

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

CIRCUIT COURT AT INDORE

Original Application No. 337 of 1997

Indore, this the 14th day of May 2003

Hon'ble Shri R.K. Upadhyaya - Administrative Member.  
Hon'ble Shri A.K. Bhatnagar - Judicial Member.

Ayaz Khan, S/o. Shri Gulam  
Mohammad, Aged about 31 years,  
Working as Sr. Clerk, C/o.  
Station Master, Western Railway,  
Mhow, B. No. 140, Opp. Rly.  
Goods. Mhow (MP)-453 441.

... Applicant

(By Advocate - Shri I.H. Khan)

V e r s u s

1. The Secretary to the  
Government of India, Ministry  
of Railways, New Delhi.
2. Divisional Railway Manager (DRM),  
Western Railways, Ratlam.
3. The Sr. Divisional Operating  
Manager (Sr. DOM), Western  
Railways, Ratlam.

... Respondents

(By Advocate - Shri H.Y. Mehta, Jr. to Shri Y.I. Mehta, Sr.  
Advocate)

O R D E R (ORAL)

By R.K. Upadhyaya, Administrative Member :-

This application has been filed challenging the  
order of punishment dated 11/03/1996 (Annexure A/2) as well  
consequent  
as JKK appellate order dated 06/12/1996 (Annexure A/1).

The disciplinary authority has ordered punishment of with-  
holding of increment for two years with future effect and  
the appellate authority has rejected the appeal of the  
applicant.

2. The applicant while working as CC under SS-Mhow  
during the year 1992 and dealing with the staff payment

*Chintan*

has alleged to have committed certain misconduct of over payment of leave allowance and Kilometerage allowance to some guard. Therefore the charge sheet dated 7th January 1994 was issued. As per this memorandum of charge sheet, an amount of Rs. 4209/- was over paid to Shri Arya on account of mistake of the applicant. The claim of the learned counsel of the applicant is that the entire charges are misconceived as can be seen from the certificate issued by the Station Manager on 11/08/1994 (Annexure A/4). The learned counsel of the applicant further stated that the applicant has not been properly proceeded in pursuance to the issue of charge sheet in as much as the enquiry has not been properly conducted and the enquiry report has been submitted without offering proper opportunity to the applicant for submitting his case. The applicant was not relieved by the Station Master on the ground of exigency of work as is apparent from the letter dated 24/09/1995 (Annexure A/7). The claim of the learned counsel of the applicant is that if the employee is not relieved by his <sup>is d</sup> immediate superior to attend to the enquiry and the enquiry completed without his presence, the order passed by the disciplinary authority deserves to be quashed.

3. The respondents have filed a reply in which it has been stated that the over payment to Shri Arya, Guard is attributable to the applicant only, and this was found out during the preventive check conducted by the Senior Section Officer of his Department and Senior Welfare Inspector, Ratlam. In their preliminary report, both of them have found the applicant responsible for the over payment. The respondents have further stated that the proper procedure was followed and the enquiry officer by his report dated 12/10/1995 (Annexure A/9) has held the applicant

*Ch. B. J. A. M.*

guilty of the misconduct as per charge sheet issued to him. The respondents have stated that annexures A/4 and A/5 are not genuine documents in as much as the Station Superintendent has signed these papers without appreciating the contents thereof in the rush of work. Therefore these papers should not be relied upon. On the other hand, the learned counsel stated that the enquiry report submitted by the inspection team as well as the enquiry officer should not be given due weightage. The respondents have also stated that the applicant has not co-operated in the enquiry as he has not been present on several occasions. Therefore this Tribunal need not interfere with the orders of the disciplinary authority as well as the appellate authority as there is no violation of principles of natural justice or any rules on the subject.

4. Before we give any finding and our decision in this case, it must be recorded that neither of the parties have placed full facts for our consideration. The applicant has not filed the relevant papers whereas the respondents have not produced the enquiry file for our perusal. However at the time of hearing the learned counsel of both the parties, were of the opinion that the matter should be restored for consideration of the revisionary authority who is stated to be Additional Divisional Rail Manager. The applicant is therefore directed to place full facts by way of an application in the form of a revision petition to the revisionary authority for his consideration within 4 weeks from today. If the applicant thus complies with our direction, the revisionary authority is directed to consider the entire facts of the case without raising any objection on the

*C. N. Singhaw*

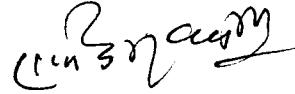
admissibility of the revision petition on the ground of limitation. The fact has to be seen whether the enquiry officer has allowed adequate opportunity to the applicant or not. The annexure at A/7 dated 24/09/1995 clearly indicates that the applicant was not relieved to attend the enquiry proceedings on account of administrative reasons. This may be a case on a particular date. But how many opportunities were given and whether the applicant was prevented on account of administrative reason or some other reason has to be seen and from the totality of the circumstances, it has to be found out whether the enquiry officer has allowed reasonable opportunity to the applicant or not. Therefore the revisionary authority may apply his mind with reference to the original records of the enquiry proceedings and other relevant materials which has been placed before us even in this original application. He may also allow an opportunity of being heard to the applicant before taking a decision in the matter. He is directed to pass a speaking and reasoned order within a period of 4 months from the date of receipt of copy of this order alongwith the revision petition and original application, under intimation to the applicant. Before parting, we may observe that the order of disciplinary authority and the order of appellate authority can hardly be called a speaking order as they do not point out the full facts, arguments advanced by the parties and the reasons for their decision. It is expected that in the future they will try to improve while passing orders in a disciplinary proceeding so that we are not compelled to remand such cases to their higher authorities for reconsideration. During the pendency of disposal of the aforesaid revision petition as per our direction the

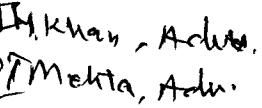
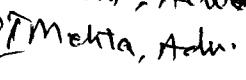


implementation of the order of disciplinary authority and appellate authority may not be complied with and status quo as on today may be maintained till the disposal of the revision petition.

5. In view of our direction in the preceding paragraph this original application is disposed of, without any order as to costs.

  
(A.K. BHATNAGAR)  
JUDICIAL MEMBER

  
(R.K. UPADHYAYA)  
ADMINISTRATIVE MEMBER

प्राप्तिकर्ता सं. ओ/ज्या..... नवलपुर, दि.....  
परिवित्रि अच्युतिः—  
(1) सरिति, उच्या न्यायालय बार एसोसिएशन, नवलपुर  
(2) अधिकारी श्री/श्रीमती/कु. .... के कार्यस्थल   
(3) प्रधानी श्री/श्रीमती/कु. .... के कार्यस्थल   
(4) विधायक, नीदारा, नवलपुर न्यायालय  
सूचना एवं आवश्यक कार्यवाही हेतु

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