

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.2299/2003

This the 2nd day of September, 2004.

**HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)**

Gurmail Singh,
Retd. Divisional Electrical Engineer,
Northern Railway, Moradabad.
R/O C-117, Sector-D,
LDA Colony, Kanpur Road,
Lucknow.
Applicant
(By Shri B. S. Maine, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Railways,
Rail Bhawan, New Delhi.
2. General Manager,
Northern Railway,
Baroda House, New Delhi.
3. Divisional Railway Manager,
Northern Railway,
Moradabad.

Respondents
(By Shri Shailendra Tiwari, Advocate)

O R D E R (ORAL)

Hon'ble Shri V. K. Majotra, Vice-Chairman (A) :

Penalty of 20% cut in the monthly pension for a period of three years vide order dated 31.3.2003 (Annexure A-1) imposed upon the applicant in disciplinary proceedings under rule 9 of the Railway Servants (D&A) Rules, 1968 has been challenged here.

2. The following charge had been leveled against the applicant.

"That the said Shri Gurmail Singh while working WEE/AMV/Lucknow during the year 1992 committed misconduct in as much as :

He having been nominated as evaluator of Answer Sheets by Dy.CEE/CB/LKO for the selection for the post of intermediate App. Mechanic TL Group Gr.Rs.1400-2300 (RPS), written test for which was held on 25.3.1992, failed to explain as to how the answer sheets of the candidates S/Shri Birender Baboo (Virendra Babu) and OP Gupta differed to the answer sheets of other candidates appeared in the said selection leading to doubt that these were managed subsequent to the date of written examination as the print of Northern Railway was not available in their answer sheets papers as given to candidates in the Examination Hall and, therefore, stands indicated for his act of rendering out of the way external assistance to the above said successful candidates as established in CWM/CB/LKO's investigation report dated 3.6.1992 wherein it was implied that unfair means were used by the two successful candidates.

Thus by his above act of omission and commission, the said Shri Gurmail Singh failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of the Railway Servant thereby contravening Rule 3.1 (i), (ii) & (iii) of Railway Services (Conduct) Rules, 1966."

3. The learned counsel of applicant raised the following contentions :

- (1) Though it is obligatory to supply documents demanded by the charged officer including statements made by witnesses during the preliminary enquiry, the enquiry officer did not supply the same but they were relied upon for proving the charge against the applicant. The learned

W

counsel particularly referred to the statement made by Shri O.P.Gupta in the preliminary enquiry, as Shri Gupta had not been examined in the regular enquiry. In support of his contention, the learned counsel relied upon **State of U.P. v. Shatrughan Lal & Anr.** (1998) 6 SCC 651.

(2) The report of the 'Union Public Service Commission (UPSC) was communicated to the applicant along with the impugned order passed by the disciplinary authority. He contended that advice of UPSC was relied upon by the disciplinary authority and its non-supply to the applicant before passing of the final orders in the disciplinary enquiry was a handicap for the applicant to make an effective representation before the disciplinary authority before imposition of the penalty. In this behalf, the learned counsel relied upon order dated 30.1.2004 passed by the Hon'ble Supreme Court in Civil Appeal No.642 of 2004 (arising SLP (C) 12188/2003) : **S. N. Narula v. Union of India & Ors.**

4. The learned counsel of respondents contended that applicant had been provided full opportunity to present his case as has been stated by the enquiry officer in the enquiry report and as such he cannot be allowed to take this objection that he had not been supplied a copy of the statement of O.P.Gupta in the preliminary enquiry. The learned counsel of applicant could not deny that the UPSC's advice was made available to the

applicant along with the impugned orders passed by the disciplinary authority.

5. We have considered the contentions of both sides as also the material on record.

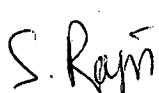
6. Annexure A-1 dated 31.3.2003 has been addressed by the respondents to the applicant enclosing copy of the impugned orders as also the UPSC's advice. It is clear that UPSC's advice was not made available to the applicant before final decision was taken by the disciplinary authority. It was communicated only along with the final order passed in the matter by the disciplinary authority. The Hon'ble Supreme in the matter of S.N.Narula (supra) has held that the UPSC's report has to be communicated to the delinquent before the final orders are passed by the disciplinary authority.

7. The name of O.P.Gupta is not included among the list of witnesses enclosed with the articles of charge against the applicant. Obviously, the statement of O.P.Gupta had been recorded during the preliminary enquiry against the applicant. UPSC has observed in its report that clinching evidence has come from the testimonials of Shri Virendra Babu and Shri O.P.Gupta. The names of both these persons are not included in the list of witnesses. It is not respondents' case that statements of these witnesses were supplied to the applicant, but these have obviously been relied upon by the UPSC whose report in turn has been relied upon by the disciplinary authority. Non-supply

of these documents to the delinquent has greatly prejudiced the case of the delinquent. Obviously, he was unable to make an effective defence in the absence of the documents relied upon by the respondents.

8. In the light of the above discussion, it is established that respondents have acted against the principles of natural justice in not supplying copies of the statements recorded in the preliminary enquiry against the applicant, particularly of O.P.Gupta, and also in not supplying copy of the advice of UPSC before passing final orders. These omissions/Commissions on the part of the respondents have prejudiced the defence of the applicant.

9. In result, the OA is allowed and Annexure-A dated 31.3.2003 imposing penalty of cut in pension upon the applicant is quashed and set aside with consequential benefits.


 (Shanker Raju)
)
 Member (J)
 (A)


 (V. K. Majotra)
 Vice-Chairman 2.9.04

/as/