

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

original Application No. 206 of 2001

Jabalpur, this the 20<sup>th</sup> day of April, 2004

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

Ajit Kumar Jain, S/o. Shri Namichand  
Jain, Date of Birth : 16.6.1962,  
Head Clerck, TRO's Section, Diesel Shed,  
DRM Office, Habibganj Station, Central  
Railway, Bhopal.

R/o. 211, Vaishnav Apartment, Surendra  
Chandra Palace, Opposite Barkatullah  
University, Bhopal.

... Applicant

(By Advocate - Shri S. Paul)

V e r s u s

1. Union of India,  
through its Secretary,  
Ministry of Railways,  
Railway Board, New Delhi.
2. The General Manager,  
Central Railway,  
Mumbai CST, Mumbai.
3. The CMPE (Dal), (Revising  
Authority), O/o. General Manager,  
Central Railway, Mumbai CST,  
Mumbai.
4. The Divisional Railway Manager,  
Central Railway, Bhopal.
5. The Sr. Divisional Mechanical  
Engineer (D), Central Railway,  
Itarsi.

... Respondents

(By Advocate - Shri N.S. Ruprah)

O R D E R

By Madan Mohan, Judicial Member -

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

"(ii) set aside the order dt.28.4.2000 Annexure  
A-1, order dt. 30.4.99 Annexure A-2, order dt. 2.2.99  
Annexure A-3 and order dt. 22.9.1998 Annexure A-4.

(iii) consequently direct the respondents to  
provide all consequential benefits to the applicant  
as if the aforesaid impugned orders are never passed."

2. The brief facts of the case are that the applicant

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Was served with a charge sheet dated 22.9.1998. He submitted his reply to the same on 3.10.1998, denying the charges in toto, and also prayed for the documents annexed with the charge sheet which has not been supplied to him. However, without supplying the documents the enquiry officer was appointed to enquire into the charges levelled against him. The applicant further submitted that no presenting officer was appointed by the disciplinary authority and the enquiry officer himself took the burden to prove the charges against the applicant in the departmental enquiry <sup>act</sup> to/as a presenting officer also. In the departmental enquiry in a very peculiar manner, the enquiry officer asked the questions to the prosecution witness and they said that they agree with the charges against the applicant and are proved. The pre-recorded statement of witnesses were also permitted to be seen by them and without there being any effective examination in chief, the earlier statements were relied upon. This procedure is against the principles of natural justice and is bad in law. It was duty of the Technical Surveyors (Sr. Fuel Inspector) to ensure that the Road Tanker is empty. The applicant being a clerical/ministerial staff is under no obligation to physically see the road tanker and he only relies on the report of the Sr. Fuel Inspector. The enquiry officer found the applicant guilty of the charges. The enquiry officer submitted his report and the enquiry report was supplied to the applicant alongwith a show cause notice dated 18.1.1999 by the disciplinary authority. The applicant preferred a representation, wherein he categorically submitted that the findings of the enquiry officer is perverse in nature and are not based on the basis of statement of prosecution witness and material on record. The applicant requested in the departmental enquiry that Shri S.S. Tiwari be summoned as a witness in the enquiry. But the applicant's

request was turned down without assigning any reason by the enquiry officer. The Department should have conducted a joint enquiry under the RS (D&A) Rules, 1968, because the charges arising out of same incidents were made against Shri S.S. Tiwari. The enquiry officer ignored the statement of Shri Ashwini Kumar. However without considering the representation of the applicant, a punishment of removal from service was inflicted on the applicant. Feeling aggrieved by the said order the applicant preferred an appeal to the appellate authority, which modified the earlier punishment order of the disciplinary authority vide order dated 30.4.1999. The applicant approached the reviewing authority and the reviewing authority further modified the punishment of the applicant to permanent reduction from the post of OS-II (Rs. 5500-9000) to Head Clerk (Rs. 5000-8000/-) fixing the applicant's pay at Rs. 5,000/- for a period of two years with cumulative effect. All the orders passed by the respondents are against the law. Aggrieved by this the applicant has approached this Tribunal by filing this Original Application claiming the aforesaid reliefs.

3. Heard the learned counsel for the parties and perused the records.

4. The learned counsel for the applicant argued and relied on a judgment of the Jaipur Bench of the Tribunal in the case of Gaffor Khan Vs. Union of India and Ors., 2002(3)AISLU 75 wherein the Tribunal has held that "Railway Servants (Disciplinary & Appeal) Rules, 1968 - Examination in Chief- Alleges that during enquiry only a prerecorded statement of witness was shown to him and got confirmed but no examination in Chief was done". It is further discussed in para 7 of the said judgment that the witnesses examined were not

subjected to the Examination-in-Chief but, instead, their statements recorded during the investigations by the PI, quite sometime back, were shown to the witnesses and they were asked whether it was their statement and whether all that is written in these was correct. Thus, according to the learned counsel for the applicant, there was violation of Rule 9(17) of the Rules and this by itself had vitiated the entire enquiry and was a good enough reason to quash the impugned order.

5. Against it the learned counsel for the respondents argued that in view of the judgment of the Hon'ble Supreme Court in the case of State of Mysore and others Vs. Shivabasappa Shivappa Makapur, AIR 1963 SC 375, wherein the Hon'ble Supreme Court has held that "Domestic Tribunal - Inquiry held before - Rules of natural justice - Bombay Police Manual, s.545, cl.(8) - Statements of witnesses recorded in absence of defaulter's presence - Opportunity to cross-examine witnesses given - Rules of natural justice are not violated.", the judgment cited by the applicant can be distinguished. This judgment is a full Bench decision consisting of Hon'ble Five Judges of the Hon'ble Supreme Court. In the present case the witnesses were called and pre-recorded statement (examination in chief) was also read in presence of the applicant and the witnesses confirmed their earlier pre-recorded/examination in chief to be correct. Hence there was no violation of any rule and the procedure followed is not against the principles of natural justice. In this case the applicant was given due opportunity of cross examining the witnesses.

6. It is further argued on behalf of the applicant that no presenting officer was appointed by the disciplinary



authority and the enquiry officer himself took the burden to prove the charges against the applicant in the departmental enquiry as well as he acted as a prosecutor and a judge. This act is against the existing provisions of rule and law and also against the principles of natural justice. One cannot act in both the capacities of a prosecutor and a judge. In this regard our attention is drawn towards the judgment of this Bench of the Tribunal in the case of Ram Singh Vs. Union of India & Others, 1996 MPLSR 128, wherein the Tribunal has held that "no presenting officer appointed and documents proved by producing witnesses - Enquiry Officer combined in himself the role of the Enquiry Officer as well as Presenting Officer - Held, a same person cannot be a prosecutor and a Judge at the same time - Enquiry vitiated." Further our attention was drawn towards the order of 26th February, 2004 in OA No. 152/2000 - Lal Bahadur Singh Vs. UOI & ors. in which the Tribunal held that "the presenting officer was not appointed in the present case and the applicant was set ex parte by declining the request of the applicant's defence assistant for adjournment. Hence we are of the considered view that the enquiry proceeding is vitiated and the orders of the disciplinary authority as well as appellate authority are quashed and set aside and the OA is allowed with no order as to the costs."

7. The learned counsel for the respondents further argued that there was no necessity to appoint the presenting officer in this case. As per rules it is not necessary that there should be a presenting officer always and he further stated that the enquiry officer may also put questions to the witnesses as it thinks fit.

8. The learned counsel for the applicant also argued that it was duty of the Senior Fuel Inspector to check the Road Tanker whether it was empty or not. The applicant was serving as a clerical/ministerial staff. Hence it was not his duty and he only relied on the report of the Senior Fuel Inspector. Hence he is not at all liable to be granted any punishment.

9. The learned counsel for the respondents again argued that the applicant cannot escape himself from his legal responsibility <sup>and</sup> before verifying on the report of the Sr. Fuel Inspector, he should also have examined the Road Tanker. It was not his formal duty to just rely on the report of the Sr. Fuel Inspector.

10. We have given careful consideration to the rival contentions made on behalf of the parties and we find that the pre-recorded statement (examination-in-chief) of the witnesses which were not recorded in presence of the applicant by the enquiry officer, does not cause any prejudice to the applicant in view of the judgment of the Hon'ble Supreme Court in the case of Shivabasappa Shivappa Makapur (supra) as the pre-recorded statement of the witnesses were read out to the witnesses in presence of the applicant and the witnesses confirmed their statements as to be correct and the applicant was also given opportunity of cross-examining the witnesses. Hence no injustice was caused to the applicant. So far as not appointing the presenting officer, we are not convinced with the arguments advanced on behalf of the respondents as there is no necessity to appoint the presenting officer in each and every case. The respondents could not show us any rule exempting the appointment of the presenting officer. However, we are convinced with the argument raised on behalf of the

applicant that the enquiry officer himself can put in questions to the witnesses but he not legally entitle for recording their examination in chief as a whole. The examination in chief of the witnesses shall be recorded by the presenting officer and thereafter the applicant shall have opportunity to cross-examine the witnesses. During the recording of the statements the enquiry officer may himself ask any question to the witnesses in the interest of justice and for good decision in the disciplinary proceedings. He is not debarred from asking any question from the witnesses. We have gone through the judgments relied upon by the applicant in this regard. The arguments raised on behalf of the applicant seems to be just and legal. We also perused the orders of the disciplinary authority, who passed the order of removal of the applicant from service and appellate order and revisional order, wherein the authorities have taken a lineant view against the applicant while passing the orders.

7. Hence we are of the considered opinion that the impugned orders i.e. the orders of the disciplinary authority, appellate authority and revisional authority deserves to be quashed and set aside. Accordingly, the Original Application is allowed and the impugned orders dated 28.4.2000 (Annexure A-1), 30.4.1999 (Annexure A-2) and 2.2.1999 (Annexure A-3) are quashed and set aside. We remand back the case to the disciplinary authority to initiate fresh proceedings from the stage of application of the presenting officer. No costs.

(Madan Mohan)  
Judicial Member

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(M.P. Singh)  
Vice Chairman