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CENTRAL ADMINISTRATIVE TRIBUNAL :
GUWAHATI BENCH.

O.A./XXXX No. 82 of 1998
..... of

DATE OF DECISION 7.2.2001
.....

Sri B.C. Saikia

PETITIONER(S)

Mr. G.N.Das

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

Union of India & Ors.

RESPONDENT(S)

Mr. S. Sengupta, Railway Standing Counsel.

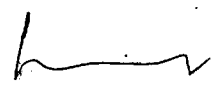
ADVOCATE FOR THE
RESPONDENTS

THE HON'BLE MR. JUSTICE D.N.CHOWDHURY, VICE-CHAIRMAN.

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman.



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 82 of 1998.

Date of order : This the 7th day of February, 2001.

Hon'ble Mr. Justice D.N.Chowdhury, Vice-Chairman.

Shri B.C. Saikia
Son of Shri Mathura Nath Saikia
presently serving as the Head Clerk (Stores),
W/3 Section, N.F.Railway
under D.R.M. (W), Tinsukia.

Applicant.

By Advocate Mr. G.N.Das.

-versus-

1. Union of India (represented by the General Manager, N.F.Railway, Maligaon, Guwahati).
2. Divisional Railway Manager, N.F.Railway, Tinsukia.
3. Divisional Engineer, N.F.Railway, Dibrugarh.
4. Senior Divisional Engineer, N.F.Railway, Tinsukia.
5. Divisional Railway Manager (P), N.F.Railway, Tinsukia.

Respondents.

By Advocate Mr. S.Sengupta, Railway Standing Counsel.

O R D E R (ORAL)

CHOWDHURY J. (V.C.).

This application under section 19 of the Administrative Tribunals Act 1985 is directed and has arisen against the impugned order of imposition of major penalty and for recovery of the cost of allegedly missing articles from the applicant in the following circumstances. The applicant is a Railway servant. While he was working as Senior Clerk posted to the office of the Divisional Engineer, N.F.Railway, Dibrugarh, Stores Section, a disciplinary proceeding was initiated against him under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 for three charges namely shortage of seven Fluorescent Lamps, 135 nos. of blankets and the

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applicant did not pay heed to the administrative order and did not inform the cause for the alleged insubordination by not attending office on date specified despite directions. The applicant was placed under suspension under order No. 4-E/1561 dated 26.7.93 in contemplation of a disciplinary proceeding. The applicant submitted his written statement denying the charges. The Assistant Engineer, Dibrugarh was appointed as Enquiry Officer to conduct the enquiry. The Enquiry Officer submitted his report holding the applicant guilty as regards charge No. II. The disciplinary authority accepted the findings of the Enquiry Officer and ordered for recovery of the costs of the articles mentioned below :

"Cost of Fluorescent light 6 (six) Nos. - Rs.7800.00
@ Rs.1300.00 (Each).

Cost of Blanket Superior light Blue - Rs.6905700
(One hundred thirty one Nos.)
@ Rs.527(Each).

The cost of above materials should be
recovered @ Rs. 1000.00 (per month)

Appeal lies with Sr. DEB/TSK."

2. The applicant submitted his appeal before the Appellate Authority which was also turned down. Hence this application assailing the legality and validity of the disciplinary proceeding as well as the findings of the Enquiry Officer including the order of the Disciplinary Authority.

2. The respondents duly contested the O.A. and submitted its written statment denying the claim of the applicant. Mr. G.N.Das, learned counsel for the applicant submitted that the order of penalty suffers from vice of arbitrariness and therefore unsustainable since it violated all the procedural propriety and the enquiry was held contrary to the established procedure. Mr. G.N. Das, learned counsel for the applicant submitted that major penalty under Rule 9 of the Railway Servants (Discipline and Appeal) Rules 1968 can only be made after holding an enquiry under Rule 9 of the Rules and

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in the instant case the learned counsel for the applicant submitted that penalty was imposed on the applicant in breach of the rules prescribed and that findings based on the improper enquiry cannot be sustained. The learned counsel for the applicant submitted that there was no enquiry under the law and the Enquiry Officer instead of examining the witness, at the first instance cross examined the applicant and so far few witnesses were examined after his examination that too also without providing him any opportunity to cross examine the aforementioned witnesses. The learned counsel for the applicant also submitted that the findings reached by the Enquiry Officer which was accepted by the disciplinary authority for the loss of seven Fluorescent lamps are patently perverse and the same are discernible from the subsequent finding of the same authority that three of those lamps were recovered from another officer. Mr. S. Sengupta, learned counsel for the Railways on the other hand strenuously opposing the application submitted that the applicant caused loss to the public exchequer and guilt of the delinquent officer was duly established after proper enquiry held under the law. The applicant was made aware of the allegations, provided given opportunity, to defend the charges alleged against him, and an enquiry was held by a competent officer in presence of the applicant in a fair manner. The legal requirements were fulfilled and therefore there is no justifiable ground in questioning the proceeding. Mr. Sengupta submitted further that the respondents allthroughout acted bona fide and thereafter on enquiry the applicant was found guilty and accordingly the order of penalty was passed. Mr. Sengupta further submitted that the respondents all throughout acted justly and fairly and even when three of missing lamps was received from G.C.Gogoi, Ex. DEN/DBRT, Dibrugarh, those were adjusted accordingly and debitable amount was reduced by

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Rs. 3,900.00. The main issue relates to the legitimacy of the procedural fairness adopted by the respondents. In exercising of power conferred in article 309 of the Constitution rules are made described as the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to Rule). Part IV of the Rules provide the procedure for imposing penalties. Procedure for imposing major penalties is prescribed under Rule 9. As per rule no order imposing any of the penalties specified in clauses (v) to (ix) of rule 6 shall be made except after enquiry held, as far as may be, in the manner provided in Rule 9 or 10. The Rules provides for providing the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge, statement of the imputations of misconduct or misbehaviour in support of each articles of charge, statement of all relevant facts including any admission or confession, list of documents and witness by which each article of charge is proposed to be sustained and shall require the railway servant to submit a written statement of defence. The Rules by itself are the code for providing a reasonable opportunity to an employee to state his case in conformity with the article 311 (2) of the Constitution. Sub rule 17 of the Rule contemplated that on the date fixed for the enquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer, if any, and may be cross examined by or on behalf of the Railway Servant. The enquiry Officer may also put such questions as he thinks fit. When the case for disciplinary authority closed, the Railway servant shall be required to state his defence orally or in writing as he may prefer. The evidenc on behalf of the Railway servant shall thereafter only be produced. It is the disciplinary

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authority to prove and establish the charge proposed by producing either oral or documentary evidence and not for the charged employee to disprove the charge. In the instant case the enquiry officer took steps contrary to procedure prescribed instead of recording any evidence for disciplinary authority straightway started questioning the charged officer. These examinations took place on 19.10.93 and 20.10.93. In the enquiry on 19th and 20th October 1993 the enquiry officer questioned the charged officer to which he answered. No explanation was called for from the applicant. The enquiry Officer thereafter himself examined the three other witnesses namely D.D.Singh, D.K.Deori and J.N. Bagree. The applicant was not provided any opportunity to cross examine the witnesses. The procedure adopted by the enquiry officer is not only contrary to the rules and also contrary to the fair procedure. The report of the enquiry officer which was submitted to the disciplinary authority did not assign reason except the conclusion given therein. The disciplinary authority mechanically adopted the findings of the enquiry officer. Though the Rules provide for appeal, Sub rule 22 of Rule 19 prescribes that the appellate authority is required to consider the appeal on application of mind. The impugned order of penalty itself indicated that appeal lies with the Sr. DEN/TSK. The applicant preferred his appeal on 11.3.94. Admittedly the appeal was filed within time. The applicant submitted reminders but the appeal of the applicant was not disposed of. Thereafter appeal was disposed by the authority as time barred referring to his appeal dated 3.10.96. The applicant filed his appeal on 11.3.94 through proper channel. The respondents did not go into the merits of the appeal and dismissed the same as time barred. In the departmental proceeding the disciplinary authority is not guided by the Evidence Act, nonetheless such authorities are charged with

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the responsibility of adhering to a fair proceeding. Disciplinary rules are made regulating the procedure and those are rules meant to be abided and not to be breached. It is the duty of the authority to prove and establish the things either by oral evidence or documentary evidence providing fair opportunity to the delinquent officer or his assistants for cross examination. The delinquent officer in this case denied the charges and was the duty of the disciplinary authority to esconse and establish the charge through evidence. In the instant case, as alluded earlier, the disciplinary authority adopted a queer procedure by first examining the delinquent officer when he was not even afforded opportunity to explain his statement. Thereafter the enquiry officer himself examined the witnesses for the disciplinary authority without providing any opportunity to the defence assistant and/or the delinquent officer to cross examine the same. Mr. Sengupta, learned counsel for the Railwayssubmitted that the charged officer was also equally at fault by not putting any question to the witnesses examined by the disciplinary authority. The responsibility was on the disciplinary authority for providing opportunity the the delinquent officer. The alleged lapse of the delinquent officer cannot be a ground for denying a reasonable opportunity to delinquent officer. The perfunctory nature of the enquiry further appears from the communication dated 1.5.2000 from the office of the Divisional Railway Manager (W), N.F.Railway, Tinsukia to the DRM(P), Tinsukia, relating recovery of shortage of Fluorescent Emergeny light. The full extracts of the communcation is reproduced below :

In course of further verification of records it has come to light that Shri B.C.Saikia the then Sr. Clerk was held responsible to shortage of 6 Nos Fluorescent Emergency light and 131 Nos. Blanket light Blue(Superior)from his custody as per enquiry report vide above letter. I has now come to light that out of those 6 No. Fluorescent Emergency light, 3 Nos. were

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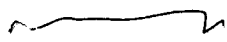
returned by Shri G.C.Gogoi, Ex. DEN/DBRT at W-3 Section under DRM(W)TSK at Tinsukia and that the fact of return of 3 Nos. F/light were not brought to the notice of enquiry officer and so the debitable amount could not be reduced by Rs. 3900.00 (i.e. cost of 3 Nos. F/light @ Rs. 1300/- each) by the enquiry officer.

As these 3 Nos. F/light has been brought into stock, it is necessary to lessen from the recoverable amount by Rs. 3900/-.

DRM(P)TSK may please take necessary action."

4. The aforementioned circumstances also itself shows the slipshod nature of the enquiry. Considering all the aspects of the matter and for the reasons stated above the impugned order dated 3.3.1994 (Annexure XI to the application) cannot be sustained and accordingly the same is set aside, alongwith all the consequential orders thereunder which are also set aside. The respondents are directed to refund the amount so far recovered from the applicant within two months from the date of receipt of a certified copy of this order.

5. The application is allowed. There shall, however, no order as to costs.


(D.N.CHOWDHURY)
Vice-Chairman

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