

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR  
O.A.No.438/95

Date of order: 3/12/2001

Kishan Singh, S/o Sh.P.R.Kaushal, Electrical  
Chargeman, O/o Sr.Traction Foreman, Gangapur City,  
W.Rly, Kota Division.

...Applicant.

Vs.

1. Union of India through the General Manager, W.Rly,  
Churchgate, Mumbai.
2. Chief Electrical Engineer, W.Rly, Churchgate, Bombay
3. Divisional Rly.Manager, Western Rly, Kota.
4. Addl.Divisional Rly.Manager, Western Rly, Kota.

...Respondents.

Mr.P.V.Calla : Counsel for applicant  
Mr.T.P. Sharma : for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member.

Hon'ble Mr.A.P.Nagrath, Administrative Member.

PER HON'BLE MR S.K.AGARWAL, JUDICIAL MEMBER.

In this O.A filed under Sec.19 of the ATs Act, 1985,  
the applicant makes a prayer to quash and set aside the  
impugned order dated 4.3.93 passed by the disciplinary  
authority read with letter dated 16.4.93' the order of  
appellate authority and revisional authority dated 15.6.94  
with all consequential benefits.

2. Facts of the case as stated by the applicant are  
that while working on the post of Electrical Chargeman, an  
enquiry under the provisions of Railway Servants (Discipline  
& Appeal) Rules was initiated on the basis of preliminary  
enquiry conducted against the applicant and memorandum of  
charge sheet dated 9.11.90 was issued on the following

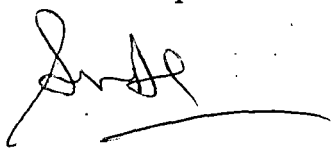


charges: "While Sh.Kishan Singh was on medical leave, stationed at Bharatpur, on 13.9.90 when Train 4 UP reached at the Bharatpur Railway Station, Sh.Kishan Singh quarreled with the Driver Sh.Jagdish Prasad and assaulted the Driver which caused detention of 4 UP train." The Enquiry Officer was appointed. The applicant denied the charges and Inquiry Officer, after conducting enquiry proceedings found the applicant guilty of the charge. A copy of the enquiry report was served upon the applicant to submit his representation and the applicant submitted detailed representation. Thereafter, the punishment of removal from service was issued vide order dated 10.11.91. The applicant preferred an appeal to Respondent No.3 pointing out serious infirmities. Vide order dated 4.3.94 the appellate authority considered the punishment of removal from service as disproportionate and reduced <sup>it</sup> to that of reduction by 3 stages in the present grade with future effect which was to commence from 1.3.93. The applicant filed revision petition to Chief Electrical Engineer, respondent No.2, which was rejected vide order dated 15.6.94. It is stated that the Enquiry Officer instead of asking the delinquent to engage his defence assistant at his own accord, appointed a person as defence assistant and the defence assistant did not cross examine the prosecution witnesses at all and in this way the enquiry conducted by the Enquiry Officer is contrary to rules and the principles of natural justice. It is also stated that no presenting officer was appointed on behalf of the prosecution, therefore, the Inquiry Officer acted as Inquiry Officer as well as Prosecutor. It is also stated that criminal case against the applicant and Driver Jagdish Prasad is pending but the respondents' department has only initiated



disciplinary proceedings against the applicant and not against Driver Jagdish Prasad. Therefore, initiation of DAR proceedings against the applicant are derogatory and indication of pre-determination of mind hence liable to be quashed. Therefore, the applicant filed this O.A.

3. Reply was filed. It is stated in the reply that the applicant was pressing Driver Jagdish Prasad to allow him in Engine Cabin from Bharatpur to Gangapur City but the Driver refused to allow him as it was against the rules. Therefore, the applicant abused Driver Jagdish Prasad with the help of his companion and assaulted the Driver. It is stated that preliminary enquiry was conducted and as per the preliminary enquiry the applicant was found guilty of the charges therefore, charge-sheet was issued to the applicant and thorough enquiry was conducted. It is denied that the applicant was not given any opportunity to cross examine. It is also stated that a copy of enquiry report was sent to the applicant and was asked to send his representation against the enquiry report but he did not like to submit his representation. It is also stated that when no presenting officer is appointed, the enquiry officer examined and cross examined the witnesses. It is stated that the applicant was asked to propose name of his defence assistant vide letter dated 11.2.91 and accordingly he proposed Sh.B.S.Sharma as defence assistant. It is stated that the order of disciplinary authority is perfectly legal and valid and was passed after full application of mind. It is also stated that the appellate authority, after careful consideration, reduced the punishment and reinstated the applicant in service. It is also stated that the revision petition filed by the applicant was rejected. It is stated that DAR

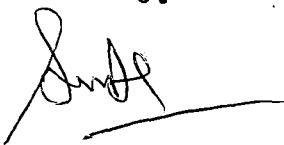


proceedings can be initiated before the trial in criminal case is over therefore initiation of DAR proceedings and punishment order passed by the disciplinary authority is perfectly legal and valid. It is stated that the applicant was given full opportunity of hearing and rules/procedures have been properly followed while conducting the enquiry by the Inquiry Officer and the applicant has no case.

4. Heard the learned counsel for the parties and also perused the whole record.

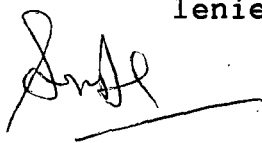
5. The counsel for the applicant vehemently raised the following grounds at the time of arguments; (i) the defence assistant was appointed directly by the Inquiry Officer in contravention of Rules; (ii) in a pending criminal case the applicant as well as Driver Jagdish Prasad have been prosecuted but departmental proceedings have been initiated only against the applicant with a view to harass him; (iii) no opportunity of cross examination was afforded to the applicant. Therefore, principles of natural justice have been violated. On the other hand the learned counsel for the respondents argued that while conducting the enquiry, Inquiry Officer has followed the Rules/procedures and enquiry has been thoroughly conducted. He has also argued that opportunity to cross examination was given to the applicant but his defence assistant did not like to cross examine the witnesses. He also argued that departmental proceedings were initiated on the basis of preliminary enquiry conducted, therefore, merely the Police filed the charge-sheet against the applicant and Driver Jagdish Prasad does not vitiate the enquiry proceedings initiated against the applicant.

6. We have given anxious consideration to the rival



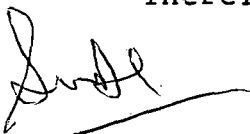
contentions of both the parties and also perused the whole record.

7. In the reply filed by the respondents, it has been categorically mentioned that the delinquent was asked to propose name of his defence assistant vide letter dated 11.2.91 and accordingly the applicant proposed Shri B.S. Sharma, TFC(TRD) GGC. There is no rejoinder to controvert the reply filed by the respondents, in this connection. According to rules, the government servant may take assistance of any other govt servant but it does not mean that the authority can in no way express its inability to spare the services of particular government servant. In the instant case, as per reply, it appears that the Enquiry Officer vide letter dated 11.2.91 has asked the delinquent to propose the name of his defence assistant and accordingly defence assistant was appointed. Therefore, in our considered view, the contention of the applicant regarding this fact is baseless and has no substance. Reference to other contentions of the learned counsel for the applicant, it can only be said that enquiry against the applicant was initiated on the basis of preliminary enquiry conducted by the department after on a report filed by both the parties in the Police Station and after police investigation filed charge sheet against the applicant and Driver Sh.Jagdish Prasad. The disciplinary proceedings appears to have been initiated against the applicant after giving him full and reasonable opportunity of hearing. The Inquiry Officer found the applicant guilty of the charge and the disciplinary authority imposed punishment of removal from service upon the applicant against which the appellate authority took a lenient view and reduced the punishment to that of reduction



by 3 stages in the present grade with future effect. But this does not mean that the charge sheet issued against the applicant is not sustainable in law and the enquiry proceedings initiated against the applicant are vague and baseless. We are, therefore, of the opinion that the ground taken by the applicant are not sustainable in law and the applicant is not entitled to any relief sought for. On the point of cross examination, in the reply, the respondents have categorically stated that the defence assistant was present at the time of cross examination of witnesses and the applicant was given full opportunity to cross examine but the applicant and his defence assistant did not like to cross examine the witnesses. Therefore, merely stating that the applicant did not cross examine the witnesses cannot be said that opportunity to cross examine was not given to the applicant. Moreover, the applicant did not choose to file any rejoinder to controvert the version of the respondents in the reply, therefore, the statement of the respondents' department cannot be disbelieved.

8. The learned counsel for the applicant has also argued that in the enquiry, it could not be determined who was the aggressor, therefore, any case is made out against the applicant. We are not convinced with this argument. Any cross cases, the question of determination that who was the aggressor is important only for the purpose of determining the plea of self defence raised by the parties in those cases. But in departmental enquiries standard of proof is always on different footing. In departmental enquiries the principle of probability is important whereas in criminal cases the theory of beyond reasonable doubt is important. Therefore, in view of different principles adopted for



appreciating evidence in criminal cases and departmental enquiries, we are not convinced <sup>with</sup> the argument as submitted by the counsel for the applicant.

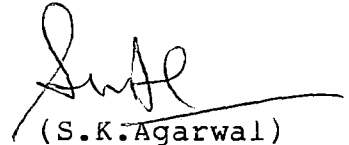
9. In view of above all, we are of the opinion that the applicant has no case for interference by this Tribunal and this O.A devoid of any merit is liable to be dismissed.

10. We, therefore, dismiss this O.A having no merits with no order as to costs.



(A.P.Nagrath)

Member (A).



(S.K.Agarwal)

Member (J).