

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 214/2001

New Delhi, this the 14th day of September 2001

Hon'ble Smt. Lakshmi Swaminathan, V.C. (J)
Hon'ble Sh. Govindan S. Tampi, Member (A)

Azmat Ali S/o Sh. Jan Mohd
Ex. Painter, R.C.F. C/O Sh. Kartar Singh
House No. 383, Mohalla Sherjul
Near Radha Krishan Mandir,
Kapurthala (Punjab)

.....Applicant

(By Shri T.D. Yadav, Advocate)

Versus

1. Union of India through
Chairman Railway Board,
Min. of Railways,
Rail Bhawan, New Delhi
2. General Manager, RCF Kapurthala.
3. Sh. R K Sangar, Dy. C.M. E. Bogie,
now Dy. C.M.E. Furnishing, RCF Kapurthala
4. Sh. Jasbir Singh Works Manager, Bogie,
now W.M. Shell Progress, RCF, Kapurthala
5. Sh. H. A. Khan (Enquiry Officer)
Shop Superintendent Paints Shop Department
RCF through General Manager,
RCF Kapurthala.

.....Respondents

(By S/Shri H K Gangwani and V.S.R. Krishna, Addvocates)

O R D E R

BY HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Removal of the applicant from service and the
rejection of the appeal and revision against the above
punishment are under challenge in this O.A.

2. Shri T.D. Yadav, learned counsel appeared for the applicant while S/Shri H.K. Gangwani and V.S.R. Krishna were the learned counsel for the respondents.

3. Sh. Azmat Ali, the applicant, Painter Grade-III in Bogie Shop of RCF Kapurthala was charge sheeted on 1.9.1995, under Railway Servants (Discipline and Appeal) Rules 1968 - RSDA Rules - on the allegation of his participation in an illegal "Dharna" on 10.8.1996. As the list of documents relied upon and the list of witnesses were not furnished, the applicant asked for the same. Without supplying the above and without examining the contents of the representation, proceedings were initiated and I.O. was appointed. Protest by the applicant was of no avail. It was indicated that having participated in the illegal Dharna he was guilty and had therefore been correctly dealt with. Disciplinary authority had some animus against the applicant, which was manifest in the proceedings. There has been no preliminary meeting among the I.O., presenting officer and the charged officer to lay down the modalities of the inquiry and the applicant made a specific protest in this regard. Still the examination of the witnesses began, wherein reference was made to a confidential report on the applicant's participation in the "Dharna". Copy of the said report was not made available despite request by the applicant. This was also not heeded and the inquiry continued. None of the witnesses specifically deposed about the applicants participation in the strike. He also desired to examine two other witnesses and promised to file his written brief thereafter, but without waiting for the same the I.O., on 21.9.1995 finalised the report stating that following his

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sanctioned leave from 10.8.1995 to 11.8.1995. He was on unauthorised leave from 11.8.95 to 27.8.95 and that as shown by the witnesses report he was on 'Dharna'. Side by side the applicant was also intimated about the rejection of his request for supply of confidential report and examination of witnesses. In spite of his detailed representation dated 5.10.1995, indicating all the irregularities in the procedure the disciplinary authority accepted I.O.'s report and imposed on the applicant the penalty of removal by his order dated 7.10.1995. His appeal of 25.10.95 against the same was rejected by a cryptic order dated 2.1.1996. Review petition filed on 28.1.1996, was not attended to till the Tribunal by its order dated 29.10.1996, in O.A. No. 1098/96 directed the revisionary authority to pass the order, which it did, on 24.2.1997 by a non speaking order. Hence this application.

4. The applicant states that the respondents who were keen to initiate, go ahead with and impose penalty on him in an inordinately ~~fast~~ just and speedy manner, with scant respect for procedure, had taken more than a year thereafter to deal with the revision petition. In fact the revisionary authority thought of dealing with it only after a year that too, because of the Tribunal's order. The extreme punishment has been meted out to the applicant on account of the respondents' prejudice towards him. The proceedings have been characterised by violation of principles of natural justice i. e. non-supply of the letter dated 16.8.95 on which the charge was framed, non-supply of the list of witnesses and the nature of their evidence, denial of permission to have the witnesses examined, non-speaking nature of the orders of the disciplinary authority. appellate authority and

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revisory authority, have all vitiated the proceedings throughout and therefore the orders emerging therefrom should be set aside with consequential reliefs of reinstatement with attendant benefits, is what the applicant seeks.

5. In their reply the respondents vehemently deny the allegation by the applicant. According to them as the applicant, had on 10.8.1995 participated in a "Dharna", before the Administrative Block of the office, which was declared illegal on 12.8.1995 and had remained unauthorizedly absent from 12.8.1995 to 26.8.1995, charge sheet was issued to him. On receipt of the inquiry report, the disciplinary authority imposed on him, the penalty of removal, which has been upheld both by the appellate authority and revisory authority. As the proceedings have been gone through correctly there was no justification for any interference on the issue by the Tribunal. The application should therefore fail, according to the respondents.

6. They further point out that the applicant was charge sheeted for participation in illegal dharna and unauthorized absence. Charge sheet was issued in terms of the rules and adequate time also granted for the applicant to file his response, which he did not do further according to them.

- i) the appointment of Inquiry Officer was proper and legal;
- ii) relied upon documents were duly supplied to the applicant;

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- iii) bias alleged against the respondents is not with any basis;
- iv) the applicant was employing delaying tactics and incorrect steps to delay the adjudication;
- v) only those witnesses whose evidence was relevant were examined. The applicant was given the opportunity to cross examine the witnesses;
- vi) the decision has been arrived after fully following the procedure;
- vii) while it was true that some reliance was placed on the confidential note of 18.5.1998, it was not the basis of the decision which was arrived at after examining all the relevant facts;
- viii) I.O.s reports were based on evidence which emerged during the enquiry;
- ix) as the applicant was permitted to cross examine all the witnesses produced no prejudice has been caused to him;
- x) the original appellate and revisionary orders
[~~were~~ speaking orders;]

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xi) all necessary and proper opportunities have been provided to him; /

xii) participation in illegal "dharna" was an offence which could not have been tolerated. Hence the proceedings against him. At the same time all the procedures have been gone through legally and properly and there was thus no case for interference, by the Tribunal, urge the respondents.

7. During the oral submissions learned counsel for both sides, reiterated their respective pleas. Shri T.D. Yadav, learned counsel for the applicant specifically referred to the incomplete charge - which did not include the list of witnesses as well as refusal to furnish a copy of the confidential note from which the entire matter arose. Proceedings were vitiated on account of this lacunae, he said. He also relied upon the decisions of the Hon'ble Apex Court in the case of State of UP Vs Shatrughna Lal 1998 (6) SCC 651 and SBI and Others Vs DC Agarwal 1993(1)SCC 13. He also referred to the non speaking nature of the impugned orders and sought that they be set aside. On the other hand, according to Sh. Gangwani, learned counsel for the respondents, non-supply of the list of witnesses did not prejudice the case of the applicant, as he had been permitted to cross examine the witnesses, especially Amanjit Singh. Besides, the confidential note referred to by the applicant was not the only piece of evidence relied upon by the enquiry

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officer/disciplinary authority . In view of the above there was no ground for any interference by the Tribunal, as per the learned counsel.

8. The rival contentions have been carefully considered. The applicant in this OA has been removed from service on the charge of participation in an illegal dharna as well as unauthorised absence. While the applicant assails the entire proceedings on the non-supply of list of witnesses as well as the confidential report on which the proceedings were based and also on the harshness of the punishment imposed; according to the respondents no prejudice at all has been caused to the applicants' case. They also feel that the orders of all the authorities have been correct, proper and reasoned. We observe certain deficiencies which have occurred in the proceedings like the non supply of a note which led to the beginning of the investigation, and denial of the request by the applicant for production of two witnesses. This would have vitiated the proceedings if any prejudice has been caused to the applicant. It is on record that the applicant has during the course of the inquiry cross-examined the witnesses extensively . It cannot therefore be said that reasonable opportunity of putting forth his case has been denied to the applicant. The fact that as he was away from duty without any sanction is a matter of fact and it has been deposed by the witnesses that he was seen at Dharna, which was an illegal activity. Therefore both the ingredient of the charge sheet stand proved by evidence. Therefore in spite of the shortcomings in the procedures, which were avoidable, there has been no denial of justice and the applicant cannot have a legitimate ground for complaint. Keeping in

mind the gravity of the charges against him, which are proved, we do not think the punishment of removal imposed on him, is harsh so as to shock the judicial conscience.

9. Coming to the orders, issued by the various authorities in this case, we find that the orders issued by the Disciplinary and Appellate Authorities, could have been in our view a bit more detailed. Still they are legal and proper. The order of the Revisionary Authority is a detailed, lucid and speaking order. The said order has examined and discussed correctly all the issues involved and there is no ground to assail its contents neither on facts nor in law.

10. In the above view of the matter we find that the applicant has not made out any case for our interference. OA fails and is therefore dismissed.

11. No costs.

Govindan S. Tampi
Member (A)

Patwal/

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)