

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 686 of 2000

Jabalpur, this the 6th day of May, 2004

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

Prakash Kumar Tandon S/o
Shri Dhansukhlalji Tandon,
aged 57 years Section Engineer
(Works) (Bridge) & (Flood),
Central Railway, Jabalpur, r/o
18 Master Plan, Civil Lines,
Near Old Rojgar Office,
Satna (M.P.)

APPLICANT

(By Advocate - Shri S. Paul)

VERSUS

1. Union of India, through its
Secretary, Ministry of Railways,
Railway Board, New Delhi.
2. Divisional Railway Manager,
Central Railway, DRM Office,
Jabalpur.
3. Additional Divisional Railway Manager,
(Appellate Authority),
Central Railway, DRM Office,
Jabalpur.
4. Senior D.E.N. (CO) (Disciplinary Authority),
Central Railway, Office of D.R. M.,
Jabalpur.
5. The Chief Engineer (Co-Ordination),
Central Railway,
C.S.T. Mumbai,
Mumbai.

RESPONDENTS

(By Advocate - Shri S.P. Sinha)

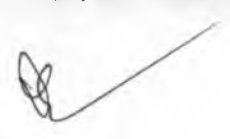
O R D E R

By Madan Mohan, Judicial Member -

By filing this OA, the applicant has sought
the following main reliefs :-

"(ii) Set-aside the charge-sheet, order
dt. 6.1.98 (Ann.A/2) dt. 18.6.99 (Ann.A/9).

(iii) Direct the respondents to provide all
consequential benefits to the applicant as if the
impugned orders and disciplinary proceedings
are never initiated against him."




2. The brief facts of the case are that the applicant while he was working as Inspector of Works ^{Gr. I} (IOW) at Satna under the direct control of A.E.N. during the year 1991-92 a charge sheet had been issue to him the following charges were made against him :-

"Shri P.K. Tnadon, while working as IOW, Gr.I at Satna during the period 1991-92 is charged with gross misconduct and failing to maintain absolute integrity and devotion to duty in as much as that:-

- a) he knowingly and intentionally accepted substandard quality of wood.
- b) he knowingly and intentionally gave misleading statements to vigilance."

An enquiry officer was appointed to investigate the charges levelled against the applicant. The enquiry officer has concluded the enquiry and the charges levelled against the applicant were proved and a copy of the enquiry officer report was forwarded to the applicant to submit his representation. The applicant has submitted a representation dated 2.7.97 to the respondents. The disciplinary authority has taken into consideration the representation of the applicant and the findings of the enquiry officer and thereafter he has imposed the penalty of reduction of pay to lower stage in the scale of Rs. 6500-10500/- for a period of 2 years with cumulative effect. The applicant has submitted his appeal dated 2.6.99 against the order of the disciplinary authority. The appellate authority has modified the order of the disciplinary authority and imposing the penalty of reduction of his pay to the lowest stage in the scale of Rs. 6500-10500/- at Rs. 6500/- for 3 years with cumulative effect. In view of the modified punishment order passed by the appellate authority, the respondents have passed an order dated 2.7.99(Annexure-A-11). The applicant has preferred an appeal to the reviewing authority. Till now the reviewing




authority has not decided the appeal of the applicant. Aggrieved by this, the applicant has filed this OA claiming the aforesaid reliefs.

3. Heard the learned counsel for the applicant and respondents.

4. The learned counsel for the applicant has stated that the enquiry officer was superior in rank than the disciplinary authority and therefore, the disciplinary authority could not have dared to disagree/reappreciate as the findings independently applying his mind. He has further stated that the applicant has requested to the department to summon the then AEN, Mr.B.S. Waliya to clear the picture but, the department did not summon the then AEN. The learned counsel for the applicant has submitted that the Annexure-A-3 clearly mentioned that "AEN is responsible for correctness of m/ment for all works. Wood work and other materials have been traditionally been passed by Astt. Engineer" But, he was not punished.

5. On the other hand, the learned counsel for the respondents has stated that the enquiry officer was from a different department and of a different division and thus there is no question of not daring to disagree or reappreciate the findings by independent application of mind. He has also stated that Shri Walia was interrogated by the vigilance and nothing was found against him. Hence, he was not called nor cited as a witness. In the enquiry against the applicant, the evidence of the AEN Shri Walia was not thought necessary. The learned counsel for the respondents further states that the AEN was not punished because he was not responsible for measurement, correctness, quantity etc and he was responsible for only 20% and the applicant was responsible



for 80%. Therefore, the respondents have not committed any irregularity in the orders passed by them.

6. After hearing the learned counsel for the parties, we find from Annexure-A-3 that "AEN is responsible for correctness of m/ment for all works" and applicant has also requested to the respondents to call the AEN for clarifying the picture. But, he was not called whereas he was main person to clarify the picture. In the reply the respondents have stated that Shri Walia was interrogated by the vigilance and nothing was found against him. Hence, he was not called nor cited as a witness. It seems to be not satisfactory, therefore, the contention of the respondents is rejected. We have also found that the enquiry officer was from a different department and of a different division and thus there is no question of daring to disagree or reappreciate the findings by independent application of mind. However, the argument advanced by the respondents also does not seem to be proper and justified. The enquiry officer must be junior to the disciplinary authority. He may be of any department. If the enquiry officer is senior to the disciplinary authority, the same is neither legal nor justified and it is against the principle of natural justice.

7. In view of the facts and circumstances of the case, we are of the opinion that the impugned orders passed by the appellate authority and disciplinary authority are liable to be quashed. Accordingly, the OA is partly allowed, the order dated 6.1.98(Annexure-A.2) and 7.1.94 (Annexure-A-1) are set aside . The case is remitted back to the disciplinary authority to enquire in-to the matter from the ^Q of appointment of enquiry officer in terms of the ~~of the~~ ^{of the} observation made above.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman