

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
CIRCUIT CAMP AT BILASPUR

Original Application No. 739 of 2003

Andore, this the 26th day of April, 2005

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

Ajay Kumar Asati,
S/o Shri Motilal Asati,
Date of birth 10.5.1970,
R/o Station Jhalwara,
Post, Katanginagar, District
Rajnagar (M.P.)

APPLICANT

(By Advocate - Shri S.Paul)

VERSUS

1. Union of India
Through General Manager,
South Eastern Railway,
Garden Reach,
Kolkata.
2. Divisional Railway Manager,
South Eastern Central Railway,
Bilaspur Division,
Bilaspur.
3. Additional Division Railway Manager,
(Appellate/Revising Authority)
South Eastern Central Railway,
Bilaspur Division,
Bilaspur.
4. Sr. Divisional Operating Manager,
(Appellate Authority)
South Eastern Central Railway,
Bilaspur Division,
Bilaspur.
5. Divisional Operational Manager(M/L)
(Disciplinary Authority),
O/o Sr. Divisional Operating Manager,
Bilaspur Division,
Bilaspur.

RESPONDENTS

(By Advocate - Shri M.N. Banerjee)

O R D E R

By Madan Mohan, Judicial Member -

By filing this Original Application, the applicant
has sought the following main reliefs :-

"(ii) Set aside the punishment order dated
3.7.2002 Annexure A/1, appellate order dated
17.10.2002 Annexure A/2 and revision order dated
3.3.2003 Annexure A/3 and also the disciplinary
proceedings ;

(iii) Consequently, command the respondents to
provide all consequential benefits to the applicant
as if the impugned disciplinary proceedings is never
initiated/instituted against him;



2. The brief facts of the case are that the applicant was working on the post of Station Master under the respondents. He was served with a charge sheet dated 31.8.2001 (Annexure-A-4) and placed under suspension vide order dated 24.8.2001 (Annexure-A-5) w.e.f. 17.8.2001. According to the applicant no Presenting Officer was appointed by the respondents and the enquiry officer acted as the Presenting Officer and Inquiry Officer in the same capacity. The Enquiry Officer in his report held that charges are found to be proved against the applicant. Thus, he acted as a prosecutor and a judge simultaneously, which is not permissible under the law. None of witnesses have deposed that applicant was in a drunken condition and was not able to perform his duties. After receiving the Enquiry Officer's report (Annexure-A-9), the applicant submitted his reply Annexure A-10. The respondents' vide order dated 3.7.2002 (Annexure-A-1) removed the applicant from service. The applicant has preferred an appeal dated 19.7.2002 (Annexure-A-11) against the order of removal. The said appeal was rejected on 17.10.2002 (Annexure A/2) without assigning any reason. He again preferred an appeal/revision Annexure-A-13 to the Revisional Authority. The Re-visional Authority passed the order dated 3.3.2003 (Annexure-A-3) whereby modified the order of punishment of removal from service and awarded multiple punishment which is not legal. Hence, this OA.

2. Heard the learned counsel for the applicant and respondents.


3. The learned counsel for the applicant has argued that the applicant was not sent for medical examination by the respondents to ascertain the facts as to whether he was in drunken position or not. It is mandatory on their part. The learned counsel for the applicant further argued that the Revisional Authority has modified the punishment awarded

by the disciplinary authority as well as the appellate authority vide its order dated 3.3.2003 whereby awarded multiple punishment which is not sustainable in the eyes of law. He further argued that the respondents have not appointed the presenting officer during the departmental proceeding while it was mandatory. The learned counsel for the applicant has drawn our attention towards a judgement of Hon'ble High Court in the case of Union of Indian and Ors. Vs. Mohd. Naseem Siddique, 2005 (1) ATJ 147. The learned counsel for the applicant further stated that the whole enquiry proceedings conducted by the respondents is against the rules and law. Hence, the impugned orders passed by the respondents are not sustainable in the eyes of law.

4. In reply, the learned counsel for the respondents argued that the respondents have passed the impugned orders after carefully going through the inquiry proceedings as well as the inquiry officers report. The impugned orders are perfectly legal and justified. The learned counsel for the respondents further argued that no multiple punishments are awarded by the revisional authority while passing the order dated 3.3.2003 (Annexure-A-3) and the whole departmental proceedings was conducted in accordance with the Rules and law.

5. After hearing the learned counsel for the parties and on careful perusal of the records, we find that according to the principles laid down by the Hon'ble High Court of Madhya Pradesh in the case of Mohd. Naseem Siddique (supra) it has been held as under :-

"(A) Railway Servants (Discipline and Appeal) Rules, 1968-Rule 9(9)(c)-Disciplinary Proceedings-Natural Justice-Contention that as the Rule uses the word 'may appoint' a Presenting Officer, disciplinary authority has the discretion to appoint or not to appoint a Presenting Officer-Held it is an enabling provision which gives discretion to the disciplinary authority to appoint any railway or other Govt. servant as a Presenting Officer to present the case on behalf of the Disciplinary Authority But the said provision does not permit an Inquiry Officer to act as the Presenting Officer and conduct examination in-chief of the departmental witnesses and cross examine the defence witnesses."




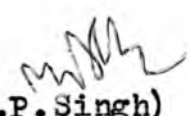
(B) Disciplinary Proceedings-The Inquiry Officer, who is in the position of a judge shall not act as Presenting Officer, who is in the position of a prosecutor.

(F) Disciplinary Proceedings-Natural Justice-Disciplinary authority did not appoint any Presenting Officer-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-Inquiry Officer has also conducted regular cross examination of the defence witnesses-Put questions suggesting of answer supporting the charge-Enquiry held vitiated being violative of principles of natural justice-A person cannot act as prosecutor and judge simultaneously."

The Hon'ble High Court has held in para 14 of the aforesaid judgment that " we find no error in the order of the Tribunal. The Tribunal has reserved liberty to petitioners to resume the inquiry from the stage of appointment of Presenting Officer."

5. After considering all the facts and circumstances of the case we are of the considered opinion that the respondents have not appointed any Presenting Officer and the Enquiry Officer itself played a role of prosecutor as well as the enquiry officer i.e. a judge also. Hence, according to the principles laid down by the Hon'ble High Court of M.P. in the case of Mohd. Naseem Siddique (supra) the impugned orders dated 3.7.2002, 17.10.2002 and 3.3.2003 are liable to be quashed and set aside. We do so accordingly. The matter is remitted back for departmental proceedings against the applicant from the stage of appointment of Presenting Officer and the respondents are also directed that all the facts argued on behalf of the applicant shall be considered during the enquiry proceedings while passing the final order. No order as to costs.


(Madan Monan)
Judicial Member


(M.P. Singh)
Vice Chairman