

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 592 of 2001

Jabalpur, this the 8<sup>th</sup> day of July, 2004

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

Shri Umesh Chandra Sharma,  
S/o. Shri Mewa Lal, aged 47 years,  
Resident of House No. 1479/2, Samdariya  
Nagar, Kanchghar, Behind Dr. Budhraja,  
Jabalpur. ... Applicant

(By Advocate - Smt. S. Menon)

V e r s u s

1. Union of India,  
through : The General Manager,  
Central Railway, Mumbai.
2. The Additional Divisional Railway  
Manager, Central Railway, Jabalpur.
3. Sr. Divisional Commercial Manager,  
Central Railway, Jabalpur. ... 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  
claimed the following main reliefs :

"(i) quash the entire proceedings resulting in the penultimate order of removal dated 22.1./8.2.2001 (Annexure A-10) and be further pleased to direct the respondents to reinstate the applicant with full back wages together with all consequential and ancillary service benefits."

2. The brief facts of the case are that the applicant was appointed in the year 1979 as a Khalasi and was selected as a Commercial Clerk in the year 1984. He was promoted to the post of Senior Booking Clerk w.e.f. 1991 and continued to function on the said post, until the issuance of the impugned order of removal. The applicant was placed under suspension vide order dated 18.11.1997. The suspension order was revoked vide order dated 9.10.1998. The applicant submits that the suspension was not at all necessitated, in as much as, no memorandum of charge sheet was issued during the said period

and therefore, it was issued with a malafide intention to humiliate and harass the applicant. The applicant was issued with a memorandum of charge sheet on 30.6.1999 enclosing therewith the imputation and statement of charges as also the list of documents and list of witnesses, on the basis whereof the alleged charges were to be proved against him. The applicant submitted his application dated 15.9.1999, requesting to furnish the copies of the documents. The applicant was informed about the appointment of the enquiry officer. The relevant documents were not made available to the applicant. The statement of Shri S.K. Jaiswal & Shri K.C. Rajput, were necessary for preparation of the defence of the applicant but the respondents examined during the preliminary enquiry and that to behind his back. The enquiry was conducted in a most mechanical manner. The enquiry officer did not ponder to adhere to the procedure adumbrated in the Railway Service (Discipline & Appeal) Rules, 1968. The applicant was not made available with the copy of the prosecution brief. The applicant was also not informed as to who is the presenting officer and from the order sheets, it would be evident that the enquiry officer was playing the role of presenting officer, in as much as, he led the evidence of the witnesses. This was in utter violation of the rules and therefore, the entire enquiry is liable to be vitiated. Shri A.N. Mridha, CVI has not been examined and he being the leader of the Vigilence Team and author of the joint statement, it cannot be said that the guilt has been brought home against him. The enquiry officer has submitted his report, wherein he has stated that preliminary enquiry was conducted on 15.9.1999 and the applicant is made to understand that the statements of Shri S.K. Jaiswal and Shri K.C. Rajput were recorded during the preliminary enquiry. The enquiry officer has heavily relied upon the contents of the statements of Shri Jaiswal and Rajput but the said

two witnesses never entered appearance during the departmental enquiry, nor was the delinquent granted an opportunity to cross-examine or retaliate their statements despite the request for furnishing the copy of the statements for preparation of his defence. It is in violation of the principles of natural justice, fair play and equity and since there was a request from the delinquent, the enquiry officer could not have relied upon the statement of the said two witnesses, recorded behind the back of the applicant, to come to a conclusion that the guilt has been brought home against him. The report of the enquiry officer is perverse and illegal. The applicant submitted his representation dated 1.9.2000, wherein he mentioned all the facts. The disciplinary authority failed to consider the points raised by the applicant in his representation and passed the impugned order. The disciplinary authority has gone beyond the scope of the memorandum of charges and before coming to such a conclusion, ought to have given a note of disagreement or at least inform the applicant by giving an opportunity of hearing. Since this was not done, the entire action deserves and is liable to be set aside. Aggrieved by the said order of removal from service on the applicant by the disciplinary authority, the applicant preferred an appeal within the statutory period, which also suffered rejection. The whole departmental enquiry proceedings are not only inoperative, but also unjustified, malafide and also liable to be interfered with by the Tribunal.

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

4. It is argued on behalf of the applicant that the entire procedure adopted by the authorities concerned during the departmental enquiry is in violation of the rules. The

relevant copies of the documents were not furnished to the applicant and he was also not given opportunity to cross-examine the witnesses. The statement of the witnesses were recorded during the preliminary enquiry that too behind the back of the applicant. The main and important witness Shri A.N. Mridha was also not examined. The charges against the applicant are not proved at all by any cogent evidence and the disciplinary authority has not given due consideration on the findings of the enquiry report. He should have dissented it and should have given a dissenting note informing the applicant but the respondents were adamant to punish the applicant without any basis. The applicant preferred an appeal against the order passed by the disciplinary authority. The copy of the order passed in his appeal is not made available to him while he has filed his memo of appeal with this OA. The order of the disciplinary authority is not a speaking order. It is also clear from the order sheets that no presenting officer was appointed by the respondents, and the enquiry officer himself played the role of presenting officer and enquiry officer which is against the law.

5. In reply the learned counsel for the respondents argued that the applicant has only challenged the order passed by the disciplinary authority. He has not challenged the order passed by the appellate authority, while he has preferred an appeal against the order of the disciplinary authority which he has filed with the OA as Annexure A-11. The applicant should have waited for the decision of the appeal or he should have sought a direction to the respondents for issuing the copy of the order passed in the appeal. If the appeal of the applicant was rejected, then he should have made the necessary amendments in the OA. The applicant has not followed all these mandatory requirements/procedures. So far as the

charges are concerned, the same are proved that too by cogent reasons. The case of the applicant is also not a case of no evidence. Hence, the Original Application is liable to be dismissed as having no merits.

6. After hearing the learned counsel for the parties and on careful perusal of the records, we find that in para 4.12 of the OA, it is mentioned by the applicant that the applicant preferred an appeal within the statutory period, dated 19.3.01, which has suffered a rejection. He has filed the copy of the appeal memo as Annexure A-11. In reply to this para 4.12 the respondents have mentioned that the applicant has neither annexed the copy of the appellate order nor discussed the contents of the appellate order in the pleadings. Hence, in these circumstances no specific reply to this para could be submitted. The applicant has also filed a rejoinder, wherein he has mentioned that it is astonishing that the respondents have not averred an iota to the effect whether the appeal preferred by the applicant before the appellate authority has been decided by the said authority and communication made thereof. The applicant has very specifically mentioned that the appeal preferred before the appellate authority, its decision has not been made available to him. It is not only mandatory, but rather obligatory on the part of the authorities concerned to have, in fact, annexed the copy of the order passed by the appellate authority along with the return, instead of putting query to the applicant, because this document is apparently in the possession of the respondents. We have very carefully perused the original disciplinary enquiry record produced by the respondents vide order dated 16.6.2004, when the case was reserved for orders after hearing the parties. In this record at page No. 99 the appeal memo of the applicant is kept which is still pending with the respondents. Hence as the appeal memo of the applicant is still pending with the appellate authority, ends of justice would be met if we direct the appellate authority to decide the appeal of the applicant

within a period of one month from the date of receipt of copy of this order. We do so accordingly. Accordingly, the Original Application stands disposed of. No costs.

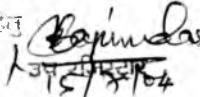
(Madan Mohan)  
Judicial Member

  
(M.P. Singh)  
Vice Chairman

"SA"

पूर्णांकन सं. ओ/व्या..... जबलपुर, दि.....

द्य लिपितापि उच्च दिग्दिवारा:-

(1) संविव, उच्च न्यायालय उ.र. इन्डिया, जबलपुर  
(2) आवेदक श्री/श्रीमती/कु. द्ये काउंसल Smt. S. Menon  
(3) प्रत्यर्थी श्री/श्रीमती/कु. द्ये काउंसल M. N. Banjare  
(4) वायपक्ष, ओ/व्या, जबलपुर अध्यक्ष  
सूचिता एवं आवायालय कार्यकारी द्युति   
15/7/84

Issued  
on 15.7.84  
by