

8

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2436/1996

New Delhi this the 4th day of April, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

P.K.Kochhar S/O K.L.Kochhar,
R/O Pocket B-6/70, Sector 4,
Rohini, Delhi.

... Applicant

(In person)

-Versus-

1. Union of India through
Chairman, Railway Board,
Rail Bhawan, New Delhi.

2. General Manager,
Northern Railway,
New Delhi.

... Respondents

(None present for respondents)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

A penalty of withholding of increments permanently for two years with cumulative effect imposed on the applicant by the disciplinary authority being the Divisional Traffic Superintendent, New Delhi on 22.1.1983 in disciplinary proceedings conducted against him is impugned by the applicant in the present O.A. Applicant has also impugned an order of the appellate authority being the Area Superintendent (D), New Delhi passed on 30.4.1983 dismissing his appeal, as also the order of the revisional authority being the Divisional Railway Manager passed on 17.11.1995 rejecting the revision application of the applicant.

2. Applicant at the material time was working as a Reservation clerk. A chargesheet bearing

No.Vig./385/81/Comml.-II/87A dated 30.11.1981 was issued against the applicant. A copy of the chargesheet is annexed at Annexure A-4. The chargesheet inter alia alleged that the applicant was guilty for not allotting berths though available, manipulation in time of allotment of berths, not obtaining clear-cut demand from the party before making reservation, duplicate and irregular allotment of berths and accepting incomplete requisition forms from the intending passenger with an ulterior motive. He was further charged of being responsible for an excess amount of Rs.20.87 in government cash.

3. Prior to the service of the aforesaid chargesheet on the applicant, a vigilance enquiry had been conducted and based on the investigation report, a decision was taken by the disciplinary authority to initiate disciplinary proceedings against the applicant. A chargesheet was accordingly served on the applicant. One Shri T.S.Ahluwalia was appointed as enquiry officer.

4. It is inter alia contended by the applicant that a copy of the investigation report though asked for was not supplied to him; this has adversely affected his right to put up his defence. The entire disciplinary proceedings, it is contended, on the basis of the aforesaid submission will stand vitiated.

5. Investigation report, it is well known, is not a part of the disciplinary proceedings conducted against the delinquent. On the contrary, investigation report is a privileged document.

Net

10

Preliminary investigation is carried out merely in order to find out whether a prima facie case against a delinquent exists or not. Preliminary investigation is often carried out in order to ensure that innocent members of the staff are not unduly harassed without sufficient cause. It is only after the disciplinary authority is satisfied that a prima facie case exists that steps are taken to initiate disciplinary proceedings against a delinquent by framing charges against him. The aforesaid investigation report, we find, has not been relied upon by the enquiry officer for the purpose of giving a finding of guilt against the applicant. The same has not been relied upon by the disciplinary authority, the appellate authority as also the revisional authority. Since the investigation report has not been relied upon by any of the aforesaid authorities for holding the applicant guilty of the charges levelled against him, no prejudice can be said to have been caused to the applicant for non-supply of the same to him. Aforesaid contention raised by the applicant, in the circumstances, is rejected.

6. Applicant has next contended that one Shri T.S.Ahluwalia who was appointed as enquiry officer, in the past had worked in the capacity of a Vigilance Inspector, and in the circumstances, was an interested person against the applicant; he could not be said to be a fair and unbiased officer who could be expected to do justice impartially; hence, the impugned order of penalty based on the report of the aforesaid enquiry officer would stand vitiated.

sep

(11)

7. In our judgment, there is no merit in the aforesaid contention. Shri T.S. Ahluwalia has not even remotely participated in the vigilance enquiry which had been conducted against the applicant. Merely because in the past he had worked as a Vigilance Inspector would not justify a criticism that he was biased and was not expected to give a fair and equitable treatment to the applicant in the conduct of the enquiry against him. Hence, it cannot justifiably be said that the said enquiry officer had any bias against the applicant. Aforesaid contention of the applicant, in the circumstances, is also rejected.

8. We have perused the report of the enquiry officer. The same is annexed at Annexure A-5. The same, we find, is a detailed report running into as many as 24 pages. It has discussed the evidence of the prosecution witnesses being PW-1, PW-2 and PW-3 as also the defence witnesses DW-1, DW-2 and DW-3. The same has also taken into account the documentary evidence which had been adduced during the enquiry. Applicant has accordingly been found guilty of charge Nos. (i), (ii), (iii), (iv), (vi), (x) and (xi), and has been found not guilty of charges (v), (vii), (viii) and (ix). Aforesaid findings indicate an unbiased approach on the part of the enquiry officer. In our view, no fault can be found with the aforesaid report of the enquiry officer.

9. A copy of the enquiry report was duly served on the applicant. An opportunity to make representation against the report was duly afforded to the applicant. Applicant has availed of the

Ref

129

opportunity and has submitted his representation. The disciplinary authority by its impugned order has rejected the representation of the applicant and has proceeded to accept the findings of the enquiry officer and has thereafter imposed the aforesaid order of penalty on the applicant.

10. The order of the disciplinary authority, it is contended, is not a speaking order; it does not deal with the various points raised by the applicant in his representation; it does not discuss the evidence on record; and hence the order of the disciplinary authority would stand vitiated. Similar is the contention as regards the orders passed by the appellate authority and the revisional authority. We have given our anxious consideration to the aforesaid contention raised by the applicant in regard to the aforesaid orders. If one were to view the aforesaid orders in isolation, one may have been persuaded to accept the aforesaid contention of the applicant. However, if one reads ^{these} ~~such~~ orders in conjunction with the report of the enquiry officer, it becomes clear that aforesaid orders cannot be successfully assailed merely on the ground that they do not contain detailed reasons in support of their findings. As far as the order of the disciplinary authority is concerned, it has observed as under :

"I have gone through the Enquiry Report vis-a-vis the article of charge and the finding of the Inquiry Officer (Inspector). I accept the findings of E.O. & hold him guilty for not allotting the berths though available, manipulation in time of allotment of berths, not obtaining clear cut demand from the party before making reservation, duplicate and irregular allotment of berths and accepting incomplete Requisition Forms from the intending passenger with an ulterior

12.1

motive. He is also responsible for an excess amount of Rs.20.87 in Govt. cash. These cannot be routine irregularities. In view of these serious irregularities committed by him, he is awarded W.I.P. for two years (withholding of increment permanently for two years with cumulative effect)."

The appellate authority in its order has observed as under :

"I have gone through the appeal and do not find adequate grounds to change the conclusion reached by EO or the punishment awarded by the disciplinary authority. Appeal is rejected."

The revisional authority in its order has observed as under :

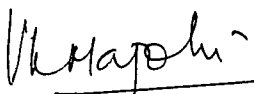
"I have considered the revision petition. The post occupied by Sh. Kochar carried a lot of responsibilities regarding fairness in dealing with public. He failed to discharge his duties faithfully due to which Sh. Verma was seriously inconvenienced. Considering the gravity of offence he has been dealt with leniently already. I, therefore, consider that Sh. Kochar has been correctly dealt with. The revision petition is rejected."

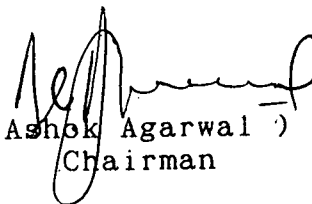
The aforesaid orders, though not detailed speaking orders, do point out the gist of the misconduct which has been found proved against the applicant. The same, therefore, disclose application of mind.

11. We have considered the entire material on record and we find that no case is made out for interference in the present O.A. As far as the applicant is concerned, after expiry of the period of two years in respect of the penalty, he was promoted to higher grades in his turn. He has thereafter

retired on superannuation. In our judgment, if one has regard to the gravity of the charges found proved against the applicant, the order of penalty, if at all, errs on the side of leniency. No interference is thus called for either in respect of the finding of guilt or in respect of the quantum of penalty imposed against the applicant.

12. Present O.A., in the circumstances, is devoid of merit and the same is accordingly dismissed. There shall, however, be no order as to costs.


(V. K. Majotra)
Member (A)


(Ashok Agarwal)
Chairman

/as/