

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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OA NO. 653/2001

New Delhi, this the 22nd day of February, 2002

HON'BLE SH. KULDIP SINGH, MEMBER (J)
HON'BLE SH. GOVINDAN S. TAMPI, MEMBER (A)

Umesh Mishra,
Train Clerk,
Northern Railway,
Railway Station,
Moradabad.
(By Advocate: Sh. G.D.Bhandari)

Versus

Union of India through
1. The General Manager,
Northern Railway,
Headquarters Office,
New Delhi.

2. The Divisional Railway Manager,
Northern Railway,
Moradabad.

(By Advocate: Sh. B.S.Jain)

O R D E R (ORAL)

By Sh. Govindan S.Tampi, Member (A)

This OA has been filed by one Sh. Umesh Mishra challenging the imposition of penalty dated 7.8.99, rejection of the appeal by order dated 18.6.99 rejection of the revision by order dated 21.9.99 and final orders rejecting modification of the penalty in terms of the Revisional Authority's orders.

2. Heard S/Sh. G.D. Bhandari and B.S. Jain, learned counsel for the applicant and the respondents respectively.

3. Proceedings had been initiated against the applicant vide charge-sheet dated 30.9.96 containing three articles of charge relating to detention of trains on two occasions and recording incorrect entries about the movement of trains to show excess working hours. His having denied the charges, an enquiry was conducted wherein the enquiry officer showed that the charges

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(16)

stood proved. After examining the Inquiry Officer's report and the party's representation the Disciplinary Authority passed the orders accepting the Inquiry Officer's report and reducing the applicant from the post of Guard to that of Trains Clerk in the grade of Rs.3050-4590 and fixed his pay at Rs.3050/- for a period of 7 years with cumulative effect. An appeal filed by him on 10.5.99, has been rejected by an order dt. 18.6.99, communicating that the same was turned down. Revision petition filed on 15.7.99, was disposed of on 21.9.99, reducing the penalty to one of reduction to the bottom of the next lower grade for a period of 3 years, with cumulative effect. Thereafter in reply to representation it was indicated on 4.8.2000 that as he had been reduced from the post of Guard in the grade of Rs.4500-7000/- to Train Clerk Grade Rs.3050-4590/- for 7 years, modified to this year, he was not due as the Senior Train Clerk in the grade of Rs.4000--6000/-. Hence this OA.

4. During the Oral submissions before us today, Sh.G.D.Bhandari, learned counsel for applicant reiterated the above. He invited our attention to the penultimate paragraph in the Annexure 'A' to the Disciplinary Authority's order dated 7.8.99 which reads as below:-

"All the three articles of charges have been substantiated at the end of the extensive enquiry by the E.O. I am fully convinced with the outcome of enquiry report. On going through, the service record of employee, it is revealed that he has been punished for a destructive working for as many as 17 (seventeen) times so far in just last 5 (five) years. He has no signs to improve himself at this stage.

(b)

Shri Umesh Mishra Guard/HQ-RAC is reduced to the post of Trains Clerk in Gr.3050-4590 at the pay of Rs.3050/- for 7 (seven) years with cumulative effect."

5. According to Sh. Bhandari this means that the order has been passed by the Disciplinary Authority by taking into consideration, extraneous matters which the applicant was not given an opportunity to contest or deal with as they did not form part of the charge-sheet at all. He says that the order was vitiated on this ground itself and deserved to be set aside without going to any further arguments.

6. Fiercely, arguing against the plea of the applicant Sh. Jain, counsel for the respondents points out that there was nothing wrong with the Disciplinary Authority mentioning the above as the service record of the individual showed that he had been punished for destructive working for as many as 17 times. This was also proved on records. This was not a case where this particular observation had influenced the decision of the Disciplinary Authority as the earlier paragraph I.O's findings on the charges have been specifically examined and accepted. Disciplinary Authority has done nothing wrong by making this observation and the plea raised by the applicant cannot and should not merit any acceptance according to Shri Jain. He also relied upon the decision of Hon'ble Apex Court in the case of Union of India vs. Upender Singh where the Court had, while referring to their earlier decision in H.T.Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal vs. Gopi Nath & Sons affirmed the principle as enunciated below:-

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review

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cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

7. It is evident, therefore, according to Sh. Jain that the scope of judicial review did not extend to determining the correctness of the order of the Disciplinary Authority and the Tribunal cannot take up on itself the jurisdiction of the appellate authority. The OA, therefore, merits dismissal straightway, is what Sh. Jain pleads.

8. We have given careful consideration to the rival contentions made.

9. As the counsel for the applicant had during his submissions, confined himself to the observations made by the Disciplinary Authority only without going to the orders of the appellate authority or the revisional authority, we are also limiting our findings to the said plea which to our mind is sufficient to deal with this OA. We find, as pointed out earlier, the disciplinary authority had indicated that on going through the service record of the employee it was revealed that he had been punished for his destructive working for as many as 17 times so far in just last 5 years and that he showed no signs to improve himself. During the submissions Sh. Jain, for the respondents had also pointed out that this indicated the incorrigible nature and mental attitude of the

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which were not made available to the applicant/the charged officer at the time of the charge or at the time of the enquiry or while disposing of his representation. The order, therefore, is quashed and set aside and remanded to the original authority for deciding the case afresh, confining himself to only those issues which have formed part of the charge-sheet as well as the enquiry report. This exercise shall be completed within 4 months from the date of receipt of a copy of this order. As the disciplinary authority ^{now} stands vacated, the appellate order and the revisional orders follow suit. No costs.

GOVINDAN S. TAMPI)
Member (A)

(KULDIP SINGH)
Member (J)