

(2023) 11 CAT CK 0002

In the Central Administrative Tribunal

Case No : Original Application No. 358 Of 2012

Rajendra Singh

APPELLANT

Vs

Union Of India Through General Manager, North Eastern
Railway, Gorakhpur & Ors

RESPONDENT

Date of Decision : 01-11-2023

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Railway Servants (Discipline And Appeal) Rules, 1968 — Rule 9, 9(21), 22(2)(C), 22(3) (V)

Central Civil Services (Classification Control And Appeal) Rules, 1965 — Rule 14(18)

Citation : (2023) 11 CAT CK 0002

Hon'ble Judges : Om Prakash VII, Member (J); Mohan Pyare, Member (A)

Bench : Division Bench

Advocate : Vinod Kumar, S.C. Mishra

Final Decision : Allowed

Judgement

Om Prakash VII, Member (J)

1. The present original application has been filed by the applicants under section 19 of the AT Act, with the following reliefs:-

“(a) To issue an order or direction in the suitable nature quashing the impugned punishment order dated 04.08.2011 and the notice dated 02.03.2012 to enhance the punishment Annexure A1 and A2 respectively to the present Original Application.

(b) To issue an order or direction in the suitable nature commanding the respondents to produce order if any passed in pursuance to impugned notice dated 02.03.2012 or any other consequential order passed by them against the applicant in present controversy, and Hon'ble Tribunal further be pleased to quash the same.

(b)(i) To issue an order or direction in the suitable nature quashing the order

dated 18.5.2012 Annexure A-2 –B to the present original application.

(c) To issue an order or direction in the suitable nature of mandamus commanding the respondents to pay the applicant his regular monthly salary along with arrears of salary treating the impugned punishment order and all the departmental proceedings null and void ab initio with all consequential benefits along with market rate of compound interest.

(d) To issue an order or direction in the suitable nature of punishing suitably the private respondents and any other authority who has arbitrarily harassed the applicant without any rhyme or reason.

(e) To issue any order or direction, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

(f) To award the cost of the application to the applicant".

2. The brief facts of the case are that applicant was duly selected as Gangman on the basis of panel recommended through employment exchange Bareilly and was posted under P Way Inspector Budaun where he joined his duties on 18.11.1983. Thereafter he was selected on the basis of 10% departmental quota for N.E.R. Workshop, Izatnagar, Bareilly and he joined the aforesaid workshop in the year 1985. Further applicant got a number of promotions and lastly promoted as Technician Grade I. While the applicant was on duty respondent No.8 came on the place where the applicant was busy in his duty, started badly abusing him with filthy and obscene language about his caste, as well as his family members and parents. In response to this, applicant objected about misbehaviour but respondent No. 8 instead of withdrawing his misbehaviour started cruel assault against the applicant. On account of aforesaid assault, the applicant was admitted in the Railway Hospital for four days. On the malafide report of respondent No. 5, who himself recorded the statement of the applicant as well as other employees, applicant was served upon a memorandum/chargesheet for major penalty dated 31.12.2010. Applicant submitted his reply dated 07.01.2011 against the aforesaid memorandum denying the charges framed against him. Disciplinary Authority appointed Inquiry Officer to enquire the conduct of the applicant. Without following Rule 9 of Railway Servants (Discipline and Appeal) Rules 1968, Inquiry Officer submitted enquiry report dated 12.05.2011. The aforesaid enquiry report was made available to the applicant only on 7.6.2011 along with covering letter. Applicant filed his representation dated 20.06.2011 against the enquiry report. Disciplinary Authority (respondent No. 4) has passed the punishment order dated 04.08.2011 imposing the punishment of reduction in rank as well as reducing the pay of the applicant by more than 50% of the pay which he was getting for a period of 6 years with cumulative effect. Applicant filed his appeal dated 07.09.2011 against the punishment order. When respondents failed to decide the appeal of the applicant for a long time, applicant submitted a legal notice dated 02.03.2012. Thereafter appellate authority after considering the appeal of the applicant proposed to enhance the punishment of

the applicant. Appellate Authority enhancing the punishment imposed upon the applicant for recovering the damage cost passed fresh order. Through this OA, applicant is challenging the orders of disciplinary authority and order of appellate authority.

3. We have heard the learned counsel appearing for the parties and have gone through the entire record carefully.

4. Submission of the learned counsel for the applicants is that respondents have pressurized the applicant while recording the statement due to his ill health and also abnormal mental condition. Learned counsel further submitted that respondent No. 7 has not applied his mind while enquiring the matter. He examined the witnesses whose names were not in the list of witnesses. Learned counsel also submitted that respondents must have examined the main witnesses first then they can examine the other witnesses.

5. Learned counsel for the applicant contended that applicant has not been provided opportunity to cross examine the witnesses. He has also pointed out his grievance before the Disciplinary Authority and appellate authority but same was not acceded to. Learned counsel further contended that Appellate Authority in its order travelled beyond the memo of charges. Learned counsel also contended that copy of fact finding report and witnesses statement were not supplied to the applicant despite repeated requests.

6. Submission of learned counsel for the applicant is also that Inquiry Officer has not examined the applicant, thus he has violated the provision of Rule 9 (21) of the Railway Servants (Discipline and Appeal) Rules, 1968. It is also argued that provision of Rule 9 (21) of the Railway Servants (Discipline and Appeal) Rules, 1968 is an analogues provision to the Rule 14 (18) of CCS (CCA) Rules, 1965 which is mandatory in nature.

7. It is also argued that since examination of the applicant/charged officials in case he/she has not examined himself/herself after closing of the prosecution evidence is must, which has not been followed, thus, the entire inquiry proceeding has been vitiated on this count.

8. Learned counsel for the applicant has placed reliance on the following case law:-

“(i) State of U.P and others Vs. Saroj Kumar Sinha reported in 2010 LawSuit (SC) 42;

9. In rebuttal, learned counsel for the respondents further submitted that fact finding enquiry report has been provided to the applicant during the course of enquiry. Learned counsel also submitted that applicant has cooperated in the enquiry and his statement was recorded and also no pressure tactics was adopted while recording the statement. Learned counsel further submitted that whole disciplinary proceeding has been conducted in terms of Rule 9 of the Railway Servants (Discipline and Appeal) Rules 1968 and applicant has been

accorded full opportunity to cross examine the witnesses as well as adduce his evidence.

10. Learned counsel for the respondents further contended that there is no provision in Railway Servants (Discipline and Appeal) Rules 1968 that punishment passed by the Disciplinary Authority cannot be implemented on account of pendency of the appeal. Learned counsel further contended that show cause notice for enhancement of punishment dated 2.3.2012 has been correctly issued by the competent authority as per provision of Rules 22 (2) (c) read with Rule (V) of Sub rule 3 of Rule 22 of Railway Servants (Discipline and Appeal) Rules 1968, as such there is no illegality in issuing the aforesaid show cause notice. Learned counsel for the respondents also argued that if Inquiry Officer has not examined the applicant, no prejudice is caused to him. This fact has been raised for the first time before this Tribunal.

11. We have considered the rival submissions of the parties and perused the entire record.

12. The aspects, which are required to be adjudicated in the instant case are whether inquiry was conducted in accordance with the statutory provisions or not and whether the punishment that was imposed during and after the conclusion of inquiry was just and appropriate and also respondents have followed Rule 9 (21) of Railway Servants (Discipline and Appeal) Rules 1968.

13. Undisputed facts are that the deceased employee while working with the respondents' organization was served with the charge sheet. The enquiry was conducted and the Inquiry officer submitted its report. Inquiry Officer has found that all the charges leveled against the applicant stand proved. The copy of the enquiry report was duly communicated to the applicant and after the receipt of the enquiry report, the applicant has given a reply. Considering the points raised by the applicant in his reply, the disciplinary authority passed an order of reduction in rank as well as reducing the pay of the applicant by more than 50% which he was getting for a period of 6 years with cumulative effect by order dated 04.08.2011. Aggrieved against the order of disciplinary authority, applicant submitted an appeal to the Appellate Authority and the appellate authority has also considered the appeal of the applicant along with report of the enquiry officer as well as punishment imposed by the disciplinary authority and proposed to enhance the punishment imposed upon the applicant.

14. Perusal of the order passed by the Appellate Authority also reveals that no charge regarding damages which have been imposed by Appellate Authority has been served to the delinquent official. Thus, imposing of punishment regarding damages occurred to the Railway itself becomes untenable because no opportunity to defend himself to the delinquent official has been afforded before imposing such type of penalty.

15. In this matter, it is also evident from the record that the statement of the applicant/charged official was recorded at the beginning of the enquiry,

thereafter statement of the prosecution witnesses were recorded. It also transpires from the record that on dated 5.2.2011, letter was issued in the enquiry proceeding to the charged official to appoint advisor and also to file written reply on the charge-sheet as well as to give details of the evidence said to be adduced in support of the defence, thereafter a date i.e. 22.2.2011 was fixed. On the date fixed in the matter i.e. 22.2.2011, charged official appeared before the Inquiry Officer and gave the name of the advisor then the next date i.e. 4.3.2011 was fixed, on which date applicant appeared before the Inquiry Officer along with his advisor, his statement was recorded and next date was fixed. On dated 12.3.2011 again statement of the applicant was recorded and next date was fixed as 22.3.2011. On the said date, statements of some of the witnesses were recorded and next date was fixed as 31.3.2011, on which date statement of complainants Shri Ram Singh Yadav was recorded. Inquiry Officer has also recorded on this date the statement of Chhotey Lal Yadav the witness belonging to the prosecution and next date was fixed as 4.4.2011. No proceeding took place on the said date. On dated 15.4.2011, Inquiry Officer recorded the statement of D.C. Dubey, the prosecution witness and next date was fixed on 29.4.2011. On this date applicant was afforded opportunity to cross examine from the witness Shri Ram Singh Yadav, whose statement has already been recorded on dated 31.3.2011. On the next date fixed in the enquiry, statement of Shri H.P Gautam, the prosecution witness was recorded and he was also cross examined by the applicant. It also appears that on dated 11.5.2011, again prosecution witness Shri Ram Singh Yadav was cross examined. Enquiry report is submitted on dated 12.05.2011 without affording opportunity to adduce defence evidence as would be clear from the enquiry report itself.

16. If submission raised on behalf of the applicant that documents relating to the fact finding enquiry have not been supplied to the applicant, is taken into consideration in light of the fact disclosed in the enquiry report, it can be seen that enquiry report or charge-sheet issued in the matter do not indicate that the aforesaid documents were supplied to the applicant at any point of time. It appears that when prosecution evidence was closed, no opportunity to adduce the defence evidence was given to the applicant. It is also evident from the record that no statement of the applicant/charged official was recorded after closing of the prosecution evidence under Rule 9 (21) of the Railway Servants (Discipline and Appeal) Rules, 1968.

17. Hon'ble Supreme Court in the case of Saroj Kumar Sinha (supra) in para 32 to 36 have held as under:-

"32. This Court in the case of Kashinath Dikshita Vs. Union of India (1986) 3 SCC page 229, had clearly stated the rationale for the rule requiring supply of copies of the documents, sought to be relied upon by the authorities to prove the charges levelled against a Government servant. In that case the enquiry proceedings had been challenged on the ground that non supply of the statements of the witnesses and copies of the documents had resulted in the

breach of rules of natural justice. The appellant therein had requested for supply of the copies of the documents as well as the statements of the witnesses at a preliminary enquiry. The request made by the appellant was in terms turned down by the disciplinary authority. In considering the importance of access to documents in statements of witnesses to meet the charges in an effective manner this Court observed as follows:

"When a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the concerned employee prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? It is difficult to comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf. Perhaps the disciplinary authority made it a prestige issue. If only the disciplinary authority had asked itself the question: "What is the harm in making available the material?" and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid and adamant attitude. On the one hand there was the risk of the time and effort invested in the departmental enquiry being wasted if the courts came to the conclusion that failure to supply these materials would be tantamount to denial of reasonable opportunity to the appellant to defend himself. On the other hand by making available the copies of the documents and statements the disciplinary authority was not running any risk. There was nothing confidential or privileged in it."

33. On an examination of the facts in that case, the submission on the behalf of the authority that no prejudice had been caused to the appellant, was rejected, with the following observations:

"Be that as it may, even without going into minute details it is evident that the appellant was entitled to have an access to the documents and statements throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also at the time of arguments, he would have needed the copies of the documents. So also he would have needed the copies of the documents to enable him to effectively cross-examine the witnesses with reference to the contents of the documents. It is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself."

34. We are of the considered opinion that the aforesaid observations are fully applicable in the facts and circumstances of this case. Non-disclosure of documents having a potential to cause prejudice to a government servant in the

enquiry proceedings would clearly be denial of a reasonable opportunity to submit a plausible and effective rebuttal to the charges being enquired into against the government servant.

35. The aforesaid proposition of law has been reiterated in the case of *Trilok Nath Vs. Union of India* 1967 SLR 759 (SC) wherein it was held that non-supply of the documents amounted to denial of reasonable opportunity. It was held as follows:

"Had he decided to do so, the document would have been useful to the appellant for cross-examining the witnesses who deposed against him. Again had the copies of the documents been furnished to the appellant he might, after perusing them, have exercised his right under the rule and asked for an oral inquiry to be held. Therefore, in our view the failure of the Inquiry Officer to furnish the appellant with copies of the documents such as the FIR and the statements recorded at Shidipura house and during the investigation must be held to have caused prejudice to the appellant in making his defence at the inquiry."

36. The proposition of law that a government employee facing a department enquiry is entitled to all the relevant statement, documents and other materials to enable him to have a reasonable opportunity to defend himself in the department enquiry against the charges is too well established to need any further reiteration. Nevertheless given the facts of this case we may re-emphasise the law as stated by this Court in the case of *State of Punjab Vs. Bhagat Ram* (1975) 1 SCC 155:

"The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.

It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable

opportunity of showing cause against the action proposed to be taken."

18. In the case of Union of India and others Vs. Surendra Kumar in W.P (C) 11031/2022, CM Appl. 32309/2022 & 32310/2022 decided on 02.06.2023 Hon'ble Delhi High Court has held as under:-

"22. It may further be noticed that in terms of Rule 14(18) of CCS (CCA) Rules, after the prosecution evidence is over, the charged officer is required to submit his statement of defence indicating his line of defence, if any. The evidence is to be led in the same manner giving an opportunity of cross-examination to the Presenting Officer. Thereafter, the Inquiring Authority shall enquire the charged officer if he wishes to appear as his own witness and in case the charged officer declines to do so, the Inquiring Authority is required to generally question him to explain any circumstances appearing against him.

The statement of the respondent, if any, recorded in defence has not been placed on record or discussed in the Inquiry Report. Neither, it has been reflected in case the questions were put up to the respondent in respect of the evidence appearing against him during the course of inquiry as contemplated under Rule 14(18) of CCS (CCA) Rules. The complete record of inquiry proceedings has not been placed on file. Rule 14(18) of CCS (CCA) Rules, 1965 has been formulated for enabling the delinquent official to rebut and explain the circumstances appearing against him in evidence. The Inquiry Officer, as such, is obligated to put the incriminating evidence to the respondent in order to give him a proper opportunity of explaining the circumstances appearing against him unless he is examined in defence. Reliance may also be placed upon Ministry of Finance v. S.B. Ramesh, (1998) 3 SCC 227 wherein the Hon'ble Supreme Court held the Rule 14(18) of CCS (CCA) Rules, 1965 to be mandatory.

For the foregoing reasons, we agree with the finding of the Tribunal to the extent of setting aside the inquiry proceedings along with the penalty order with liberty to proceed in the matter in accordance with law".

19. Hon'ble Supreme Court in the S.B. Ramesh (supra) case has clearly held that it is incumbent on the Inquiry Officer to question the officer facing the charge, broadly on the evidence appearing against him in a case where the officer does not offer himself for examination as witness. The mandatory provision of CCS (CCA) Rules, 1965 has been lost sight by the Inquiry Authority.

20. As regards supply of the relied upon documents to the delinquent official is concerned, he has requested time and again for supplying of the fact finding enquiry report as well as other documents, but the same were not supplied to him. Thus, on this count submission raised on behalf of the applicant is acceptable. Non supply of relied upon documents can be taken as violation of principle of natural justice and it can be held that Inquiry Officer has not conducted enquiry fairly and no proper opportunity was given to the charged official. View taken by the Tribunal find support with the law lay down by Hon'ble Supreme Court in Saroj Kumar Sinha (supra) case.

21. As far as conducting of enquiry in haste manner as well as non-recording of the statement of the charged official is concerned, certainly Hon'ble Supreme Court in the case of S.B. Ramesh (supra) and Hon'ble Delhi High Court in Surender Kumar (supra) case have held that provision of Rule 14 (18) of the CCS (CCA) Rules 1965 is mandatory in nature in case the charged official has not examined himself/herself as defence witness. The provision of Rule 14 (18) of the CCS (CCA) Rules 1965 is analogous to the provision of Rule 9 (21) of Railway Servants (Discipline and Appeal) Rules 1968. For ready reference, Rule 9(21) of the Railway Servants (Discipline and Appeal) Rules 1968 and Rule 14 (18) of CCS (CCA) Rules, 1965 are reproduced below:-

"9 (21) of the Railway Servants (Discipline and Appeal) Rules 1968:

"The inquiring authority may, after the Railway servant closes his case, and shall, if the Railway servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Railway servant to explain any circumstances appearing in the evidence against him".

Rule 14 (18) of CCS (CCA) Rules, 1965

"The inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him".

Thus in view of aforementioned discussion, it can safely be held that provision of Rule 9 (21) of Railway Servants (Discipline and Appeal) Rules 1968 applicable in the present matter is also mandatory in nature. If Inquiry Officer has not attempted to question the applicant/charged official on the evidence appearing against him in the proceeding which is mandatory in nature then it can be presumed that Inquiry Officer has not concluded the enquiry in fair manner and has not given sufficient opportunity to the delinquent official to defend his case. Purpose of examination of charged official under Rule 9 (21) Railway Servants (Discipline and Appeal) Rules 1968 is that charged official may explain the evidence appearing against him during the enquiry.

22. As far as prejudice caused to the applicant is concerned, it can also be held that non examination of the charged official under Rule 9 (21) of the Railway Servants (Discipline and Appeal) Rules 1968 and non-affording of opportunity to him to adduce defence evidence, certainly prejudice is occasioned to him to defend his case properly and it is clear violation of mandatory provision of the Rule 9 (21) of the Railway Servants (Discipline and Appeal) Rules 1968. Thus, on this count also enquiry report as well as impugned orders passed in the matter becomes unsustainable.

23. Considering the observations of the Hon'ble Supreme Court/Hon'ble Delhi

High Court in the cases of Saroj Kumar Sinha (supra), S.B. Ramesh (supra) and Surender Kumar (supra) as well as submissions of the parties and after perusal of records, we are of the considered opinion that the OA is liable to be allowed. Accordingly, OA is allowed and impugned punishment order dated 04.08.2011, impugned notice dated 02.03.2012 and order dated 18.5.2012 are quashed. Respondents are directed to pay the monthly salary along with arrears of salary treating the impugned orders as null and void with all consequential benefits to the applicant. It is made clear that respondents may conclude the enquiry afresh, if so advised, in accordance with law. This order shall be complied with within a period of three months from the date of receipt of a certified copy of this order. There shall be no costs. All associated MAs are disposed of.