

18

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A No. 1501/1999
T.A No.

Date of Decision 31-1-2001

Sh.Yogesh Gautam

..Petitioner

Sh.B.S.Mainee

..Advocate for the petitioner(s)

Versus

..Respondent

UOI Through GM(NR) & ORS

Sh.Rajeev Bansal

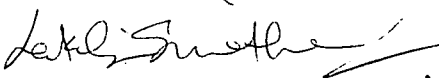
..Advocate for the Respondents

Coram:-

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)

Hon'ble Shri Govindan S.Tampi, Member(A)

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal ? No


(Smt.Lakshmi Swaminathan)
Vice Chairman (J)

19

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1501/1999

New Delhi this the 31st day of January, 2001-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri Govindan S. Tampi, Member(A)

Shri Yogesh Gautam,
S/o Late Sh. Sh. G. L. Gautam,
Ex. Enquiry-cum-Reservation Clerk,
Railway Station, Northern Rly.,
Najibabad.
Presently R/o 157, Gujar Dairy,
Gautam Nagar, New Delhi.

. Applicant

(By Advocate Sh. B. S. Mainee)

VERSUS

Union of India, through:

1. The General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Moradabad.
3. The Senior Divisional Commercial
Manager, Northern Railway, DRM's
Office, Moradabad.

. Respondents

(By Advocate Sh. Rajeev Bansal)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J):

The applicant who was working with the respondents as Enquiry-cum-Reservation Clerk(ERC) is aggrieved by the punishment orders passed by the respondents dismissing him from service, namely, the disciplinary authority's order dated 3.9.1997 and the appellate authority's order dismissing his appeal on 14.1.1999 (Annexures A-1 and A-2).

2. The applicant had been charged on certain allegations of misconduct as given in the Memorandum of charges issued by order dated 28.11.1994. After

JS

holding the disciplinary proceedings against him, the aforesaid impugned punishment orders were passed which have been assailed by the applicant on a number of grounds.

3. One ground taken by Shri B.S. Mainee, learned counsel is that certain documents as demanded by the applicant were not produced at the enquiry. However, during the hearing, neither the details of the documents were given nor their relevancy either established or even mentioned. Hence, we do not find any basis for this ground and the plea is accordingly rejected.

4. The second ground taken by the learned counsel for the applicant is that the action of the respondents in passing the punishment orders is in violation of Article 311(1) of the Constitution of India, namely, that they have not been passed by the competent authorities. According to him, the applicant had been appointed as ERC after approval of the Senior Divisional Commercial Manager (Sr.DCM) whereas the disciplinary authority who has passed the impugned order dated 3.9.1997 is a lower functionary, namely, the Divisional Commercial Manager (DCM), Moradabad. The appellate authority who has passed the order dated 14.1.1999 is the Sr.DCM. In the circumstances, learned counsel has submitted that these orders have not been passed by the competent authorities.

VB

(3)

5. The third ground taken by the learned counsel for the applicant is that the order passed by the appellate authority is not a speaking order. He submits that this shows non-application of mind as he has also not referred to the grounds taken by the applicant in his appeal submitted on 20.10.1997. On these grounds, learned counsel has prayed that the impugned orders should be quashed and set aside and the applicant be reinstated in service with all consequential benefits.

6. We have perused the reply filed by the respondents and heard Sh. Rajeev Bansal, learned counsel. According to the respondents, the order relied upon by the applicant dated 4.7.1991 with regard to his appointment as ERC, does not show that it was passed by the Sr. DCM, Moradabad. Further they have submitted that the applicant was appointed by the Divisional Personnel Officer (DPO) who is equivalent in rank to the DCM. They have, therefore, contended that the disciplinary authority is the DPO and not the Sr. DCM in the present case.

7. The applicant had filed MA 603/2000 praying for a direction to the respondents to produce the records, including the file in which his promotion order had been issued as also the file containing the disciplinary proceedings. When the case was heard today, the respondents have failed to produce the appointment order of the applicant as ERC, although

13/

the disciplinary proceedings file is available with them.

8. It is relevant to note that in the appeal filed by the applicant against the disciplinary authority's order dated 3.9.1997, he has specifically mentioned in Paragraph 6 that the orders dismissing him from service have been passed by an officer who was not even competent to do so. A mere perusal of the appellate authority's order shows that the same is not a speaking order and is contrary to the provisions contained in Rule 22 of the Railway Servants (Disciplinary and Appeal) Rules, 1968. The appellate authority is required under the Rules to consider the appeal under various heads as mentioned under Sub-Rule 2 of Rule 22. These provisions have not given adhered to by the appellate authority in the present case. Therefore, the appellate authority's order is liable to be quashed and set aside on this ground.

9. In the absence of the records being not produced by the respondents to controvert the specific averment made by the applicant that the disciplinary authority's order is not legal as it has not been passed by the competent authority, we have no reason to doubt the same. In Annexure A-3 letter dated 11.7.1991 by which the applicant had been appointed as ERC, it is stated that the same has been done with the approval of the competent authority without stating who it is. Sh.B.S.Mainee, learned counsel has also

13/

relied on the judgement of the Tribunal in B.D.Lamba and Ors. Vs.UOI & Ors. (1997(2)ATJ 33). We find that the observations in the Tribunal's order in B.D.Lamba's case(supra) are fully applicable to the facts in this case. In any case, when the same point had also been raised by the applicant in his appeal, there was no reason why the appellate authority could not have considered the issue in accordance with law and Rules. As mentioned above, this has not been done by the appellate authority in his order. Therefore, the impugned orders are liable to be set aside.

10. It is an admitted fact that the applicant had been placed under suspension prior to the initiation of department proceedings. Thereafter the punishment orders of dismissal from service has been passed by the respondents against him.

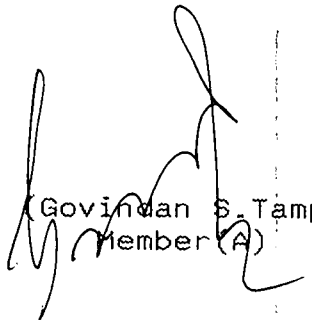
11. For the reasons given above, the OA is partly allowed to the following extent:-

The impugned orders dated 3.9.1997 and 24.1.1999 are quashed and set aside. However, the applicant shall not be entitled to automatic reinstatement but he shall continue to be placed under suspension as previously. The case is remitted to the respondents for being placed before the competent disciplinary authority to

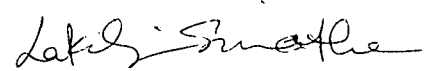
V₂

(6)

pass fresh orders in accordance with law within
two months from the date of receipt of a copy of
this order. No order as to costs.


(Govindan S. Tampi)
Member (A)

sk


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)