

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 598 of 2002

Indore, this the 10th day of *January*, 2005

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

Laljee Shrivastava, S/o. late
Trivenilal Shrivastava, 52 years, Qr.
No. 99/1, Railway Colony,
Jabalpur (MP). Applicant

(By Advocate – Shri S. Paul)

V e r s u s

1. Union of India, through its Secretary,
Ministry of Railway, Rail Bhawan,
New Delhi.
2. General Manager, South Eastern
Railway, Garden Reach, Kolkata.
3. Chief Operating Manager, South
Eastern Railway, Garden Reach,
Kolkata.
4. Divisional Railway Manager,
South Eastern Railway, Bilaspur
Division, Bilaspur (CG).
5. Sr. Divisional Operating Manager,
South Eastern Railway,
Bilaspur (CG).
6. Divisional Operating Manager (C),
South Eastern Railway,
Bilaspur. Respondents

(By Advocate – Shri M.N. Banerjee on behalf of Shri S.K. Jain)



O R D E R

By Madan Mohan, Judicial Member –

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

“(b) set aside the orders dated 18.11.1998 Annexure A-1, 19-8/8.9.1999 Annexure A-2 and dated 29.12.1999 Annexure A-3,

(c) direct the respondents to pay all consequential benefits to the applicant as if the orders aforesaid have never been passed.”

2. The brief facts of the case are that the applicant was initially appointed on 26.9.1970 as Loco Shed Khalasi. He was promoted as Trains Clerk in the year 1976 and further promoted as Guard in the year 1986. The applicant was served with a charge sheet dated 7.5.1998/15.5.1998 issued by the respondent No. 6. The applicant denied the charges. However, Shri A.K. Satpathi, Assistant Area Manager wrote a letter dated 16.6.1998 by which the applicant was directed to appear in the next sitting of the enquiry scheduled to be held on 26.6.1998. The applicant preferred a detailed representation dated 8.7.1998 in which he pointed out the discrepancies of the charge sheet and demanded time to inspect document and to nominate a defence counsel. The applicant also made allegations against the enquiry officer that he is biased against him and demanded to change the enquiry officer. The respondent No. 5 has considered the representation of the applicant and charge sheet dated 17.5.1998/15.5.1998 was cancelled by order dated 20.7.1998 and a fresh charge sheet was issued on 22.7.1998. Shri A.K. Satpathi, Asstt. Area Manager was appointed as the enquiry officer. The applicant again requested for change of the enquiry officer. But the enquiry officer proceeded with the enquiry and on 10.8.1998 the applicant was directed to submit the name of the defence assistant till 11.8.1998 otherwise ex-parte decision will be taken. The enquiry officer wrote a letter dated 11.8.1998 by which the next sitting of the enquiry was fixed as 22.8.1998. The disciplinary authority rejected the representation of the applicant vide

order dated 10/11.8.1998. The applicant appeared before the enquiry officer on 22.8.1998 and demanded the first finding report and also sought time to go through it and to engage a defence counsel. The request of the applicant was turned down by the enquiry officer and he proceeded ex parte against the applicant. He preferred representation against the enquiry officer's report on 5.9.1998 but the disciplinary authority has passed its order dated 18.11.1998 (Annexure A-1) wherein it was held that the applicant was partly responsible for this major accident and a punishment of reversion from the post of Guard to the post of Sr. TNC in the pay scale of Rs. 4000-6000/- was imposed for two years with non-cumulative effect. Feeling aggrieved the applicant preferred an appeal to the respondent No. 5 on 5.1.1999. Without considering the appeal of the applicant the appellate authority issued a show cause notice dated 18.5.1999 with the intention to enhance the punishment imposed by the disciplinary authority. The applicant submitted his representation against the show cause notice issued by the appellate authority but without giving any opportunity of personal hearing the appellate authority enhanced the punishment vide order dated 19.8.1999/8.9.1999 by reversion for seven years with cumulative effect in place of two years with non-cumulative effect. Thereafter the applicant preferred an appeal to the respondent No. 4 on 24.10.1999. But it was also rejected by the respondent No. 4. The applicant thereafter, preferred a revision petition before the respondent No. 3 which has not yet been decided by the respondent No. 3. The applicant also stated in his OA that no presenting officer has been appointed in the enquiry and the enquiry officer has acted as a prosecutor rather than a judge in the departmental enquiry. The enquiry officer has also taken burden to establish the charges. Aggrieved by this the applicant has filed this Original Application.

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



4. It is argued on behalf of the applicant that the enquiry officer was biased against the applicant as the applicant was a witness in a criminal trial against the said enquiry officer Shri A.K. Satpathi. This fact is evident from Annexure R/J-2 with the rejoinder filed by the applicant. The applicant requested the authorities to change the enquiry officer but despite of the aforesaid ground the enquiry officer was not changed and the enquiry officer submitted his report holding the charges proved against the applicant. The disciplinary authority and the higher authorities should have taken into consideration the representation of the applicant and also should have ignored and rejected the enquiry officer's report. He further argued that during the enquiry proceedings the respondents did not appoint any presenting officer. The enquiry officer himself had taken burden to establish the charge against the applicant as it was a mandatory requirement. The learned counsel for the applicant has drawn our attention towards the judgment of the Hon'ble Madhya Pradesh High Court in WP(S) No. 4874/2004 – Union of India & Ors. Vs. Mohd. Naseem Sidiqi, decided on 5.8.2004, wherein the Division Bench consisting of the Hon'ble Chief Justice and one other Hon'ble Justice held that in absence of appointment of the presenting officer the enquiry is vitiated. He further argued that the respondents have discriminated the applicant with the Driver as the Driver was mainly responsible for the alleged incident. Thus, the impugned orders are non-speaking and have no reasons.

5. In reply the learned counsel for the respondents argued that due opportunity of hearing was given to the applicant and when he did not co-operate with the enquiry proceedings in-spite of due information by the enquiry officer the enquiry officer was bound to proceed with the enquiry ex-parte against the applicant. The punishment of the applicant was enhanced by the appellate authority after giving due notice to the applicant and also after submission of the reply to the said notice by the applicant. Since the charges levelled against the applicant was severe, hence, the punishment was enhanced by the appellate authority. The

applicant was not at all discriminated in comparison with the Driver in awarding the punishment. So far as the appointment of the presenting officer is concerned it is not mandatory for the Railway authorities and the applicant is not at all prejudiced by non-appointment of the presenting officer during the departmental enquiry proceedings. The charges against the applicant are proved and this is not a case of no evidence and the impugned orders passed by the respondents are speaking orders. Hence, this OA deserves to be dismissed.

6. After hearing the learned counsel for the parties and on careful perusal of the records and pleadings, we find that the applicant has filed the rejoinder in which it is mentioned that a complaint was lodged by Mr. N.G. Viswas before the Special Judge at Shahdol against Shri A.K. Sathpathi under Section 3(1)(10) of the Prevention of Atrocity on SC & ST Act, 1989, wherein the applicant was witness against the enquiry officer Shri A.K. Sathpathi. His name is mentioned at serial No. 6 of the list of witnesses. The applicant made several requests in writing to the higher authorities to change the enquiry officer but the respondents have not considered the representations of the applicant. We have perused the judgment passed by the Hon'ble Madhya Pradesh High Court in WP(S) No. 4874/2004 – Union of India & Ors. Vs. Mohd. Naseem Sidiqi, decided on 5.8.2004. In this judgment the Hon'ble High Court has vitiated the enquiry on the ground that no presenting officer was appointed. In the instant case also we find that no presenting officer was appointed and the enquiry officer has acted as a prosecutor rather than a judge in the departmental enquiry and he has also taken the burden to establish the charges.

7. Thus, considering all the facts and circumstances of the case and also in view of the judgment of the Hon'ble High Court referred to above, we are of the opinion that this Original Application deserves to be allowed. Accordingly, the Original Application is allowed and the impugned orders dated 18.11.1998 (Annexure A-1), 19.8/8.9.1999



(Annexure A-2) and 29.12.1999 (Annexure A-3) are quashed and set aside. The respondents are directed to resume the enquiry from the stage of appointment of the Presenting Officer. They are also directed to change the enquiry officer Shri A.K. Satpathi as the applicant has alleged bias against him, as he was a witness in a criminal trial against the said enquiry officer. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

“SA”

पृष्ठांकन सं. ओ/न्यौ.....जबलपुर, दि.....
 दस्तिलिपि अच्ये धितः—
 (1) संघिव, उच्च व्यापारिया यार एरोपीयान, जबलपुर
 (2) आर्केक्य श्री/क्लीवरी/कु.....के काउंसल
 (3) पत्तरी श्री/शीकरी/दु.....के काउंगल
 (4) बंधुवा, कोपाजा, जबलपुर अदालतीठ
 सूचना एवं आवश्यक कार्यवाही देनु
 उप रजिस्ट्रार

*I assed
on 25.01.08*