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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 854 of 2002

Jabalpur, this the 15<sup>th</sup> day of September, 2004

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

T.C. Chouhan, S/o. Shri K.S.  
Chouhan, aged about 59 years, R/o.  
House No. 32, R.S. Convent School  
Building Gali No. 1, Dwarka Nagar,  
Bhopal (MP).

.... Applicant

(By Advocate - Shri S. Paul)

V e r s u s

1. Union of India, through its  
General Manager, Central  
Railway, Mumbai CST, Mumbai.
2. The Divisional Railway Manager,  
Central Railway, Bhopal.
3. The Sr. Divisional Electrical  
Engineer (TRD), Central Railway,  
Bhopal.
4. The Addl. Divisional Railway  
Manager, Central Railway,  
Bhopal.

... 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 :

"(ii) set aside the order dated 6.2.2002 Annexure  
A-8 and also the order dated 25.2.2002 Annexure A-1  
and also set aside the order dated 20.11.2002  
Annexure A-15,

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

2. The brief facts of the case are that the applicant  
while working as a Passenger Driver was served with a  
charge sheet. He denied the charges in toto. The applicant  
came to know that the enquiry officer submitted his  
report to the disciplinary authority, wherein he found




that the charges against the applicant are not established. The disciplinary authority passed the order dated 14.10.1998, wherein he recorded the points for dissatisfaction of the enquiry report of the enquiry officer. He also directed to re-start the departmental enquiry. The letter dated 14.10.1998 shows that he proposed to introduce witnesses who were not part of the enquiry record. The applicant feeling aggrieved with this order filed OA No. 827/2000 before this Tribunal. The Tribunal initially passed an ad interim order at the time of admission of the case. The matter was finally heard and decided by order dated 23rd November, 2001, wherein the order of the disciplinary authority was quashed. However, the disciplinary authority was given liberty to take further action based on the enquiry authorities report as per law and in that even let the proceedings upto the stage of the order of the disciplinary authority be completed within three months from the date of receipt of this order. The disciplinary authority issued an order dated 27.12.2001 to the applicant enclosing enquiry officer's report. The enquiry report shows that the charges are not found to be proved against the applicant. The applicant submitted his representation dated 12.1.02 against the enquiry officer's report. Thereafter the disciplinary authority vide order dated 6.2.2002 again intended to disagree with the enquiry officer's report. The applicant submitted his representation dated 20.2.2002. In the earlier OA filed by the applicant the Tribunal has held that the disciplinary authority is free to pass an order on the basis of material on record. But in the order dated 6.2.2002 the disciplinary authority relied on the material which was not part of the enquiry record. Thus the reasons mentioned in the order dated



6.2.2002 are foreign to the enquiry record and the said reasons are extraneous considerations. Even the joint note cannot be relied upon because the signatory of joint note were not produced in the enquiry nor any witness proved the said document. In absence of any authenticity, corroboration and evidence, the joint note could not have been relied upon. The disciplinary authority vide order dated 25.2.2002 imposed the impugned punishment on the applicant. On perusal of the impugned order it would show that no reasons are assigned as to why the applicant's defence is not trust worthy to the disciplinary authority. The disciplinary authority without assigning any reasons, mechanically and without application of mind inflicted the punishment on the applicant. Feeling aggrieved with the order dated 25.2.2002 the applicant filed OA No. 218/2002. The Tribunal disposed of the OA on 30th April, 2002 with observation that the present original application is pre-mature and the applicant was given liberty to file an appeal to the appellate authority against the order dated 25.2.2002. The applicant preferred an appeal on 8.4.2002 which was decided during the pendency of the present case vide order dated 20.10.2002. By this order the earlier punishment was modified to reduction of pay by two stages for three years without cumulative effect. The grounds raised in the applicant's appeal has not been considered by the appellate authority. This action of the appellate authority is bad in law. Hence, 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 after




conclusion of the enquiry, the enquiry officer submitted his report and exonerated the applicant from the charges levelled against him. But the disciplinary authority vide order dated 14.10.1998 passed a dissenting note against this report of the enquiry officer. Feeling aggrieved by the order of the disciplinary authority the applicant filed OA No. 827/2000. The Tribunal quashed the order of the disciplinary authority with liberty to the disciplinary authority to take further action based on the enquiry report as per law and also observed that the proceedings upto the stage of the order of the disciplinary authority be completed within 3 months from the date of receipt of this order. The disciplinary authority again passed a dissenting note which was replied to by the applicant and thereafter the disciplinary authority imposed the punishment on the applicant. The applicant preferred an appeal which was also decided and the appellate authority modified the earlier punishment to reduction of pay by two stages for three years without cumulative effect. Our attention is drawn towards the order of the Principal Bench of this Tribunal in the case of S.K. Mishra Vs. Union of India and ors., 2004(2)ATJ488. This is a case of no evidence against the applicant. Hence the OA deserves to be allowed.

5. In reply the learned counsel for the respondents argued that the disciplinary authority has issued the second dissenting note after due consideration of each and every fact of the enquiry officer's report and this dissenting note is prepared in due compliance of the order passed by the Tribunal in OA No. 827/2000. on the basis of dissenting note the applicant was given opportunity to submit his reply and he submitted the reply and after



hearing the applicant the impugned order is passed. He further argued that the applicant did not raise any objection regarding the validity and reliability of the said joint note which is the basis of the dissenting note. Hence, the dissenting note issued by the disciplinary authority is perfectly legal. He also argued that the appellate authority has taken a lineant view and reduced the punishment awarded by the disciplinary authority. He <sup>also</sup> stated <sup>that</sup> /no irregularity or illegality has been committed by the respondents while passing the impugned orders.

6. After hearing the learned counsel for the parties and on careful perusal of the records, we find that the Tribunal vide its order dated 23rd November, 2001 in OA No. 827/2000 quashed the impugned order dated 14.10.1998. However, liberty was given to the disciplinary authority to take further action based on the enquiry authorities report submitted in his letter dated 17.8.1998 as per law and in that event let the proceedings upto the stage of the order of disciplinary authority be completed within 3 months from the date of receipt of this order. We carefully perused the order passed in the OA No. 827/2000. In its paræ 5.2 and 5.3 it is made clear that the disciplinary authority cannot advise the enquiry officer to take any additional evidences or to revise the proceedings based on his own views. While in the second dissenting note dated 6.2.2002 the disciplinary authority has based his disagreement on the statement of four witnesses whose names were not in the charge sheet and <sup>name of</sup> only /one witness i.e. Station Master of Bina was mentioned in the charge sheet. Secondly, the disciplinary authority has based his disagreement on the basis of a joint note. The ruling cited by the applicant in the case



S.K. Mishra (supra), it is provided in its para 6 that "from the records, it is established that only a joint note was recorded by the vigilance team and signatures of a passenger obtained on the joint note. No statements of any witnesses were recorded during the vigilance check. Further in its para 11 it is provided that "the authorities have relied upon the joint note recorded at the time of vigilance check on which signatures of a passenger were also obtained. This document has not been proved in the departmental enquiry. The learned counsel for the respondents stated that this document need not have been proved by anyone as its genuineness had not been challenged. The contention of the respondents cannot be accepted. In our view, any document which is produced in an enquiry cannot be validly proved if the maker of that document is not summoned in the enquiry for the purpose of affording a reasonable opportunity to the charged officer to cross examine him." In this case the disciplinary authority relied on the material which was not part of the enquiry record. The joint note cannot be relied upon because the signatory of joint note were not produced in the enquiry nor any witnesses proved the said document. In absence of any authenticity, corroboration and evidence, the joint note could not have been relied upon. Hence, the joint note dated 6.2.2002 (Annexure A-8) is not sustainable in the eye of law. Accordingly, this Original Application deserves to be allowed.

7. Thus, the Orders dated 6.2.2002 (Annexure A-8), 25.2.2002 (Annexure A-1) and 20.11.2002 (Annexure A-15) are quashed and set aside, and the applicant will be entitled for all consequential benefits as if the aforesaid orders are never passed.



8. Accordingly, the original Application stands allowed. No costs.

(Madan Mohan)  
Judicial Member

(M.P. Singh)  
Vice Chairman

"SA"

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....

पतिलिपि भव्ये धितः-

- (1) सतिन, उच्च न्यायालय का एक्सेक्यूटिव, जबलपुर
- (2) आदेशक श्री/श्रीमती/शु .....के कार्यालय Shm S Paul
- (3) प्रत्यक्षी श्री/श्रीमती/शु .....के कार्यालय Shm M N Banerjee
- (4) न्यायालय, के.एम. जबलपुर न्यायाधीश

सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

Issued  
On 20-9-09  
PS