiry Officer allowed the Defence Counsel to verify some of the above mentioned documents as the inquiry was held at Kothapally Railway Station and these documents/as were available at Kothapally Railway Station and rejected the request of the applicant to verify/other documents as there was no relevance to the case; that the applicant requested for copies of the Statement of witnesses dt. 07.5.95; that the enquiry officer rejected the request and ordered that the prosecution witness would be examined afresh and that their depositions/recorded on 07.5.95 would not be taken into consideration; and/therefore no injustice has been caused to the applicant.
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8. They/that the inquiry was conducted as per the procedure contemplated under the Railway Servants (DA) Rules, 1968, giving sufficient and adequate opportunity to the applicant to defend himself. The disciplinary authority had not examined any witness from Kothapally Railway Station. There was no impediment for the applicant to examine his witnesses from Kothapally Railway Station to substantiate his defence; that CCI/Warangal had submitted his report to the office on 22.10.94 along with the statement of Mr. M.L. Bhagat Singh dt. 19.10.94 but the CCI/Warangal mentioned the date as 12.10.94 instead of 22.10.94; that this was only a technical mistake and did not in any way affect the fact that the applicant was not available at Kothapally Railway Station on 17.10.94; that M.L. Bhagat Singh was directed to work at Kothapally Railway Station on 17.10.94; that the

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applicant was not available to hand over the charge to Mr. M.L.Bhagat Singh on 17.10.94; that Sri M.L.Bhagat Singh returned to the HQrs i.e. Warangal and reported the same to the Chief Booking Supervisor and the Chief Commercial Inspector at Warangal; that the request of the Defence Assistant to summon the Chief Booking Supervisor, Warangal as his defence witness was turned down by the Inquiry Officer as he was not at all connected to the charge levelled against the applicant.

9. They submit that the applicant concealing the fact that he was not available at Kothapally Railway Station on 12.10.94 and on 17.10.94 was trying to establish that the tickets were being issued on the said dates. The applicant is silent about the charge that the tickets were being issued by an outsider which fact was substantiated by the statement of M.L.Bhagat Singh. The contention of the applicant that the disciplinary authority passed the order on conjectures and surmises has to be rejected; that the appellate authority has considered the various grounds raised by the applicant in the memorandum of appeal and rightly modified the punishment. The same has been accepted by the Revisional authority. The appellate authority modified the punishment purely on humanitarian grounds. The applicant has been punished only after conducting a thorough enquiry giving all the opportunities. Hence, there are no reasons to interfere, with the impugned orders.

10. The respondents have produced the inquiry records. We have perused the same.

11. During the course of the arguments, the Learned Counsel for the applicant in support of his contentions relied upon the decision of the Hon'ble Supreme Court in the case of State of UP Vs. Shatrughan Lal (reported in 1998 (6) SCC 651) and and in the case of State Bank of Patiala Vs. S.K.Sharma (reported in AIR 1996 SC 1669).



12. The Learned Counsel for the respondents relied upon the decision of the Hon'ble Supreme Court in the case of Choube Vs. Union of India (reported in AIR 1984 SC page 1356 and 1989 SC page 2219).

13. The charge levelled against the applicant is that he was not available at the Kothapally Railway Station on 12.10.94 and on 17.10.94. However, the respondent authorities noticed that an outsider was issuing the tickets on 17.10.94 and the applicant was absent from duty.

14. It is alleged that M.L.Bhagat Singh was directed to take charge of the duties from the applicant on 17.10.94 and that M.L.Bhagat Singh had travelled from Warangal to Kothapally for taking charge from the applicant and since the applicant was not available at the Kothapally Railway Station, he returned to Warangal. This is the gist of the misconduct levelled against the applicant.

15. His absence on 12.10.94 was noticed by Sri TRK Rao, Senior Divisional Commercial Manager during the course of his inspection. His notes of inspection is at page 1 to 3 of the inquiry file. In para 7, he has observed as follows :

"7. While returning from Ramagiri Express, it was observed that at Kottapalli there was no booking clerk. Mr. Mohd. Arifuddin, Booking Clerk was supposed to be available but booking office was locked. S.F. 5 to be issued and performance with regard to sale of tickets from Kothapalli to be put up".

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14. His absence on 17.10.94 was noticed by M.L. Bhagat Singh, LRCC/Warangal. It is stated that the Chief Booking Supervisor, Warangal gave instructions to M.L. Bhagat Singh to go over to Kothapally Railway Station and take charge of the Booking office at Kothapally from the applicant as the applicant was about to be placed under suspension for his absence on 12.10.94. On 17.10.94, when M.L. Bhagat Singh appeared at the Kothapally Railway Station he found the applicant absent and one person by name Chandramouli was issuing^{the} tickets. He made enquiries there and he could not take charge of the Kothapally Booking Office and returned Warangal and submitted his report. His report is at page 6 of the enquiry file.

15. These absence are the subject matter of misconduct in the charge levelled against the applicant.

16. The applicant by his letter dt. 2.12.94 (page 15 of the enquiry file) denied the charges and sought permission to engage one Mr. N. Narayan Rao as his Defence Assistant.

17. Thereafter, the SCI/HQrs. Secunderabad was appointed as the Inquiry Officer. The order appointing SCI/HQrs. as the Inquiry Officer had to inquire^e into the charges levelled against the applicant is at page 16 of the inquiry file. It is the contention of the applicant that the disciplinary authority appointed the inquiry officer without his knowledge.

18. We do not see any force in the said contention. A copy of the order dt. 18.1.95 at page 16 of the inquiry file was addressed to the applicant. Further the applicant participated in the inquiry on the notified dates by the inquiry officer. If really the applicant felt that the disciplinary authority had appointed the Inquiry Officer without his knowledge and

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he had not received a copy of the letter dt. 18.1.95, nothing prevented the applicant or his defence assistant to obtain a copy of the order dt. 18.1.95 explaining the circumstances under which he was not aware of. Having participated in the inquiry and also attended the inquiry in full, it is too late in the day for the applicant to contend that the Disciplinary Authority had appointed the Inquiry Officer without his knowledge. Hence, this contention is rejected.

21. It is stated that the Inquiry Officer had not given sufficient time for the applicant to prepare himself for the inquiry. The first hearing of the inquiry was conducted on 15.4.95. In the meanwhile, the defence assistant withdrew from the case by his letter dt. 25.3.95. Therefore, the inquiry officer by his letter dt. 26.4.95 fixed the inquiry on 7.5.95 and directed the applicant to nominate his defence assistant afresh. This letter dated 26.4.95 is at page 25 of the inquiry file.

22. A copy of this letter was marked to CCI Peddapally to serve the same on the applicant. However, the applicant could not be present during the inquiry on 7.5.95. During his absence, the inquiry officer had recorded the statements of P.Srinivasulu and M.L.Bhagat Singh. Their statements are at pages 45 and 49 of the inquiry file. The Inquiry Officer adjourned the proceedings to 27.5.95.

23. On that day the applicant appeared and participated in the inquiry. The applicant explained the circumstances under which, he was not able to appear for the inquiry on 7.5.95 and sought permission to secure the services of one S.R.Subrahmanyam, TTE and his Defence Assistant. The Inquiry Officer permitted him to do so. On that day, the applicant made a request to the Inquiry Officer to furnish the copies of the statements of Mr. P.Srinivasulu and M.L.Bhagat Singh recorded on 7.5.95. His letter of request is at page No.36 of the inquiry file. He also sought permission

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to go through the records and requested the Inquiry Officer to conduct the enquiry at Kothapally Railway station. This enquiry was held at Kothapally Railway Station. The Inquiry Officer permitted the applicant to verify the documents available at Kothapally Railway Station and as regards furnishing copies of the statements, the Inquiry Officer formed an opinion that those statements recorded in the absence of the accused on 7.5.94 would not be taken into consideration and that those persons would be recalled and examined afresh.

24. The applicant now tries to make out a case that the inquiry officer committed an irregularity in not furnishing the copies of the statements of Srinivasulu and Bhagat Singh recorded on 7.5.95. It is in this context, the learned counsel for the applicant relied upon the case of State of Uttar Pradesh Vs. Satrugan Lal and Another (reported in 1998 (6) SCC Page 651). These statements were not recorded during the course of preliminary inquiry. These statements were recorded during the regular inquiry. The inquiry officer have recorded felt that it was not be proper for him to record the statements on 7.5.95 ~~and~~ the absence of the applicant and hence, he felt it preferable not to rely on these statements and accordingly directed that these persons would be examined afresh. In our humble opinion, the 25th ~~principle~~ principle enunciated in the case cited above is not applicable. The statement of M.L.Bhagat Singh and Srinivasulu were recorded during the course of regular enquiry. Since there was an irregularity in their examination, the Inquiry Officer felt it proper not to rely on the said statements and to recall them and examine them in the presence of the accused. Therefore, we do not find any irregularity committed by the inquiry officer in not furnishing the statements of the witnesses recorded by him on 7.5.95.

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26. Accordingly, the Inquiry Officer examined P.Srinivasulu and Bahgat Singh afresh on 29.6.95. Their depositions are at pages 59 to 66 of the enquiry file. Hence, the grievance made by the applicant that the inquiry officer had not supplied the statements of M.L.Bhagat Singh and P.Srinivasulu cannot be accepted.

27. Another contention made by the applicant is that no person from Kothapally Railway Station was examined during the enquiry. It is his contention that he worked on 12.10.94 and 17.10.94 and that he sold tickets on these days. The absence of the applicant on these days was noticed by the Senior Divisional Commercial Manager and LRCC Warangal as narrated above.

28. The absence of the applicant at the Booking Office at Kothapally Railway Station was noticed by the Senior Divisional Commercial Manager. It is borne out from the note of inspection. The Disciplinary Authority can take the same into consideration as it formed part of the inquiry records. That apart P.Srinivasulu was examined on behalf of the Disciplinary Authority.

29. The contention of the applicant that the Senior Divisional Commercial Manager was not cross examined during the inquiry has no basis. The notes of inspection was issued by the Senior Divisional Commercial Manager and on that basis action was taken by the Disciplinary Authority. The applicant has not suspected the notes of inspection issued by the Sr.DCM. If really, he had suspected the notes of inspection issued by the Sr.DCM, he should have requested the Inquiry Officer to produce him for cross-examination. The disciplinary authority could take action on the basis of the notes of inspection by the Sr.DCM. Therefore, we find no force in the contention of the applicant that the Sr.DCM was not examined as a witness on behalf of the disciplinary authority.

30. M.L.Bhagat Singh, LRCC/Warangal has stated in the evidence on 17.10.94 that he waited at the booking office from 08.40 A.M. to 17.30 P.M. and took the next train to Warangal at 1730 Hrs. and submitted his report.

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31. He cross examined as to why he failed to take charge of the booking office. He gave an explanation that it was not proper for him to take charge from unauthorised persons. According to him a boy by name Chandrameuli was working at the booking office issuing the tickets. He felt that taking charge from Chandrameuli or taking charge of the booking office himself without verifying the cash and tickets may not be proper. M.L.Bhagat Singh has thus given the explanation as to why he returned without taking charge from the applicant.

32. Another explanation that has come from the mouth of M.L.Bhagat Singh is that he had not called on the applicant with the written order asking the applicant to hand over the charge to him and also an order asking him to take charge of the booking office, Kothapally, from the applicant.

33. If really the applicant was at the booking office Kothapally Railway Station on 17.10.94 and any villager had seen him performing the duties, then the applicant was at liberty to summon the said person. The fact that M.L.Baghat Singh came back without taking charge is evident from his report which is at page 6 of the inquiry report. Therefore, non-examination of any person from Kothapally village is not an irregularity which vitiates the inquiry proceedings.

34. It is for the disciplinary authority to evaluate

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the evidence collected by the inquiry officer and come to the a decision whether the charge levelled against the delinquent employee is substantiated or not. Strict rules of evidence are not applicable to disciplinary proceedings. What is essential and applicable to the disciplinary proceedings is that the delinquent employee must be given sufficient opportunity to substantiate his defence. On perusal of the enquiry records it can easily be said that the applicant was given sufficient opportunity to go through the records and also to defend himself.

35. From the nature of charges, the onus is on the applicant to prove his innocence. While submitting his explanations to the charge memo he simply denied the charges.

36. Another contention is that the inquiry officer failed to summon the Chief Booking Supervisor, Warangal as a Defence witness. It is stated that the applicant had requested the inquiry officer to summon the said witness.

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It is stated that the applicant had requested the Director to summon the said witness.

37. As stated earlier, the Senior Divisional Commercial Manager, during the course of his inspection noticed the closure of the booking office as well as the absence of the applicant at Kothapally Railway Station on 12.10.94. Shri TRK Rao was then functioning as the Senior Divisional Manager. He decided the appeal submitted by the applicant against the order of penalty of removal of the applicant from service. In fact, the appellate authority has reduced the punishment. But during the course of the arguments, the learned counsel for the applicant submitted that the complainant acted as the appellate authority and it was not proper for him to have decided the appeal. Even though the learned counsel for the applicant attempted to say that the appellate authority was biased, we are not prepared to accept his contention, for, the appellate authority has reduced the punishment. We feel that since TRK Rao was the complainant in the case and charge sheet was issued only on the basis of his notes of inspection, he should have refrained from deciding the appeal. In this connection, we feel it proper to reproduce herein the observations made by the Hon'ble High Court of Karnataka in the case of M. Sachidanandan Vs. Asstt. General Manager & Others (reported in SLR 1998 (5) Page 589 in para 7). The Hon'ble High Court has observed as follows :

"7. It is an elementary rule of natural justice that a person who tries a case should be able to deal with the matter before him objectively, fairly and impartially. The word 'impartially' is the antonym of the word 'partiality' or bias. Bias is a condition of mind which sways judgment and renders judge unable to exercise his functions impartially in a particular case. Bias on the part of the person acting in a judicial capacity is called 'Judicial Bias'. The broad principle evolved by the Courts is that a person trying a cause even in quasi-judicial proceedings must not only act fairly but must be able to act above suspicion of unfairness. This is based on the Maxim which is often repeated that justice should not only be done but should be seen to be done. /be

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38. The learned Counsel for the applicant relied upon the decision of the Hon'ble Supreme Court in the case of Ajay Choubey Vs. Union of India & Ors. (reported in AIR 1984 SC page 1356) to contend that/it was not proper the appellate authority to decide the appeal as he himself was the complainant. As already observed the Sr. DCM had noticed the absence of the applicant at the Booking Office Kothapally Railway Station on 12.10.94. It was so during the course of his official inspection.

39. The said Sr. DCM decided the appeal. In the case relied upon by the learned counsel for the applicant the Hon'ble Supreme Court observed that the respondent No.3 in that case had violated the principles fundamental principles of natural justice observing that no person can be a judge in his own cause and no witness can certify that his own testimony is true. Any one who has personal stake in an inquiry must keep himself aloof from the conduct of the inquiry. We have no hesitation to say that the appeal is continuation of the disciplinary proceedings. Therefore, even on the basis of the observations made by the Hon'ble Supreme Court in the case cited above, we feel that the appellate authority should not have decided the appeal of the applicant.

40. The learned counsel for the respondents relied upon the decision in the case of State Bank of Patiala and Ors. Vs. S.K.Sharma. In that case, the Hon'ble Supreme Court observed that mere procedural irregularities must not be made a ground to set aside the punishment imposed in the disciplinary proceeding. In para 32, the Hon'ble Supreme Court has been pleased to enumerate certain principles. Para 32 reads as follows :

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"32. We may summarise the principles emerging from the above discussion (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departamental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained herein before and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this : procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz. whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice ~~such~~ as such need be called for in such a case. To repeat, the test is one of prejudice, i.e. whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions if one is so inclined. The principle stated under (4) herein below is only another of looking at the same aspect is dealt with herein and not a different or distinct principle.

(4)(a) In the case of procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

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(b) In the case of violation of procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer, has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B.Karunakar (1994 AIR SCW 1050). The ultimate test is always the same, viz. test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions, and the only obligation is to observe, the principles of natural justice--or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action--the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e. between "no notice"/"no hearing" and "no fair fair hearing." (a) In the case of the former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e. in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the stand point of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. (it is made clear that this principle (No.5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere).

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz. to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of state or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision."

41. In the case of Baidyanath Mahapatra Vs. State of Orissa the (reported in AIR 1989 SC 2219) the Hon'ble Supreme Court considered that the Chairman of the Tribunal while working as Chief Secretary recommended the case of the applicant for premature retirement and

and he also sat on the Bench to consider the case of the applicant. therein. Then the Hon'ble Supreme Court observed that the Members of the Tribunals must follow the rules of natural justice in administering justice, like Judges, they should not sit in judgment on their own decisions. Thus observing the Hon'ble Supreme Court formed an opinion that the Chairman of the Tribunal was disqualified to hear the applicant's case and observed that the impugned order was vitiated because the Chairman had earlier considered the case of the applicant/as a Chairman of the Steering Committee. in the The observations made therein are also applicable in this case as the Sr. DCM was the complainant in this case and he should not have attempted to decide the appeal.

42. As the appellate authority reduced the punishment of removal from service to that of reversion of the applicant from the post of Senior Booking Clerk to that of Booking Clerk the order of the appellate authority has benefited the applicant to a larger extent. If we are to set aside the order of the appellate authority then the applicant ^{will} ~~would~~ be put to peril. In such an even the order passed by the disciplinary authority removing the applicant from service will stand. We do not want to adopt such a course which is most disadvantageous to the applicant. Therefore, we feel it proper to set aside the order passed by the revisional authority ^{and direct it} to consider the revision petition in accordance with the rule.

43. Considering all the facts and contentions raised by the learned counsels for the parties and also decisions relied upon by them we are of the opinion that the order of the Revisional authority be set aside and the matter be remitted back to the revisional authority to consider the revision petition afresh in the light of the observations made by us in the course of this order.

44. The revisional authority shall consider whether deciding the appeal by TKR Rao as an appellate authority had caused any bias or prejudiced the case of the applicant. If he comes to the conclusion that it did cause prejudice to the

applicant then he may set aside the order of the appellate authority and direct some other authority equal to or above the rank of the Senior Divisional Commercial Manager to decide the appeal afresh.

45. For the reasons stated above, we feel that the revisional authority should consider the revision petition of the applicant afresh taking into consideration the various grounds raised by him and also the principles enunciated by the Hon'ble High Court of Karnataka in the case cited above.

46. Hence, we issue the following directions :

a) The order dt. 29.10.95 passed by the Revisional authority (ADRM-I, Secunderabad) is hereby set aside.

b) The revision petition of the applicant dt. 30.1.96 shall be considered by the revisional authority afresh taking into consideration the grounds raised therein and also the principles enunciated by the Hon'ble High Court of Karnataka cited above.

c) The revisional authority shall decide the revision petition as expeditiously as possible.

47. With the above directions the O.A. is disposed of leaving the parties to bear their own costs.

48. The inquiry file produced by the respondents is perused and returned to the respondents.


(B.S. JAI PARAMESHWAR)
MEMBER (J)


(R RANGARAJAN)
MEMBER (A)

Dated, the 25th January, '99.

COPY TO:-

1. ~~HDHND~~
2. ~~WHRP M(A)~~
3. ~~HBSJP M(J)~~
4. ~~D.R.(A)~~
5. ~~SPARE~~

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1ST AND IIND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

~~THE HON'BLE MR. JUSTICE D.H. NASIR :~~
~~VICE CHAIRMAN~~

~~THE HON'BLE MR. H. RAJENDRA PRASAD :~~
~~MEMBER (A)~~

~~THE HON'BLE MR. R. RANGARAJAN :~~
~~MEMBER (A)~~

~~THE HON'BLE MR. B.S. JAI PARAMESWAR :~~
~~MEMBER (J)~~

DATED: 25-1-99

ORDER/ JUDGMENT

~~M.A./R.A./C.P.NO.~~

In

O.A. NO. 1264/96

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

~~DISPOSED OF WITH DIRECTIONS~~

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

8 copies

