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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA NO. 1678/2002

New Delhi, dated this the 25th day of April, 2003.

Hon'ble Shri Justice V.S. Aggarwal, Chairman.
Hon'ble Shri S.K. Malhotra, Member (A).

S.P. Singh
Pulla Ki Kothi, Prahlad Pur
Tuklakabad, Delhi.

(Shri S.K. Sawhney, Advocate)

....Applicant.

Versus

Union of India, through

1. General Manager
Northern Railway, Baroda House
New Delhi.
2. Senior Divisional Operating Manager
Northern Railway
DRM Office, New Delhi.
3. Additional Divisional Railway Manager
Northern Railway
DRM Office, New Delhi.

....Respondents.

(Shri Rajinder Khattar, Advocate)

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Shri S.K. Malhotra, Member (A)

The facts of the case, in brief, are that the applicant who has since retired from service as Deputy Station Superintendent, was charge-sheeted vide memorandum dated 3.3.1999 on the allegation that he manipulated his leave record by scratching his leave on half-pay (HAP) and converted the same to leave on average pay (LAP) in his own handwriting with ulterior motive. An enquiry was conducted, in which the applicant participated, and the enquiry officer vide report dated 29.8.2000 concluded that the aforesaid charge stood proved. Thereafter, agreeing with the findings of the enquiry officer and based on evidence on record, the disciplinary authority vide order dated 20.12.2000 imposed upon the applicant punishment of reduction in time scale by one step with effect on future increments till retirement.

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Applicant preferred an appeal which was rejected by the appellate authority vide its order dated 28.3.2001. Thereafter applicant filed OA 2309/2001 challenging appellate authority's order on the ground that the same was a non-speaking and non-reasoned order. That OA was disposed of by this Tribunal on 5.9.2001 with the direction to the respondents to pass a speaking order to the applicant. Pursuant to that, the appellate authority has passed another order dated 17.10.2001 disposing of applicant's appeal inter-alia upholding the punishment given by the disciplinary authority. All these orders are under challenge in the present OA. Applicant has also prayed for a direction to the respondents to treat the period of suspension from 11.2.1999 to 20.12.2000 as duty with full pay and benefits.

2. We have heard the learned counsel for the parties and perused the materials available on record as also the original record pertaining to the leave account and attendance register.

3. The main grounds advanced by the learned counsel for the applicant during the course of arguments are that the applicant could not have been benefited by correcting the HAP in LAP. On the other hand, it would decrease the balance on LAP side. Since the LAP is encashable at the time of retirement, it would result in lesser payment of leave encashment. No ulterior motive could, therefore, be attributed to him for the alleged manipulation. The enquiry has also not been able to prove any ulterior motive for the above allegation. Besides the above, there was no need for him to do such a manipulation as HAP could always be converted into LAP retrospectively on the request of the applicant under the provisions of Rule 505 (1) of Railway Establishment Code Vol. I. The learned counsel for the

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applicant has further contended that during the enquiry, he was not supplied with his leave applications, which form part of the list of documents relied upon by the IO. Some other important documents asked for were also denied to him. According to the applicant, the charge that he manipulated the entries in the attendance register is also not correct, as the same was not in his custody. He has also contended that the order dated 17.10.2001 passed by the appellate authority is illegal being in breach of the provisions of Rule 22(2) of Railway Servants (Disciplinary & Appeal) Rules, 1968.

4. The learned counsel appearing on behalf of the respondents rebutted the aforesaid contentions and stated that all the relied upon documents were supplied to the applicant except the leave applications which could not be supplied as the same were not found available on record when traced in March, 1999. However, he was supplied photocopies of attendance register for the period for which these leave periods related. During this period, the applicant was sick and the period was treated as HAP but the applicant later on manipulated the same as LAP. In the inquiry conducted by the IO, in which the applicant participated, witnesses were examined and also cross-examined by the applicant, the charge of manipulation of leave record was proved. The disciplinary authority after analysing all the facts, including the findings of IO and other documentary evidence on record awarded the punishment in question with a speaking and reasoned order, in terms of para 10(4) and (5) of the aforesaid Rules. Also in pursuance of this Tribunal's direction in OA 2309/2001, case of applicant was considered afresh and a speaking and reasoned order was passed keeping in view Rule 22(2) of the aforesaid Rules. Learned counsel for the respondents also

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refuted the allegation that the provisions contained in Rule 22(2) of the aforesaid Rules were not followed. In view of this position, the learned counsel was of the view that the applicant is not entitled to the reliefs prayed for and the OA be dismissed.

5. A careful perusal of the materials available on record reveals that the inquiry has been conducted as per procedure laid down on the subject; applicant was supplied all the relevant documents except copies of the leave applications which could not be traced over a period of time and he was given reasonable opportunity to defend his case. We do not find any procedural irregularity in the conduct of enquiry. The charge of manipulation against the applicant also stood proved, based on the evidence on record and the statements of witnesses.

6. It is the settled legal position that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the finding of the Enquiry Officer or the competent authority unless it is totally arbitrary or utterly perverse. If there has been enquiry consistent with the rules and in accordance with the principles of natural justice, the Tribunal cannot interfere with the penalty if the conclusion of the Enquiry Officer or the competent authority is based on evidence. In this regard we rely on the judgement of Hon'ble Supreme Court in the case of Union of India Vs. Parma Nanda, AIR 1989 SC 1185.

7. In the instant case, we are satisfied that both the disciplinary and the appellate authorities have followed the procedure as required under the rules and have passed detailed, speaking and reasoned orders which do not suffer

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from any illegality. Thus, our interference is not warranted in this case.

8. In so far as the applicant's prayer for treating the period of suspension from 11.2.1999 to 20.12.2000 on duty is concerned, it is observed that the respondents have not treated this period on duty and it would not be counted for qualifying service vide order dated 18.6.2001 (Annexure A/15). This order has been passed after imposing the penalty of reduction to a lower stage in the same time scale, till the retirement of the applicant vide order dated 20.12.2000 (Annexure A/1). As the applicant has been visited with a major penalty, such an order could have been passed by the competent authority and is legally sustainable. We do not, therefore, consider it appropriate to intervene in the matter.

9. In view of what has been discussed above, we find no merit in the present OA and the same is accordingly dismissed, leaving the parties to bear their own costs.

Malhotra
(S.K. MALHOTRA)

MEMBER (A)

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(V.S. AGGARWAL)

CHAIRMAN