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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 2558/2003
M.A. NO. 2283/2003

This the 28th day of April, 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-226012.

... Applicant

(Shri B.S. Mainee, Advocate)

-Versus-

1. Union of India through
Secretary, Railway Board,
Ministry of Railways, Rail Bhawan,
Raisina Road, New Delhi-110001.

2. General Manager,
Northern Railway, Baroda House,
New Delhi-110001.

... Respondents

(By Shri Shailendra Tiwari, Advocate)

ORDER (ORAL)

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

M.A. NO. 2283/2003 seeking condonation of delay is
allowed.

2. Applicant retired as Divisional Electrical
Engineer on 31.12.1994. Disciplinary proceedings were
initiated against him on 7.5.1996 for the following
charges :

"Shri Gurmail Singh, while working as DEE/MB
during 1993 committed serious irregularities
in execution of contract No.0/DEE/MB/92
regarding erecting of 11 Nos. of rails poles
with replacement of over head ACSR conductor
and supply, laying of cables of different

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sizes, rewiring of NRR building at Hardwar, Raiwala and Virbhadra stations inasmuch as:

3) That he accepted the dropping of items of SOR i.e. all MCCB for which the lowest tender was rejected thereby vitiating tender proceedings and causing loss of Rs.43,200/- (approx.).

4) That he gave wrongful gain to the contractor to the tune of Rs.41,000/- by passing bill for distribution boxes for MCCBs which were not provided by contractor.

By his above acts of omission and commission Shri Gurmail Singh, DEE/MB (Retired) failed to maintain absolute integrity, exhibited lack of devotion of his duty and thereby committed grave misconduct and acted in a manner unbecoming of a Railway servant thereby contravened Rule 3.1(i), (ii) and (iii) of Railway Service (Conduct) Rules, 1966."

3. The enquiry officer's report held charge 1 as not proved, however, the disciplinary authority disagreed with him and held charge 1 as proved against the applicant. The President ultimately held that some blame in respect of charge 1 is definitely attached to the conduct of the applicant. However, considering the same as not a grave misconduct, the proceedings for cut in pension were dropped and the Government's displeasure was communicated to the applicant. Applicant has challenged these orders. Learned counsel of the applicant has stated that in memorandum of disagreement (Annexure A-4) the disciplinary authority differing with the enquiry officer, instead of arriving at a tentative conclusion, held the charge as proved to an extent on the basis of which Government's displeasure was ultimately communicated to the applicant after his retirement.

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4. Learned counsel of the respondents, on the other hand, contended that no procedural irregularity has been committed on behalf of the respondents and a portion of charge 1 has been fully proved against the applicant on the basis of which the Government's displeasure has been communicated to the applicant.

5. It has been held in the case of **Yoginath D. Bagde v. State of Maharashtra**, 1999 (7) SCC 739 that opportunity of hearing has to be accorded to the charged employee before reversing the findings of the enquiry officer. Disciplinary authority before forming its final opinion has to convey to the charged employee its tentative reasons for disagreeing with the findings of the enquiry officer. In the present case, while the enquiry officer had held charge 1 as not proved against the applicant, the disciplinary authority had communicated the following memorandum of disagreement with the findings of the enquiry officer :

Charge IO's DA findings (Board)'s findings	Reasons for DA's disagreement
Cha-I Not proved	Proved
	<p>The IO held the charge as not proved accepting the CO's plea that items 23, 24, 25 & 28 were dropped on a letter written by Sr. Elect. Foreman, Sh. P.C.Sharma to him and that he (Sr. EFO) has discussion with him when Sr. EFO told him that this part of the work had been done departmentally by the former DEE, Sh. Chawla during Ardh Kumbh Mela.</p> <p><u>W</u></p> <p>This is not acceptable as it is seen from the perusal of the relevant records of</p>



exhibits taken as P-1 during the inquiry viz. Sr. EFO/HW's letter No. WO No.331/92 dated 10.3.1993 addressed to DEE/MB and variation statement prepared by SEFO/HW that the CO had agreed to the proposal for dropping items 23, 24, 25 & 28 without any reason except for Sr. EFO's remarks that "the existing switch room on plat form No.1 at HW will be able to cater the need hence deleted." The reason that these items had already been provided during Ardh Kumbh Mela held in previous year, which has been accepted by the IO has nowhere been mentioned and therefore, is considered after thought. The CO deleted the items without proper application of mind. He, as manager of contract should have examined this aspect in greater detail because it had led to vitiation.

Therefore, the charge is held as proved against Shri Gurmail Singh to the extent indicated above.

6. The perusal of the memorandum of disagreement clearly indicates that the disciplinary authority had taken a final decision and held the charge as proved. It is not a tentative conclusion and does not meet the requirement of law because final decision to disagree with the enquiry officer had already been taken before communication of the show cause notice. Such a post-decisional hearing is of no avail in the circumstances of the present case. In our view it is unnecessary to dwell upon the other contentions raised in this OA when the OA can succeed on this ground alone that instead of a tentative conclusion, the disciplinary



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authority had taken a final decision to disagree with the enquiry officer before issuing the show cause notice. Certainly, the applicant's defence has been severely prejudiced the final decision to hold the charge as proved having already been taken by the disciplinary authority.

7. In result, the OA is allowed and the impugned order Annexure A-1 dated 7.12.2001 is quashed and set aside. No costs.

S. Raju

(Shanker Raju)
Member (J)

V. Majotra

(V. K. Majotra)
Vice-Chairman (A)

28.4.04.

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