

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 811 of 1999

Jabalpur, this the 24th day of March 2003.

Hon'ble Mr. Shanker Raju - Member (Judicial)  
Hon'ble Mr. R.K. Upadhyaya - Member (Admnv.)

Mangal Prasad S/o Ramadhar,  
aged about 40 years,  
Carr: & Wqn. Khalasi,  
Itarsi, (Compulsory Retired)  
R/o, Ramnagar, Near 'C' Cabin  
Itarsi,  
Distt: Hoshangabad, M.P.

- APPLICANT

(By Advocate - Shri M.R. Chandra)

VERSUS

1. Union Of india,  
Through the General  
Manager, Central Railway,  
Mumbai
2. Divisional Railway Manager,  
Central Railway, Bhopal,  
Distt. & P.O. Bhopal
3. Divisional Mechanical Engineer,  
Central Railway, Bhopal  
Distt. P.O. Bhopal, M.P.
4. Assistant Mechanical Engineer,  
Central Railway, Itarsi,  
P.O. Itarsi, Distt. Hoshangabad.

- RESPONDENTS

(By Advocate Shri N.S. Ruprah)

ORDER (ORAL)

Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 10.6.98 where after an enquiry on disagreement a major penalty of dismissal has been imposed as well as appellate order dated 21.12.98 whereby on appeal punishment has been reduced to compulsory retirement. He has

sought quashment of these orders with reinstatement and all consequential benefits.

2. Applicant who was working as Helper Khalasi was also an active union worker. A minor penalty chargesheet was served upon applicant on 27.3.97 for the allegations contained therein. On enquiry, enquiry officer through his enquiry report could not establish article No.2. The other charges were proved. Disciplinary authority on receipt of reply of applicant to the finding, imposed upon him a penalty of dismissal.

3. On appeal against the order, taking a lenient view, punishment of compulsory retirement has been imposed, giving rise to the present OA. Though learned counsel for applicant Sh. Chandra assails the impugned order on several legal issues, but at the outset, it is contended that although applicant has been exonerated of one of the charges by the enquiry officer, without following the due process of law envisaged under the rules and without recording any tentative reasons and also not affording an opportunity to show cause to applicant, <sup>D.A.M</sup> disagreed with the findings of the E.O. and imposed a punishment on a charge which has not been substantiated by the EO, which violates the constitutional mandate of the Apex Court.

4. On the other hand, respondents' counsel Sh. Ruprah vehemently opposed the contentions and contended that the disciplinary authority has power to disagree with the Enquiry Officer and as sufficient reasons have been recorded in the punishment order there is no infirmity in the order passed.

5. We have carefully considered the rival contentions of parties and perused the material on record. Railway Board through its letter/circular dated 13.9.98 held as follows:

"Hearing while disagreeing with E.O.--If E.O. had given adverse findings, the delinquent is given copy & opportunity to represent on it. It does not stand to reason where the E.O. has given favourable findings which is proposed to be overturned by the DA then no opportunity be granted. First stage of enquiry is till DA passes its findings. Even if the rules do not provide for any hearing in cases when DA disagrees with the E.O. and draws his own findings, such a provision should be read into the rules.

Thus in cases of favourable report by the E.O. if the DA disagrees with E.O. then the D.A. shall form a tentative opinion to disagree, indicate his tentative decision with reasons and intimate the same to employee in the form of a show cause notice, receive his reply, if any, to show cause notice, and pass final orders considering the entire record including his representation."

6. Apex Court in *Yoginath D. Bagde v. State of Maharashtra*, 1999 SCC (L&S) 1385 relying upon the decision of three-Judge bench of the Apex Court in *Punjab National Bank v. Kunj Behari Misra*, 1999 (1) SLJ 271 observed as under:

"31. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry officer into the charges levelled against him but also at the stage at which those findings are considered by the disciplinary authority and the latter, namely, the disciplinary authority forms a tentative opinion that it does not agree with the findings recorded by the enquiry officer. If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of the opinion should be tentative and not final. It is at this stage the delinquent official should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of enquiry officer."

7. If one has regard to the aforesaid ruling and the directions issued by the Railway Board in the event the disciplinary authority disagrees with the findings of the E.O. on any of the charges it is incumbent and obligatory upon him to record his tentative reasons for disagreement and after communicating the same to applicant alongwith the findings in the form of a show cause notice and on receipt of the reply by the delinquent official should pass an order of penalty. This is in consonance with the principles of fair play and natural justice.
8. From the perusal of the order passed by the disciplinary authority it is established that whereas applicant has not been found guilty of one of the charges but the disciplinary authority disagreed with the opinion of E.O. and has come to establish and imposed upon applicant a major punishment. Aforesaid procedure is an anti-thesis to the mandatory guidelines and dictum of the Apex Court which is binding under Article 141 of the Constitution of India.
9. Having failed to observe the principles of natural justice and his failure to record tentative reasons and an opportunity to show cause before passing a final order in the enquiry applicant has been greatly prejudiced as he could not effectively defend the conclusion of the D.A. which is in violation of principles of natural justice and fair play. As the original order of dismissal is not legally sustainable, the appellate order passed has also not taken into consideration the aforesaid procedural illegality which the appellate authority ~~has~~<sup>is</sup> obligated to take into consideration as per Rule 22 of the Railway

Servants (Discipline & Appeal) Rules, 1968. Accordingly the appellate order is also rendered illegal.

10. In the result, OA is partly allowed. Impugned orders are quashed and set aside. Respondents are directed to re-instate applicant in service with all consequential benefits. However, it shall not preclude respondents from proceeding further from the stage of furnishing to applicant the disagreement alongwith tentative reasons, in accordance with law. Aforesaid directions shall be complied with within a period of three months from the date of receipt of a copy of this order. No costs.

11. The other legal contentions though raised are not adjudicated.

*(Signature)*  
(R.K. Upadhyaya)  
Member (A)

*(Signature)*  
(Shanker Raju)  
Member (J)

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पृष्ठान्त में असे/ला ..... जवलपुर, दि.....  
चलित ..... जवलपुर  
(1) ..... के काउंसल  
(2) ..... के काउंसल  
(3) ..... के काउंसल  
(4) ..... के काउंसल  
सूचना एवं आवश्यक कार्रवाई हेतु

*(Signature)*  
N.S. R. Upadhyaya

*(Signature)*  
31.3.03

Issued  
On 31.3.03  
ES