

Central Administrative Tribunal
Jabalpur Bench

OA No.912/05

Jabalpur, this the 1st day of November, 2006

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Mr.A.K.Gaur, Judicial Member

Jansingh
S/o Bhupsingh
Former Bungalow Peon
Divisional Rail Manager
Ratlam (M.P.).

Applicant

(By advocate Shri A.N.Bhatt)

Versus

1. Union of India
through General Manager
Western Railway, HQ Office
Churchgate, Mumbai.

2. The Divisional Rail Manager
Divisional Office, W.Railway
Ratlam (MP)

Respondents.

(By advocate Shri Anand Pathak)

ORDER

By A.K.Gaur, Judicial Member

The applicant is aggrieved by the order of removal from service as Bungalow Peon at the quarters of DRM, Ratlam. It is alleged in the OA that the applicant was removed from service by DRM, Ratlam in order to accommodate another person of his choice in his place. On the basis of a false and fabricated complaint made on 16.4.05, a charge sheet was issued against the applicant by a Senior Scale Officer on 26.4.05 and on the same day the applicant was suspended. Thereafter the inquiry officer was appointed on 5.5.2005. Inquiry was conducted by one Assistant Personnel Officer who was the appointing

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authority of the applicant. The inquiry report was accepted by the disciplinary authority and the disciplinary authority imposed on the applicant, the penalty of removal from service on the charge of carelessness. Applicant preferred an appeal to the appellate authority. The appeal was rejected. Thereafter the applicant preferred a review petition to the revisional authority on 29.11.04, which was also rejected. Hence the applicant has filed this OA.

2. Learned counsel for the applicant argued that the inquiry officer was biased and his findings were perverse. The applicant was not afforded any opportunity to defend himself by way of examination of defence witnesses or to cross examine them. The disciplinary authority too did not consider any points raised by the applicant nor did he give any reason for arriving at his findings. The appellate authority did not grant him a personal hearing and failed to consider the quantum of punishment. The revisional authority also failed to observe the provisions of Rule 25 (3) read with provisions of Rule 22 (2) (2) (b) of D&A Rules, 1968. The allegation that the applicant misbehaved with one Janitor is farther from truth as the applicant was working in the Bungalow of DRM whereas the Janitor was working in the Divisional office.

3. Respondents have defended their action saying that the penalty of removal from service had been passed after conducting regular departmental enquiry and by the appropriate and competent authorities. Ample opportunity was given to the applicant for producing his witnesses, for cross-examination and for written submission etc. There was no error in the procedure adopted and therefore the punishment is liable to be confirmed. The applicant was working as a temporary worker and his work was not satisfactory. As per DAR Rules, it is not necessary that the appointing authority cannot be the enquiry officer. Regarding the hasty inquiry proceedings, the respondents have contended that inquiry proceedings had to be completed within 60 days and therefore the set time frame had to be complied with by the respondents. As far as opportunity of

personal hearing was concerned, it was the discretion of the appellate authority and that cannot be claimed as a matter of right.

4. The applicant has filed a rejoinder to the reply. It is stated that the charges of misbehaviour and dereliction of duty are vague and since the charges are not proved, it is a case of no evidence. The whole enquiry was defective and the penalty of removal from service was imposed without application of mind. The applicant was deprived of personal hearing. The action of the respondents is in violation of settled law by various courts. The applicant has cited a number of judgements to support his contention.

5. We have heard learned counsel for both sides.

6. Without entering into the merits of the impugned orders, we would like to point out that the review petition preferred by the applicant on 29.11.04 (A-26) has been dealt with and disposed of in a most perfunctory manner without considering any of the grounds taken by the applicant therein. There are as many as 13 grounds taken by the applicant in his revision petition but the revisional authority has not considered any of them.

7. The revisional authority has utterly failed to record sufficient findings for holding that the charges are proved except for the ipse dixit. In view of the decision rendered in the case of Raj Kumar Mehrotra vs. State of Bihar and Ors., reported in 2006 SCC (L&S) 679, the revisional order is not legally sustainable.

8. The Hon. Apex Court in a landmark decision in Ram Chander vs. Union of India and others, reported in AIR 1986 Supreme Court 1173, has held that "the orders of appellate authority as well as revisional authority must be speaking and reasoned orders and should be passed in compliance with the requirement of Rule 22 (2) of the Railway Servants (Discipline & Appeal) Rules. It is a fundamental rule of law that no decision must be taken which will affect the rights of any person without first giving him an opportunity of putting forward his case".

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9. In view of aforesaid observations, we are of the view that the order of the revisional authority deserves to be quashed and set aside. Accordingly the above order is set aside and the matter is remitted to the respondent – the Revisional Authority - for deciding it afresh and pass a reasoned and speaking order, taking into consideration all the grounds taken by the applicant and affording him an opportunity of personal hearing, within 3 months from the date of receipt of this order. Our order will not affect the impugned orders passed by the disciplinary and appellate authorities, as we have not adjudicated upon these orders on merit in view of our observation in para 6 above.

A.K. Gaur
(A.K. Gaur)
Judicial Member

Dr. G.C. Srivastava
(Dr. G.C. Srivastava)
Vice Chairman

aa.

पूठांकन सं ओ/न्या.....जबलपुर, दि.....

परिचयि आये पिता:-

- (1) सविन, उच्च न्यायालय नगर एसोसिएशन, जबलपुर
- (2) आदेशन श्री/मन में, पु.....के काउंसल
- (3) प्रत्यक्षी श्री/मन में, पु.....के काउंसल
- (4) न्यायालय, जबलपुर, न्यायालय नगर

सूचना एवं आवेदन न्यायालय में
उप रजिस्ट्रार

A. R. Bhatt Adv
Ratnam
Anand Prakash
Adv Ind.

पर से पते से 9146
आने पर श्री आनंद पांडे
R17 पत्रों के उच्च न्यायालय
नगर से पते से 9146

15/11/16
उप रजिस्ट्रार
DY. REGISTRAR
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जबलपुर बेंच, जबलपुर
JABALPUR BENCH, JABALPUR

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