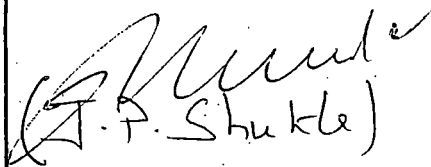



10-10-2017

Mr. S. Srivastava, Counsel for the applicant  
Mr. V. S. Bhatnagar, Counsel for the respondents

Heard the learned Counsel for  
the parties.


Order Reserved.

  
(T. P. Shukla)  
M(A)

  
(M. L. Chaudhary)  
M(G)

12/10/07

order pronounced today  
in the open court by the  
aforesaid Bench

  
12/10/07

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 12<sup>th</sup> day of October, 2007

ORIGINAL APPLICATION No.18/2003

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER  
HON'BLE MR.J.P.SHUKLA, ADMINISTRATIVE MEMBER

Virendra Kumar Sharma,  
s/o late Shri Banke Vihari Sharma,  
aged about 54 years,  
r/o Ladli Ji Ka Mandir,  
House No.2144, Ramganj Bazar,  
Jaipur, presently posted as HTXR  
(Section Engineer) C&W Department,  
North Western Railway, Jaipur

.. Applicant

(By Advocate: Shri S.Srivastava)

Versus

1. Union of India  
through General Manager,  
North Western Railway,  
Jaipur
2. Chief Mechanical Engineer,  
North Western Railway,  
Jaipur.
3. D.R.M.,  
North Western Railway,  
Jaipur
4. A.D.R.M.,  
North Western Railway,  
Jaipur
5. Sr. D.M.E.,  
North Western Railway,  
Jaipur.

.. Respondents

(By Advocate: Mr. V.S.Gurjar)

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## O R D E R

Per M.L.Chauhan, Member (J)

The applicant in this OA has challenged the order dated 29.8.2000 passed by the Disciplinary Authority i.e. respondent No.5 which was confirmed by the Appellate Authority vide order dated 23.11.2000 and the revision petition filed against that order was also dismissed vide order dated 10.12.2001.

2. The material facts reveal that inquiry was conducted against the applicant as per the report of the Senior Section Engineer to the effect that on 23/24.9.1997 the applicant in drunken condition was lying in train duty room and, therefore, there was delay in running of the trains. It was further mentioned in the report that the Breath Analyzer test was also conducted on the same date and according to the test report, the applicant was found intoxicated. Consequently, a chargesheet dated 13.1.1998 was issued on the basis of such report dated 25.9.97 submitted by the Senior Section Engineer to the Senior Divisional Mechanical Engineer. Thereafter inquiry was conducted for the charges levelled against the applicant in the chargesheet. The Inquiry Officer came to the categorical conclusion that the charges of intoxication during the duty hours on 24.9.97 on account of which departure of certain trains were

leaf

delayed is not proved and in fact the departure in delay of train No.9769 and 9735 by 30 and 25 minutes respectively were on account of delay in issuing certificate by another Junior Engineer Shri O.P.Chaudhary.

We have perused the inquiry report which has been placed on record as Ann.A5. The said conclusion has been reached by the Inquiry Officer after discussing the entire evidence including the evidence led by the prosecution side. Thus, it cannot be said that such a conclusion has been arrived at without any evidence. Rather, as already stated above, the Inquiry Officer has referred to the evidence on record for arriving at the aforesaid conclusion. The Disciplinary Authority without recording his finding as to why he has not agreed with the findings of the Inquiry Officer and on what part of the charge he wanted to differ with the Inquiry Officer, issued the order of punishment whereby penalty of withholding of three years increment with future effect has been imposed on the applicant. As already stated above, this order of the Disciplinary Authority has been upheld by the Appellate Authority as well as by the Revisional Authority.

The main grievance of the applicant is that he was neither served notice nor informed about the note of disagreement recorded by the Disciplinary Authority. Rather, no such note of disagreement was ever recorded

which was mandatory in terms of Rule 10 of Railway Servants (Discipline and Appeal) Rules, 1968. It has been urged that the applicant has suffered serious prejudice and, therefore, the entire action of the respondents is illegal and bad in law and consequently the order dated 29.8.2000 imposing punishment of withholding of 3 years increment with future effect as inflicted by the Disciplinary Authority, which was affirmed by the Appellate and Revisional Authorities is required to be quashed.

3. We have heard the learned counsel for the parties and gone through the material placed on record.

4. We are of the view that law on this point is no longer res-integra and the same stand decided by number of decisions rendered by the Apex Court. Before referring to the decisions of the Apex court, it will be useful to quote Rule 10 of the Railway Servants (Disciplinary and Appeal), Rules, 1968, which thus reads:-

**"10. Action on the inquiry report**

- (1) If the disciplinary authority, having regard to its own findings where it is itself the inquiring authority, or having regard to its decision on all or any of the inquiring authority, is of the opinion that the penalty warranted is such as is within its competence, that authority may act on evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice,

recall the witnesses and examine, cross-examination and re-examine the witnesses and may impose on the Railway servant such penalty as is within its competence, in accordance with these rules. Where such disciplinary authority is of the opinion that the penalty warranted is such as is not within its competence, that authority shall forward the records of the inquiry to the appropriate disciplinary authority who shall act in the manner as hereinafter provided.

- (2) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of Rule 9 as far as may be.
- (3) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority or any articles of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record, is sufficient for the purpose.

....."

Thus from reading of sub-rule (2) and (3) of Rule 10 as reproduced above, it is evident that the only course available with the Disciplinary Authority was either to remit the case to the Inquiry Authority for further inquiry in terms of sub-rule (2) or the Disciplinary Authority should have recorded the findings of disagreement on the basis of evidence recorded during the inquiry proceedings in terms of sub-rule (3) and in that eventuality, it was incumbent upon the Disciplinary Authority to send note of its findings on the charge(s) where it disagree with the Inquiry Authority to the applicant and thereby affording an opportunity to the applicant to make

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representation against such finding. Admittedly, in the instant case, the Disciplinary Authority has neither recorded its tentative reasons for such disagreement nor given an opportunity to the delinquent officer to represent before recording the finding of punishment. Thus, according to us, serious prejudice has been caused to the applicant, as such, action of the Disciplinary Authority is in violation of the principles of natural justice and is required to be set-aside.

At this stage it will be useful to quota decision of the Apex Court which will clinch the issue. Their Lordships of the Supreme Court in Punjab National Bank vs. Kunj Behari Misra, reported in (1998) 7 SCC 84 in para 17 ruled as under:-

"17. These observations are clearly in tune with the observation in Bimal Kumar Pandit's case (AIR 1963 SC 1612) quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the enquiry officer had given the adverse finding, as per Karunakar's case, (AIR 1994 SC 1050) the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the inquiry officer. It will not stand to reason that when finding in favour of the delinquent officer is proposed to be over-turned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the inquiring officer holds the charges to be proved, then that

report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusion, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned un heard. In departmental proceedings, what is of ultimate importance is the finding of disciplinary authority."

The Hon'ble Apex Court in the aforementioned case in para 19 further ruled as under:-

"...whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer must be given an opportunity to persuade the disciplinary authority to accept the favourable conclusions of the Inquiry Officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

In the case in hand, since the Disciplinary Authority has not recorded its tentative reasons for such disagreement and no opportunity was afforded to the applicant and instead passed the punishment order, hence, it suffers from denial of an opportunity in terms of the Apex Court ruling.

Further, the Hon'ble Apex Court in the case of Yoginath D. Bagde vs. State of Maharashtra, (1999) 7 SCC

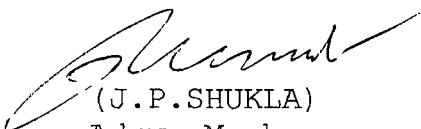
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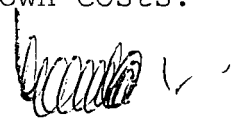


739 has ruled that a show cause notice issued to a petitioner with regard to proposed punishment do not meet the requirement of the law because final decision to disagree with the enquiry officer had already been taken before issuing show cause notice.

5. In the light of these two decisions and in the absence of any opportunity to the applicant, the order of the Disciplinary Authority has to be set-aside. When once the order of the Disciplinary Authority suffers from this patent error, the subsequent orders of the Appellate Authority and Revisional Authority also have to go in the light of this serious legal error committed by the Disciplinary Authority. Therefore, the impugned orders dated 29.8.2000 (Ann.A7), 23.11.2000 and 10.11/12.2001 (Ann.A11) are quashed and set-aside. The case is remitted back to the Disciplinary Authority for fresh consideration and in case the Disciplinary Authority does not agree with the Inquiry Officer, it shall record its findings only after giving proper hearing to the applicant in consonance with the principles of natural justice as envisaged in the case of Punjab National Bank (supra).

6. With the above directions, the OA is disposed of. The parties are directed to bear their own costs.

  
(J.P.SHUKLA)  
Admv. Member

  
(M.L.CHAUHAN)  
Judl. Member

R/