

Central Administrative Tribunal
Jabalpur Bench

OA No.740/04

Indore, this the 19th day of August, 2005.

C O R A M

Hon'ble Mr.M.P.Singh, Vice Chairman

Hon'ble Mr.Madan Mohan, Judicial Member

A.K.Patra

Son of late Damodar Patra

Khalasi

AKT/TSS, C/o P.S.Das, Near

Sharab Bhatti, Devri Khurd

P.S.Torwa, Tah.Bilaspur.

Applicant

(By advocate Shri S.Paul)

Versus

1. Union of India through
The Section Engineer
(Power Supply in charge)
South East Central Railway
Bilaspur.
2. The Chief Electrical Engineer (Principal)
South East Central Railway
Bilaspur.
3. The Additional D.R.M.
South East Central Railway
Bilaspur.
4. The D.R.M. South East
Central Railway
Bilaspur.
5. The General Manager
South East Central Railway
Bilaspur.

Respondents

(By advocate Shri M.N.Banerjee)

ORDER



By Madan Mohan, Judicial Member

By filing this OA, the applicant has sought the following directions:

- (i) To quash charge sheet dated 7.11.2000 (Annexure A1); the enquiry report dated 4.6.2003 (Annexure A2); removal letter dated 21.10.2003 (Annexure A5) and letter dated 22.4.2004 (Annexure A7) and reinstate the applicant with full back wages with effect from 20.11.2003 to his substantial post of Khalsi.

2. The brief facts of the case are the applicant who while working as Khalsi under respondent No.1 was charge sheeted (Annexure A1). He submitted his defence. However, the prosecution story could not be proved and corroborated by the prosecution witnesses themselves. The applicant sought production of original traction sub station logbook of Akaltara Station for the month of October 2000 and the original master sheet. These documents were material to ascertain the fact whether the applicant was present on duty on 4.10.2000, 6.10.2000 in the double shift and other factum of presence on 8.10.2000 to 10.10.2000. Despite the patent error in the enquiry proceedings, the applicant was removed from service vide Annexure A5. On filing an appeal, the punishment was converted into compulsory retirement vide Annexure A7. The punishment awarded is mala fide, vindictive and with ulterior motive and deserves to be quashed. A.K.Pradhan and R.K.yadav have been examined and cross-examined by the Enquiry Officer but they have not stated regarding misbehavior of the applicant with his superiors. The log sheet and attendance register of the disputed period have not been produced and exhibited during the enquiry with deliberate intention. The enquiry was conducted in a partial manner with intention to punish the applicant. The applicant submitted a revision petition, which was rejected vide order dated 11.8.2004 (Annexure A8). This order is a non-speaking order. The revising authority has assigned no reasons. The enquiry officer has acted as a prosecutor. Hence this OA is filed.



3. Heard learned counsel for both parties. It is argued on behalf of the applicant that the enquiry officer has himself mentioned in his report page 7 under sub heading –comments of inquiry officer – that Shri A.K.Pradhan refused in writing to provide the documents asked for by the enquiry officer i.e. the attendance register for the month of October, 2000. Even then the enquiry officer found the charges against the applicant as proved. This report was self-contradictory because when the concerned employee A.K.Pradhan did not produce the said attendance register before him, how the enquiry officer came to the conclusion that the applicant had manipulated his attendance for the period in question? The learned counsel further argued that this documents was utmost necessary to be produced before the enquiry officer and the applicant should have been given an opportunity to peruse it and cross examine in this regard. Our attention is drawn towards 2005 M.P.L.S.R. 61 (DB) - Union of India and others Vs. Mohd.Naseem Siddiqui, decided on 5.8.2004 in which it is held that if the enquiry officer acts as a Presenting Officer, then it would amount to Judge acting as the prosecutor. The learned counsel further argued that the charge of misbehavior by the applicant with his superior is not proved. Hence this is a case of no evidence and the whole departmental proceedings are vitiated and the impugned orders are liable to be quashed and set aside.

4. In reply, learned counsel for the respondents argued that the applicant remained absent from his duty unauthorizedly from 8.10.2000 to 10.10.2000 and shown his attendance as performed shift duty for the said days. Not only that, the applicant had also misbehaved with his in charge while the above fact was pointed out to him to enquire the matter, hence the D&A proceedings was initiated against the applicant. The applicant had tampered with the official records but had also badly misbehaved with his superiors. Hence the punishment order was issued to the applicant. The applicant himself had accepted in his defence statement that he did not perform his duty from 8.10.2000 to 10.10.2000 although he had marked his attendance



as he had performed shift duty. Hence the question does not arise to ascertain the fact whether the applicant has performed his duty for the period in question. The charges against the applicant have been proved. Due opportunity of hearing was given to the applicant and he is not prejudiced by non-appointment of the presenting officer. The respondents have passed the impugned orders perfectly in accordance with rules and law. The revising authority has upheld the punishment of compulsory retirement. Hence the action of the respondents is perfectly legal and justified. This OA deserves to be dismissed.

5. After hearing the learned counsel for both parties and carefully perusing the records, we find that it is the admitted fact that the alleged attendance register was ^{not} produced before the enquiry officer as this fact is also mentioned in the enquiry report itself. The applicant is not accepting the fact that he had sought the attendance register and thereby manipulated the same. Non-production of this register is apparently prejudicial to the right of the applicant to defend himself properly. We have perused the ruling cited on behalf of the applicant, in which the Hon'ble High Court of M.P. has held that appointment of a presenting officer is necessary because according to the High Court, if the enquiry officer acts as a Presenting officer, then it would amount to Judge acting as the prosecutor. It clearly gives an impression of bias. We have perused the impugned order dated 21.10.2003/20.11.03 (Annexure A5) passed by the disciplinary authority; the order dated 22.4.2004 (Annexure A7) passed by the appellate authority and the order-dated 11.8.2004 passed by the revising authority (Annexure A8).



6. Considering all facts and circumstances of the case, we find that the aforesaid orders are liable to be quashed and set aside. Hence the aforesaid orders are quashed and set aside and the matter is remitted back to the department for a fresh enquiry against the applicant in view of the observations made above. The applicant is also directed to fully cooperate with the departmental proceedings. The respondents shall conclude the enquiry within a period of four months from the date of receipt of a copy of this order. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

aa.

पूछावकन सं. गो/बसा.....जबलपुर, दि.....

पति:.....

- (1)जबलपुर
- (2) आदेशककाउंसल
- (3) प्रत्यक्षी श्री/श्रीमतीके काउंसल
- (4) कार्यपालक, सैफ अल, जबलपुर ब्याचपी.उ

सूचना एवं आवश्यक कार्यवाही हेतु

सेप रजिस्ट्रार

E. Paul D. M. B.
M. K. Bunker
D. M. B.

Issued
30/8/05