

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 408/2002

Jabalpur, this the 25th day of March, 2004

HON'BLE SHRI M.P. SINGH, VICE CHAIRMAN
HON'BLE SHRI MADAN MOHAN, MEMBER (J)

Mohd. Naseem Siddhiqui,
Date of Birth 18.9.1967
S/o late Nazar Mohammad,
Head Booking Clerk (Since removed)
R/o LIG III/394, New Subhash Nagar,
Bhopal (MP).

...Applicant

(By Advocate: Shri V. Tripathi)

-versus-

1. Union of India through
Secretary,
Ministry of Railway,
New Delhi.
2. General Manager,
Central Railway,
Mumbai C.S.T.
Mumbai (M.S.)
3. Chief Commercial Manager
(Appellate Authority)
General Manager's Office,
Mumbai C.S.T.,
Mumbai - 400 001 (M.S.).
4. Divisional Railway Manager,
Central Railway,
Bhopal Division,
Bhopal (MP).

...Respondents

(By Advocate: Shri H.B. Shrivastava)

O R D E R

By Shri Madan Mohan, Member (J):

By filing this O.A. the applicant has sought for the following main reliefs:-


- i) to set aside the punishment order dated 29.10.2001 (Annexure A/1) and appellate order dated 3.4.2002 (Annexure A/2) and the recovery order dated 13th Sept., 2000 (Annexure A/5).
- ii) Consequently, command the respondents to reinstate the applicant with full back wages and other consequential benefits as if the aforesaid impugned orders are never passed.
- iii) The respondents be further directed to refund the amount of recovery already made alongwith interest

on delayed payment.

2. The brief facts of the case are that the applicant was initially appointed on compassionate ground in lieu of his father who died in harness on 8.1.1987 on the post of Commercial Clerk. He was promoted as Senior Booking Clerk in September, 1990 and he was further promoted as Head Booking Clerk w.e.f. 31st March, 1998. His service career had been clean and unblemished, except the present disciplinary proceedings.

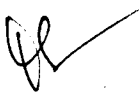
2.1 The applicant was shocked to receive a charge-sheet dated 1.11.1999 under Rule 9 of D&A Rules for imposing a major penalty. The said chargesheet was issued to the applicant on the basis of an alleged incident which took place on 26.2.1997. It is learnt that the said incident was enquired into by the Travelling Inspector of Accounts (For short, TIA) who submitted his report on 29.6.1998. The said fact finding inquiry was conducted by the said TIA, Shri R.K.Sharma. The applicant was not given any opportunity but in the said report, the TIA found the applicant, Shri Albert Tigga and Shri S.K.Dubey, the then Chief Booking Supervisor to be involved on the strength of this fact finding inquiry conducted by the TIA, the applicant is chargesheeted by the chargesheet dated 1.11.1999. But no action had been taken inspite of the report of the TIA against S/Shri Albert Tigga and S.K.Dubey. No chargesheet, show cause notice or punishment is inflicted on them. The applicant alone is picked up and chosen for disciplinary action and an Enquiry Officer was appointed who started enquiry w.e.f. 9.6.2000 after more than three years of delay, without any justification for inordinate and improper delay. The applicant denied the charges in toto and demanded certain documents.

2.2 In the meantime from September, 2000 the department suddenly started recovering an amount of Rs. 4000/- per month from the salary of the applicant. The applicant has categorically submitted that before inflicting and starting recovery from September, 2000 to the tune of Rs. 4000/- per month, no oppor-



tunity of any nature has been given to the applicant. The applicant, at no point of time, has ever admitted that any loss or shortage had taken place because of his mistake. The said illegal recovery continued for 14 months. No recovery could have been made from his bonus but the respondents recovered an amount of Rs. 4680/- from the bonus also. Without affording an opportunity, recovery could not have been imposed on the applicant. It is against the principles of natural justice. On the one hand the recovery continued and on the other hand the disciplinary proceedings were initiated by conducting a major penalty enquiry against the applicant. The applicant preferred a representation and a reminder to stop the recovery but no heed was paid to the said representation and the same were went in vain.

2.3 In the departmental enquiry, no presenting officer was appointed to present the case of the prosecution. The enquiry officer himself acted as a Presenting Officer as well as took the burden to prove the charges on his shoulders. In other words the enquiry officer combined himself as a prosecutor and a judge. The enquiry officer did examination-in-chief of the prosecution witnesses and left no stone unturned to prove the charges as a Presenting Officer against the applicant. Thus, the principle that 'justice is not only to be done but also seen to be done' is grossly violated as well as the principles of natural justice and fairness. The applicant, in the enquiry, preferred a representation whereby he demanded the documents such as Voucher Entry Book dated 26.2.1997 and 27.2.1997 and Cash Remittance Note dated 27.2.1997 and 1st, 2nd 4th, 6th, 7th, 10th and 11th March, 1997. But neither these documents were supplied nor permitted to be inspected by the applicant, while the same were necessary for separating the wheat from chaff and to ascertain as to who is the guilty of the charges.



3.4 The respondents on the pressure and dictate, obtained the statements of witnesses behind the back of the applicant even before conducting the departmental enquiry. All the prosecution witnesses were the railway employees and were working under the Railway Administration and under their pressure they had no other option but to write as per the directions and pressure of the department. The applicant before conclusion of the enquiry submitted his defence brief on 18.5.2001. The enquiry officer submitted his findings which were served on the applicant alongwith show cause notice. Against the said enquiry officer's report the applicant submitted his representation. The disciplinary authority inflicted a major punishment of removal from service on the applicant, vide its order dated 29.10.2001. Feeling aggrieved with the said disciplinary authority's order, the applicant preferred an appeal on 4.12.2001 to the appellate authority, who in turn, rejected the same by order dated 3.4.2002. The enquiry officer has treated the story of prosecution as a gospel truth and without considering the applicant's defence held him guilty. The enquiry officer has completely failed to see the categorical defence of the applicant that there was no entry of alleged double payment in Bhopal Booking Office, Jhansi Cash Office or on Bhaykhala ECCS Society where these records are maintained and were required to be forwarded by Shri Tigga. Thus the whole disciplinary proceedings are bad in law and the punishment is harsh, excessive and disproportionate, and the same is liable to be quashed and set aside.

3. Heard the learned counsel for both the parties and perused the material available on record.

4. It is argued on behalf of the applicant that the whole procedure adopted by the respondents during enquiry was against the mandatory provisions of law as no Presenting Officer was appointed. Enquiry officer alone cannot function



as Enquiry officer as well as presenting officer while conducting the enquiry.

5. Our attention has been drawn to the order passed by this Tribunal on 12.2.2002 in OA No. 271 in the case of D.Nayak vs. UOI & Ors. the relevant portion of which is reproduced below:-

"4. We have given careful thought to the rival contentions of the parties. In our considered view it has not denied that the inquiry has been proceeded against the applicant by appointment of the Inquiry officer but no Presenting officer has been appointed. The prosecution evidence has been presented by the Inquiry officer and in this manner, he assumed the role of a Presenting officer as well as Inquiry officer. In our considered view, the ratio laid down in Ram Singh's case supra that the Inquiry officer cannot act both as a Prosecutor and as a Judge at the same time which is sufficient to vitiate the departmental proceedings."

Our attention has also been drawn to the Tribunal's order dated 30.4.2002 in O.A. No. 463/1996, the relevant portion of which is reproduced as under:-

"5. We have heard the learned advocates for the parties and have gone through the records. This is admitted that no presenting officer was appointed. Our attention was drawn towards the copy of evidence of witnesses recorded by the enquiry officer as Annexure A-2 to Annexure A-7. That indicates that the enquiry officer himself cross-examined the witnesses at length. It is true that an enquiry officer can cross-examine the witnesses to clarify any ambiguity but it does not mean that the enquiry officer would take the place of presenting officer. The learned counsel for the applicant placed reliance on the decision of Principal Bench of CAT reported at (1990) 13 ATC 447 (Brahm Singh vs. UOI & Ors.) where it was held that the cross-examination of witnesses in a disciplinary proceeding by the enquiry officer, vitiated the proceeding as the Enquiry officer assumed the role of both Judge and as Prosecutor. Similar view was taken by this Bench of the Tribunal in case of Ram Singh Vs. Union of India & Ors. reported at 1996 M.P.L.S.R.128."


6. Learned counsel for the respondents has argued that no prejudice has been caused to the applicant by not appointing the presenting officer and has drawn our attention to the judgement of the Hon'ble Supreme Court rendered in the case of State of U.P. & Ors. vs. Ramesh Chandra Mangalik, reported in (2002) 3 SCC 443 in which it is held that:

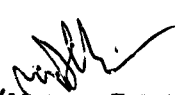
"A. Service Law -Departmental enquiry - Natural justice -

Non-furnishing of copies of relevant documents to delinquent alleged - Delinquent failing to point out any particular document made use of by inquiry officer for establishing the charges, copies of inspection of which had not been allowed by the Department - No submission advanced by the delinquent regarding prejudice which may have caused to him by non-supply of document, if any - Department submitting that no material, for document had been relied upon by the enquiry officer, copy or inspection of which had been not allowed to the delinquent-High Court also had not gone into the question of relevance of the documents, copies whereof said to have not been supplied and consequent prejudice, if any caused to the delinquent - Held, finding of High Court that principles of natural justice have been violated for non-supply of documents to the respondent - delinquent non sustainable."

7. After careful consideration of the rival contentions of the parties, we find that it is not denied that the inquiry has been proceeded against the applicant by appointment of the Inquiry officer but no Presenting officer has been appointed. It is also not disputed by the respondents that the prosecution evidence has been presented by the inquiry officer and in this manner he assumed the role of a Presenting officer as well as Inquiry officer. It is the settled position of law that Enquiry officer cannot act both as Prosecutor and as a Judge. Hence, this is sufficient ground to vitiate the departmental proceedings. The judgements cited by the applicant also support his case rather the judgement cited by the respondents is not applicable to the facts of the present case.

8. In view of discussions made above and reasons recorded, we partly allow this O.A. and set aside the impugned orders dated 29.10.2001 and 3.4.2002 passed by the disciplinary authority and appellate authority respectively. The case is remitted back to the disciplinary authority to conduct the enquiry against the applicant from the stage of appointment of the Presenting officer. No costs.


 (MADAN MOHAN)
 Member (J)


 (M.P. SINGH)
 Vice Chairman

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