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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH
JAIPUR.

O.A.No.670/1994

Date of order: 27.9.1995

B.S.Garg : Applicant

Versus

Union of India and others : Respondents.

Mr.A.N.GUPTA, Counsel for the applicant
Mr.JAGNISH BHANDARI, Counsel for the respondents

CORAM:

Hon'ble Mr.O.P.Sharma, Member(Administrative)
Hon'ble Mr. Rattan Prakash, Member(Judicial)

O R D E R

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

In this application under Section 19 of the Administrative Tribunal's Act, 1985 Shri B.S.Garg has prayed that order Annexure A-1 dated 15.7.1993 by which penalty of with-holding of increment for a period of three years without future effect was imposed and order dated 14.7.1994 (Annexure A-2) by which the appellate authority rejected the appeal filed by the applicant against the aforesaid order, may both be quashed and amount of increment with-held may be paid to the applicant with interest thereon.

2. The essential facts of the case are that a minor penalty charge-sheet Annexure A-3 dated 20.5.1993 was issued to the applicant on the ground that he had been careless and negligent with regard to handling of the X-Ray Machine as a result of which the railways suffered a loss of Rs.96,400/-. The applicant was therefore charged with being careless

and causing financial loss to the railways. After the issue of the charge-sheet a copy of report submitted by Dr. V.K.Vashistha was forwarded to the applicant by letter dated 14.6.1993 (Annexure A-4) and the applicant was asked to submit his defence at the earliest. The applicant submitted a reply which is however not made a part of the annexures to the original application. After considering the reply submitted by the applicant and the report submitted by Dr. V.K.Vashistha and after going through ~~the~~ certain statements recorded earlier, the disciplinary authority imposed upon the applicant a penalty of with-holding of one increment for three years without future effect by order dated 15.7.1992 (Annexure A-1). The applicant preferred an appeal against the order imposing penalty which had however remained undisposed of. Thereafter the applicant moved the Tribunal by filing an OA No.156/94 which was disposed of by order dated 31.3.1994 directing the respondent No.2 therein to decide the appeal filed by the applicant meeting all the points raised therein. Thereafter the appeal was disposed of by the appellate authority by order dated 4.7.1994 (Annexure A-2), upholding the penalty already imposed upon the applicant. The applicant has assailed the orders of the disciplinary authority and appellate authority on various grounds. He stated that as per the report submitted by the supplier of the equipment (Annexure A-5) dated 24.3.1994 the Tube of the Machine had failed within the normal wear and tear period of the Tube and that the expected life of the Tube is generally

4 or 5 years depending upon its use. Further according to him the Machine was operated by one Dr. Goyal who was performing the duties of a Radiologist and not by the applicant. The applicant is also aggrieved that no reasonable opportunity as enshrined under Article 311 of the Constitution was granted to him before imposing the penalty as aforesaid.

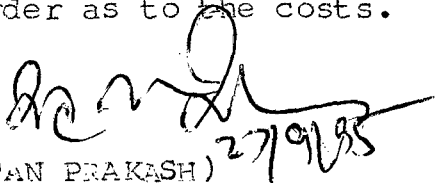
3. The respondents in their reply have stated that the applicant allowed this X-ray machine to be operated for a long time of 30 minutes which resulted in over-heating and leading to damage to the X-ray Tube costing Rs.1.0 lac. They have denied that proper opportunity of being heard was not given to the applicant before imposing the penalty.


4. We have heard the learned counsel for the parties and have gone through the material on record. We have perused the disciplinary authority's order Annexure A-1 dated 15.7.1993 wherein there are findings regarding mis-conduct of the applicant. The order of the disciplinary authority shows that statements of certain persons were recorded which were relied upon while passing the order imposing penalty on the applicant. Since this was a minor penalty charge-sheet, a formal enquiry under Rule 9 of the Railway Servant Disciplinary Appeal Rules was not held in this case. However

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statement of certain persons such as one Shri Ramjilal and Dr. Ravi Goyal were recorded which were relied upon by the disciplinary authority while imposing the penalty. It is apparent that no opportunity of cross-examining these persons was granted to the applicant before imposing the penalty. It is true that a minor penalty can be imposed without holding a formal enquiry under Rule 9. However, if statements of certain persons have been relied upon while imposing the penalty, it is expected that the minimum principles of natural justice should be followed by giving an opportunity to the applicant to cross-examine those persons whose statements are proposed to be relied upon while imposing the penalty. These minimum principles of natural justice have not been followed in this case. In these circumstances, we set-aside the order of disciplinary authority Annexure A-1 dated 15.7.1993 and the order of appellate authority Annexure A-2 dated 14.7.1994 with consequential benefits. However, the respondents shall be free to proceed in the matter afresh according to law.

5. O.A. has been disposed of accordingly with no order as to the costs.


(RATTAN PRAKASH)
MEMBER (J)


(C.P. SHARMA)
MEMBER (A)