

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

OA No. 486/2002

DATE OF ORDER : 28.10.2002

Brijendra Singh son of shri Phool Singh aged about 47 years, resident of A/72, Subhash Colony, Kherly Phatak, Kota as PWT (RFD), Kota.

.....Applicant.

VERSUS

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Chief Engineer, CCG, Western Railway, Churchgate, Mumbai.
3. The Divisional Railway Manager (Establishment), Western Railway, Kota Division, Kota.
4. The Additional Divisional Railway manager, Western Railway, Kota Division, Kota.
5. The Senior Divisional Engineer (HQ), Western Railway, Kota.

....Respondents.

Mr. Rakesh Sharma, Counsel for the applicant.

Mr. U.D. Sharma, Counsel for the respondents.

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Hon'ble Mr. Justice G.L. Gupta, Vice Chairman  
Hon'ble Mr. Gopal Singh, Administrative Member

PER HON'BLE MR. GOPAL SINGH

In this application u/s 19 of the Administrative Tribunal's Act, 1985, applicant, Brijendra Singh, has prayed for quashing the impugned orders dated 3.12.99, 24.2.2000 and 18.1.2001 placed at Annexures A/1, A/2 and A/3 respectively with all consequential benefits.

2. The applicant was served with a charge sheet vide respondents' letter dated 14.12.93 (Annexure A/4). On conclusion of the inquiry, the charges levelled against the

*Gopal Singh*

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applicant were held 'not proved' by the Inquiry officer. A copy of the Inquiry Officer's report was made available to the applicant vide respondents' letter dated 01.7.97 (Annexure A/7). The same was duly replied by the applicant. The Disciplinary authority, however, differing from the view taken by the Inquiry Officer imposed the penalty of reduction by one stage in same time scale of pay for a period of three years with future effect, upon the applicant. Appeal submitted against the Disciplinary Authority's order was rejected by Appellate authority vide his order dated 24.2.2000 (Annexure A/2) and revision petition was also rejected by Revisionary Authority vide his letter dated 18.1.2001 (Annexure A/3). The contention of the applicant is that the Disciplinary Authority had disagreed with the views of the Inquiry Officer and therefore, he should have made available to the applicant the points of disagreement so as to enable the applicant to put up his defence. This was not done and the Disciplinary Authority passed the orders of penalty as aforesaid. Thus the principles of natural justice have been violated and this vitiates the entire inquiry proceedings. Hence this application.

3. The learned counsel for the applicant cited the judgement of Hon'ble the Supreme court in Punjab National Bank & Others vs. Kunj Behari Misra, 1908 SCC (L&S) 1783.

4. In the counter, the respondents have contested the application. It has been pointed out by the respondents that the orders of the Disciplinary Authority, Appellate Authority and Revisionary Authority are in accordance with rules. It has also been pointed out by the respondents that the Disciplinary Authority had after carefully examining the inquiry report and the representation thereto submitted by the applicant had passed the order imposing the penalty upon the applicant. It has also been pointed that it was not obligatory upon the respondents to give a notice to the applicant before imposing the penalty upon him. It has, therefore, been averred by the respondents that the application is devoid of any merit and deserves dismissal. The respondents have also cited the judgement of Hon'ble the Supreme Court in State Bank of India vs. S.S. Koshal reported

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in 1994 SCC (L&S) 1019 and another judgement; State of Rajasthan vs. M.C. Saxena reported in 1998 SCC (L&S) 875 to buttress their contention.

5. We have heard the learned counsel for the parties and perused the records of the case carefully.

6. In Punjab National Bank & Ors. vs. Kunj Behari Misra (supra), Hon'ble the Supreme Court has held that the Disciplinary Authority is required to give an opportunity of representation to the charged employee before differing from the finding of the Inquiry Officer. In this connection, we consider it appropriate to extract relevant portion below of the above judgement -

Accordingly to the Constitution Bench decision in Karunakar case, a delinquent officer is entitled to represent to the disciplinary authority where the findings in the enquiry report are against him. It will not therefore, stand to reason that when the findings are in favour of the delinquent officer but they are proposed to be overturned by the disciplinary authority then no opportunity should be granted. According to Karunakar case, disciplinary enquiry is divided into two stages. The first stage ends when the disciplinary authority arrives at its conclusion on the basis of evidence, enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. The first stage of the enquiry 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 the delinquent officer must give him a hearing. When the enquiring officer hold 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,

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the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard, for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the finding of the disciplinary authority.

In the light of the law laid down by Hon'ble the Supreme Court, as above, it was incumbent upon the Disciplinary Authority to give an opportunity to the delinquent official of making representation on the views of the Disciplinary Authority, before imposing penalty upon him.

7. In State Bank of India vs. S.S. Koshal, the Inquiry Officer had held charges Nos. 1 & 5 as established but held that charges No. 2, 3, 4, & 6 not established. After perusing the report of the Inquiry officer, the Disciplinary authority agreed with the Inquiry officer that charge No. 1 & 5 are established and charges Nos. 3 & 4 are not established. So far as charge No. 2 is concerned, he disagreed with the Inquiry officer and held that the said charge to have been fully established and charge No. 6 is partially established. Accordingly, the Disciplinary Authority imposed the penalty of removal from service upon the delinquent official. In those circumstances, it was held by the Hon'ble the Supreme Court that affording a fresh opportunity to the delinquent official was not contemplated by the relevant regulation or principles of justice. This judgement was delivered on 12.1.1994. The learned counsel for the respondents has also cited judgement of Hon'ble the Supreme court in State of Rajasthan vs. M.C. Saxena printed in 1998 SCC (L&S) 875. In this case, the plea that Disciplinary Authority must give opportunity of hearing to the charged employee before disagreeing with the inquiry report favourable to the employee, was rejected by Hon'ble the Supreme Court and it was held that the only requirement is to record reasons for disagreeing and the Court does not interfere unless the findings of the Disciplinary Authority are unreasonable. This

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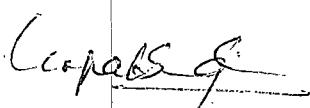
judgement was delivered on 24.2.1998.

8. It is pointed out here that Apex Court's judgement in the case of M.C. Saxena and S.S. Koshal were duly considered by Hon'ble the Supreme court while delivering the judgement in Punjab National Bank & Others vs. Kunj Behari Misra (supra). Moreover the judgement in Punjab National Bank (supra) was delivered on 19.8.98 much later than the two judgements, M.C. Saxena and S.S. Koshal (supra), cited by the respondents. The judgement in Punjab National Bank & Others vs. Kunj Behari Mishra is a three Judges judgement while the other two judgements cited by the respondents are DB judgements. Therefore, in our view the three Judges judgement must prevail in this case.

9. In the light of above discussions, we find that the OA deserves to be allowed. Accordingly we pass the order as under :-

"The OA is allowed. The impugned orders dated 3.12.99 (Annexure A/1), 24.02.2000 (Annexure A/2) and 18.1.2001 (Annexure A/3) are hereby quashed and set aside with all consequential benefits. The respondents will, however, be at liberty to proceed against the applicant from the stage of giving a note of disagreement by the Disciplinary Authority to the applicant.

10. Parties are left to bear their own costs.

  
(GOPAL SINGH)

ADMN. MEMBER

  
(G.L. GUPTA)  
VICE CHAIRMAN

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