

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI...5

ORIGINAL APPLICATION NO. 143994

MISC PETITION NO. (IN O.A.)
REVIEW APPLI. NO. (IN O.A.)
CONT. PETITION NO. (IN O.A.)

See D.K. Dutta APPLICANT(S)
Vrs.

..... N.C.D. & Ors. RESPONDENT(S)

Mr. J.L. Sarkar, ADVOCATE(S)
FOR APPL.

Mr. G. Chanda

Mr. A. Deb Roy

etc. ADVOCATE(S)
FOR RESPONTS.

OFFICE NOTE	DATE	COURT'S ORDER
	29.7.94	Heard learned counsel Mr J.L.Sarkar on behalf of applicant Shri D.K.Dutta. Perused the statements of grievances and reliefs sought for in this application.
This application is in form and within time. C. N. of Regd. No. 50226 dated 20.7.94 Dated 25.7.94		This application is admitted. Issue notice on the respondents under Registered Post. Copy of the application has been served on Railway counsel Mr B.K.Sharma and he is allowed six weeks time to file counter
<i>for hearing by Registrar (1)</i>		List on 26.9.1994 for counter and further orders.
23-9-94 Replies has been A.I.D to-day.	28/7	Vice-Chairman
23-9-94	PG	
	26.9.94	Mr J.L.Sarkar and Mr B.K.Sharma . At the request of Mr Sharma time to file written statement extended till 4.11.1994.
Replies copies are served on 26-8-94 & sent v.v.t. 6026-28 D. 24.9.94 2-11-94.		Adjourned to 4.11.1994.
<i>26/9 Counter has not been filed by the replies. B.M.</i>	PG	Vice-Chairman

4.11.94 Adjourned to 24.1.1995. Meanwhile liberty to file counter.

W Vice-Chairman

6a Member

Notice duly issued as
R. No. 2, 3 & 4.

pg

24.1.95 To be listed for hearing on 30.3.95.

W Vice-Chairman

6a Member

Counter has not
been filed.

pg

TBZ

29-3-95

19.5.95

Leave note of Mr B.K.Sharma.
Adjourned to 13.7.1995.

6a
Member

W Vice-Chairman

pg

30.3.95
for hearing

TBZ, 19/5

13.7.95 For hearing on
19.9.95.

by order

1) Counter has not been filed.
2) Service Reports are still
available.

1) Counter has not been filed.
2) Service Reports are still
available.

22

OA/IA/GP/PAT/MP No. 143 of 1994

OFFICE NOTE	DATE	ORDER
1) Service Reports are still awaited.		
2) w/ statement - In re Benn (1995)	12.2.96	To be listed for hearing on 20.3.96
<u>19.9.95</u> PPH on 28.11.95	<u>By order</u> Benn	
<u>Benn</u> Counter has not been filled.		
<u>28.11.95</u> Adjourned to 19.1.96.		
<u>By order</u> <u>19.1.96</u> To be listed for hearing on 12.2.96.		
<u>By order</u> Notice duly served on Respondents No. 2, 3 & 4 Counter has not been filled.		

20.3.96

Mr M.Chanda for the applicant.
List for hearing on 20.5.1996.20.5.96To be listed for
hearing on 5.7.96.60
MemberBy order

pg

5-7-96

None present. Written statement
has not been submitted. List for
hearing on 1-8-96.) Notices duly served
on respds no, 2,3 & 4.
) w/statement has not
been filed.60
Member

pg

1-8-96

Learned counsel Mr.M.Chanda for
the applicant. List on 28-8-96 for hearingSD
4/7w/statement has not been
filed60
Member

lm

28.8.96

None present. Written statement has not
been submitted.List for hearing on 24.9.96. In the meantime
the respondents may submit written statement.SD
7/7w/statement has not been
filed.60
MemberSD
7/8Communicate in
both sides.

trd

28/8

24.9.96

None present. Written statement has not
been submitted.List for hearing on 12.11.96. In the meantime
the respondents may file written statement.w/statement has not
been filed.60
MemberSD
23/9

nkm

29/9w/statement has not been
filed

S

12.11.96

None present. List for

hearing on 10.12.96.

6
Member

pg

MV
12/11

10.12.96

Mr. M.Chanda for the applicant.

Mr. B.K.Sharma for the respondents.

Written statement has not been submitted.

List for hearing on 2.1.1997. In the meantime the respondents may submit written statement with copy to the counsel of the applicant.

6
Member

trd

2.1.97

None present. Written statement has not

been submitted. This is a case of 1994 and requires early disposal.

List for hearing on 24.1.97. In the meantime the respondents may submit written statement.

6
Member

10.2.97

nkm

MV

2/1

1) NO. memo or
appearances has
been filed.

6.2.97

Let this case be listed on 20.2.97 for

hearing.

6
Member

Vice-Chairman

trd

MV

10/2

MV
10/2

20-2-97

We have heard Mr. M. Chanda for the applicant. None appears for the respondents. No written statement has also been filed by the respondents.

In the Original Application the applicant has challenged the Annexure III order dated 14-5-93 ¹⁴⁻⁶⁻⁹³ issued by the Sr. Divisional Operation Manager, N.F. Railway, respondent No.3 awarding punishment of stoppage of increments for next 6 months when due and also the Annexure V appellate order dated 24-2-93. Facts are: the applicant was an employee under the N.F. Railway. A Memorandum of charges were served on the applicant on the allegation that the applicant refused to carry out the duty as Guard when called upon ^{and} in consequence whereof the train could not leave in time. He was asked to show cause in writing. Accordingly, on 11-3-93, the applicant submitted his reply against the show cause notice. The Reply was submitted to the authority through the Station Superintendent, New Bongaigaon. As per the provisions of Rules if the explanation, submitted by the delinquent employee, is not satisfactory, a Departmental proceedings is initiated, giving opportunity of hearing and proceeding to give full opportunity to defend ^{him} and thereafter, the disciplinary authority on the basis of the enquiry or on report of the enquiry Officer, shall consider the allegations and the defence taken by the delinquent ~~emp~~ employee and pass appropriate order. The order of the disciplinary authority shall apply its mind and pass a speaking order. If the disciplinary authority finds the delinquent employee guilty may award punishment in accordance with Rule.

Considering the facts and circumstances ^{of the case} if the disciplinary authority find the employee guilty of misconduct

Mukund contd/-

20-2-97

We have heard Mr.M.Chanda for the applicant. None is present for the respondents. Written statement has not yet been filed by the respondents.

In the Original Application the applicant has challenged the Annexure-III order dated 14-5-93 issued by the 14-6-93 Sr.Divisional Operation Manager, N.F. Railway the respondent No.3 awarding punishment by way of stoppage of increments for next 6 months when due and has also challenged Annexure-V appellate order dated 24-2-93. Facts are :

The applicant was an employee under the N.F.Railway. A Memorandum of charges had been served on the applicant on the allegation that the applicant refused to carry out the duty as Guard when called upon and in consequence whereof the train could not leave in time. Applicant was asked to show cause in writing as to why disciplinary action should not be taken against him. Accordingly, on 11-3-93 the applicant submitted his reply to the show cause notice. The reply was submitted to the authority through Station Superintendent, New Bongaigaon. As per rule if the explanation is not satisfactory, a Departmental proceedings is ~~may be~~ initiated giving full opportunity to the delinquent employee to defend his/her case. Thereafter, disciplinary authority on the basis of the enquiry report of the Enquiry Officer shall take a decision after considering the entire matter and thereafter pass appropriate order. The disciplinary authority should apply its mind and pass a speaking order. If the enquiry Officer finds the delinquent employee guilty of charges, and the disciplinary authority agrees to the finding of the Enquiry Officer the disciplinary

20-2-97 authority shall award punishment in accordance with the rule.

In the present case we are surprised to see that an exparte order was passed by the disciplinary authority after inordinate delay. The disciplinary authority did not make any endeavour to examine the correctness of the allegations. Besides the appellate authority also passed the impugned order without giving any reason. The appellate authority simply agreed with the disciplinary authority without recording any reason. Therefore, this cannot be said to be an appellate order.

Please compare
order dated 20.2.97.

in 8/5/97.

In view of the above we are of the opinion that the Annexure III & V cannot sustain in law. Accordingly, we set aside the order.

6
Member

J. S. B.
Vice-Chairman

13.5.97

lm

8/5

copy of the order
has been sent to the
S/Chairman for review
in view of the party

of file No. 1733 to 1738

dt. 15/5/97