

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.422/99

Date of order: 20/12/2000

Mohammad Hanif, S/o Shri Aladin, Ex-Diesel Driver,
W.Rly, Kota Divn, under CTFO(R) Gangapur City.

...Applicant.

Vs.

1. Union of India through General Manager, Western Rly,
Churchgate, Bombay.
2. Sr.Divisional Electrical Engineer(TRO), W.Rly, Kota
Division, Kota.
3. Addl.Divisional Rly.Manager, W.Rly, Kota.

...Respondents.

Mr.S.C.Sethi - Counsel for the applicant.

Mr.T.P.Sharma - Counsel for respondents.

CORAM:

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

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

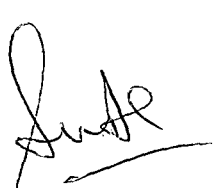
PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application filed under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash and set aside the order of removal from service dated 22.5.98 (Annx.A1) and order of appellate authority dated 2.9.98 and reinstate the applicant in service with all consequential benefits.

2. In brief, facts of the case as stated by the applicant are that while working on the post of Driver, the applicant was given charge sheet dated 15.9.97 for major penalty. The Enquiry Officer was appointed and after enquiry the punishment of removal from service was imposed. The applicant filed an appeal which was rejected. It is stated that the order imposing punishment upon the applicant and rejection of appeal is illegal, unjust and against the provisions of the principles of natural justice. The applicant was punished for

no fault of his own and he was denied the reasonable opportunity to defend. The Enquiry Officer conducted the enquiry on predetermination notions and the applicant was punished. It is also stated that the charge sheet and enquiry proceedings are nonest as no list of witnesses in support of the charge was given. The Enquiry Officer did not examine even a single witness in support of the charge and he abruptly started the examination of the applicant before examination of the departmental witnesses thus the defence was taken to disprove the charge before it was proved. It is also stated that witnesses relied upon by the Enquiry Officer in his finding was not named in the charge sheet nor he was examined in the presence of the applicant and no opportunity to cross examine the witness was given to the applicant. The applicant was not supplied the documents as demanded by him and he was not given the facility of Defence Assistant to defend the case. Therefore, the enquiry was conducted in gross violation of the rules and principles of natural justice therefore, liable to be set aside. It is also stated that on the basis of such an enquiry the punishment imposed upon the applicant is also illegal, unjustified and liable to be set aside and the order of rejection of the appeal is also liable to be set aside. Therefore, the applicant filed the O.A for the relief as mentioned above.

3. Reply was filed. In the reply it is stated that the charge sheet dated 15.9.97 was served to the applicant alleging him for violating ~~violating~~ rule 2.06 of the General & Subsidiary Rules and thereafter Shri R.K.Verma was appointed as Enquiry Officer who conducted the enquiry and submitted the enquiry report and on the basis of the enquiry report, the punishment was imposed upon the applicant by the disciplinary authority and the appellate authority has also rightly



rejected the appeal of the applicant vide order dated 2.9.98, in accordance with the provisions of the Railway Servants (D&A) Rules, 1968. Therefore, the applicant has no case for interference by this Tribunal and the OA devoid of any merit is liable to be dismissed.

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

5. The applicant was charge sheeted for violation of rule 2.06 of G&S Rules 1981, Rule 3(1)(2) of the Railway Services (Conducts) Rules, 1966 and para 1007(5)(6) and (7) of Operating Manual WR. Rule 2.06 of G&S Rules, 1981 provides as under:

"2.06 Obedience to Rules and orders. Every railway servant shall promptly observe and obey-
(a) all rules and special instructions, and
(b) all lawful orders given by his superiors.

Rule 3(1) and (2) of the Railway Services (Conduct) Rules, 1966 provides as under:

"3(1) Every railway servant shall at all times:
(i) Maintain absolute integrity;

(ii) maintain devotion to duty; and

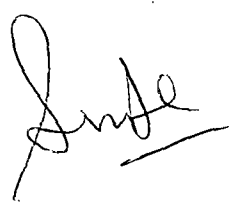
(iii) do nothing which is unbecoming of a railway or Govt servant.

(2)(i) Every railway servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all railway servants for the time being under his control and authority;

(ii) No railway servant shall in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior and shall, where he is acting under such direction, obtain the direction in writing, wherever practicable, and where it is not practicable to obtain the direction in writing, he shall obtain written confirmation of the direction as soon thereafter as possible."

Para 1007(5), (6) and (7) of the Operating Manual (WR) provides as under:

"(5) Absence at the time of call - If a member of the Running Staff is absent when the call book is sent round, a verbal notice will be left at his quarter or Running Room in which he should have been at that time.



The Station Master/Loco Foreman/Shed-in-Charge may send a written notice, if time permits, to be left at his quarter or in the running Room and may make alternative arrangements immediately.

While at headquarters, it shall be the duty of the Running Staff to instruct their servants or family members to accept these notices and to keep them in some place where they will see them on their return if they are not at home when the call book is brought to their residence.

If the Running Staff originally booked, does not turn up on duty in time or does not send information 3 hours before as laid down in para 7 below, he should be marked absent for that day and dealt with accordingly.

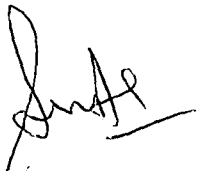
(6) Liability of Running Staff to be called on duty or short notice- Guards, Drivers, Firemen, Brakesmen and Travelling Assistant Goods Clerks must understand that even when booked for a particular train they may be called for duty at an earlier hour and at less than two hours' notice and may, at any time, be verbally ordered by the Station Master on duty, or by the Loco Foreman, or by a Superior Official to go out with a train at short notice.

(7) Running Staff-Guards, Drivers, Firemen, Brakemen, Travelling Assistant Goods Clerks, Reporting sick or unable to attend duty - The writing of the word 'sick' in the Call Book when this is sent to warn a man for duty will not be accepted. When unable to go out with a Train for which they have been booked, owing to sickness, Running Staff must give at least three hours' notice before they are due to report for duty to the Station Master/Locomotive Foreman or Shed-in-Charge, as the case may be, to enable him to make other arrangements."

On a perusal of these rules as mentioned above, it appears that there is ~~nothing~~ prima facie justification to issue the charge sheet to the applicant for initiating the departmental enquiry ~~and~~ to award major penalty to the applicant.

6. In view of the explanation submitted by the applicant if the applicant could have been given an opportunity to produce his defence before appointment of an Enquiry Officer then the position might have been different.

7. No doubt a call was booked for Karnataka Express but before issuing the charge sheet, explanation furnished by the applicant was not at all taken into consideration. Had the



concerned authority taken into consideration the explanation given by the applicant, there was no reason/basis to issue the charge sheet to the applicant.

8. On a perusal of the averments made by the parties it also appears that there has been a gross violation of statutory rules/principles of natural justice while conducting the enquiry, such as the applicant was not given proper opportunity to submit his defence and without giving such an opportunity to furnish the defence, the Enquiry Officer was appointed.

9. On a perusal of the averments made in the pleadings, it also appears that copies of documents/statement as demanded by the applicant were not supplied to him to enable him to prepare his defence. The applicant made requests for the copies of the documents but no proper attention was given to his request thereby we are of the considered view that the respondents' department has grossly violated the statutory rules/principles of natural justice while conducting the enquiry against the applicant. No list of witnesses was given with the chargesheet and no witness was examined by the department in support of the charges. The Enquiry Officer himself abruptly examined the applicant. There was no Presenting Officer by the department to examine the departmental witnesses, the applicant and his defence witnesses. Therefore, it appears that the Enquiry Officer has acted as prosecutor in this case. No proper opportunity to nominate the Defence Assistant was provided to the applicant although the applicant was asked to give the name of his defence assistant but applicant made a request that before appointment of defence assistant, the applicant may be supplied copies of documents as demanded by him to enable him to prepare his defence. The request of the applicant was not

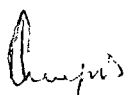


given any heed, therefore, ^{It} ~~we~~ ^{be} can safely said that no proper opportunity to nominate defence assistant was provided to the applicant. It is also very strange that the statements of Shri Ashok Kumar-D were recorded behind the back of the applicant, after the applicant was examined and no opportunity to cross examine this witness was provided to the applicant. The process of conducting the enquiry which was adopted by the Enquiry Officer appears to be as if the Enquiry Officer is conducting the enquiry on the basis of predetermined notions. Therefore, on the basis of some of the above illustrations, we can safely say that the Enquiry Officer has grossly violated the statutory rules while conducting the enquiry and in this way there has been a gross violation of the principles of natural justice.

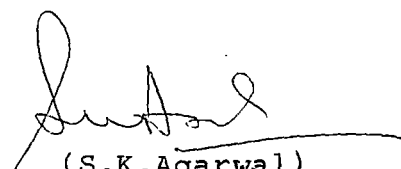
10. In view of above all, we are of the opinion that on the basis of such an enquiry, if any punishment is imposed by the disciplinary authority, the same is illegal, arbitrary and bad in law, therefore, liable to be quashed. If the appellate authority on such an enquiry and order of disciplinary authority rejected the appeal filed by the applicant, the same is also liable to be quashed.

11. We, therefore, allow the O.A and quash and set aside the order of removal dated 22.5.98 (Annx.A1) and the order of the appellate authority dated 2.9.98 (Annx.A2) and direct the respondents to reinstate the applicant in service forthwith with all back wages from the date of removal to the date of reinstatement. In the facts and circumstances of the case as discussed above, we do not think it proper to give again an opportunity to the department to initiate enquiry against the applicant.

12. No order as to costs.



(A.P. Nagrath)
Member (A).



(S.K. Agarwal)
Member (J).