

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 691 of 2004

Indore this the 18th day of October 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Vijay Kumar Saini, S/o. Shri Hari Ram Saini,
Aged about 42 years, Pointsman 'A',
Sleemanabad Road, Railway Station, West
Central Railways, R/o. Railway Quarters,
Sleemanabad, (MP).

.... Applicant

(By Advocate – Shri S.K. Nagpal)

Versus

1. Government of India, through
Chairman, Railway Board,
Railway Bhawan, New Delhi.
2. Divisional Railway Manager,
West Central Railways,
Jabalpur (MP).
3. DOM, DRM (Safety)'s Office,
West Central Railway,
Jabalpur (MP).
4. AOM (Vahan), DRM (Safety)'s
Office, West Central Railway,
Jabalpur.
5. Station Master, Sleemnabad Road
Railway Station, West Central Railway,
Sleemnabad (MP).

.... Respondents

(By Advocate – None)



ORDER

By Madan Mohan, Judicial Member –

By filing this Original Application the applicant has claimed the following main reliefs :

“(i) quash the orders dated 27.5.2003 (Annexure A-1) order dated 22.9.2003 (Annexure A-2) and order dated 25.11.2003 (Annexure A-3),

(ii) direct that the applicant be restored to pay scale of Rs. 3050-4590/- with all consequential benefits including arrears of pay and allowances,

(iii) award the interest at the rate of 12% per annum on the amount of arrears of pay, allowances due to applicant.”

2. The brief facts of the case are that the applicant is working as Pointsman-A under the respondents. By memorandum dated 8.8.2002 (Annexure A-4) the applicant was charge sheeted with certain charges. Shri S.S. Virha was appointed as enquiry officer but no presenting officer was appointed by the disciplinary authority to present the case of the applicant on behalf of the Railway administration. The enquiry officer conducted the enquiry and submitted his report on 20.11.2002 (Annexure A-5) and according to the report the charges leveled against the applicant were said to be proved. The applicant submitted a representation against it but without properly considering the representation of the applicant the disciplinary authority has awarded the major penalty by reduction of his pay scale from Rs. 3050-4590/- to Rs. 2650-4000/- and fixing his salary at Rs. 2650/- for a period of three years with cumulative effect. He submitted the appeal which was rejected by the appellate authority vide order dated 22.9.2003 (Annexure A-2). He further submitted an appeal dated 20.8.2003 (Annexure A-9) which was also rejected by the appellate authority vide order dated 25.11.2003 (Annexure A-3). Hence, the Original Application is filed.



3. Since it is an old case of 2004, we proceed to dispose of this Original Application by invoking the provisions of Rule 16 of CAT (Procedure) Rules, 1987. Heard the learned counsel for the applicant.
4. It is argued on behalf of the applicant that the respondents have conducted the enquiry in violation of rules and law. No presenting officer was appointed and the enquiry officer himself acted as the presenting officer and the enquiry officer. Our attention is drawn towards the judgment of the Hon'ble Madhya Pradesh High Court in the case of Union of India & Ors. Vs. Mohd. Naseem Siddique, 2005(1) ATJ 147. Thus, the whole disciplinary proceedings are vitiated and the Original Application deserves to be allowed.
5. We have perused the contentions mentioned in the return in which in paragraph 4.3 it is clearly mentioned that as per DAR part IV-9 item 12 appointment of presenting officer is not mandatory. No prejudice has been caused to the applicant in not appointing the presenting officer. The enquiry is conducted in accordance with the rules and law and the impugned orders are passed by the authorities concerned in accordance with rules and law. Hence, this Original Application deserves to be dismissed.
6. After hearing the learned counsel for the applicant and on carefully perusal of the pleadings and records, we find that it is an admitted position that no presenting officer is appointed during the enquiry proceedings. We have perused the aforesaid ruling cited on behalf of the applicant in the case of Mohd. Naseem Siddique (supra) and in its paragraph 13 it is held as under :

“13. In this case, no Presenting Officer was appointed. The evidence on behalf of the disciplinary Authority has been presented by the Inquiry Officer, by conducting regular examination-in-chief of prosecution witnesses by taking them through the prosecution case. The Inquiry Officer has also conducted regular cross-examination of the defence witnesses. This is not a case where the Inquiry officer merely put a few questions to clarify certain aspects.



The Inquiry Officer has put questions to present the prosecution case and make out the prosecution case. Leading questions suggestive of answers have been put to the prosecution witnesses. The fact that Inquiry Officer acted as the Presenting Officer is not seriously disputed. In fact it is sought to be justified as permissible as per Railway Board circulars. In the circumstances, we find that the inquiry was vitiated."

7. Considering all the facts and circumstances of the case we are of the considered view that the principles laid down by the Hon'ble High Court of MP in the aforesaid case shall mutatis mutandis applicable to be present case as well. Accordingly, the impugned orders dated 27.5.2003 (Annexure A-1), 22.9.2003 (Annexure A-2) and 25.11.2003 (Annexure A-3) are quashed and set aside. The matter is remitted back to the respondents to initiate the proceedings against the applicant from the stage of appointment of the Presenting Officer. The enquiry shall be concluded within a period of six months from the date of receipt of a copy of this order. The applicant is also directed to fully co-operate with the enquiry proceedings.

8. In view of the aforesaid the Original Application stands disposed of. No cots.

(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

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26.10.05