

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 293/96

199

T.A.No.

DATE OF DECISION 2-6-99

33

Sh.Kuldeep Singh

....Petitioner

Sh.M.K.Gupta

....Advocate for the
Petitioner(s)

VERSUS

DRM (NR) Moradabad (UP)

....Respondent

Sh.P.S.Mahendru

....Advocate for the
Respondents.

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member (J)

The Hon'ble Shri N.Sahu, 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.

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Member(J)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.293/96

New Delhi this the 2nd day of June, 1999.

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. N. SAHU, MEMBER (A)

Shri Kuldeep Singh,
S/o Shri Balkdev Sigh,
R/o C/o Sh. Raj Pal Sharma
30/306, Himmatpuri (Purana Block),
Trilok Puri,
Delhi-110091.

...Applicant

(By Advocate Shri M.K. Gupta)

-Versus-

The Divisional Railway Manager,
Northern Railway,
Moradabad (UP).

...Respondent

(By Advocate Shri P.S. Mahendru)

O R D E R

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J):

The applicant is aggrieved by the order passed by the disciplinary authority dated 10.5.95 compulsorily retiring him from service and rejection of his appeal by the appellate authority's order dated 21.8.95.

2. The impugned compulsory retirement order has been passed by the disciplinary authority after holding departmental proceedings against the applicant under the provisions of the Railway Servants (Discipline & Appeal) Rules, 1968. Shri M.K. Gupta, learned counsel has challenged the penalty orders on a number of grounds, stating that the applicant has not been afforded a reasonable opportunity to defend his case. He has also submitted that in the impugned penalty order of compulsory retirement from service dated 10.5.95 has been imposed from a retrospective date, i.e., with effect from 4.5.95, which is illegal. According to the applicant he had given a leave application seeking leave from

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25

_____ 7.5.94 to 15.5.94 due to pressing family problems, like the serious condition of his mother at Moradabad as well as the injuries suffered by his child falling down the stairs. He has submitted that he had reported for duty on 18.5.95 (sic. 1994) but was not allowed to join duties. The learned counsel has challenged the penalty order of compulsory retirement passed on 10.5.95 on a number of grounds. Firstly, he has stated that the penalty order has been given effect to retrospectively, i.e., w.e.f. 4.5.95 which itself is bad in law. He has also submitted that the appellate authority has passed a non-speaking order giving no reasons for the order and without consideration of the documents referred to and that it is excessively harsh in the circumstances of the case. He has contended that the applicant has remained absent from duty only for a period of about two weeks and that too on pressing domestic reasons mentioned above. His contention is that he had left a leave application with the Time Keeper, availing of his rest day on 6.5.94 to go to his home town with permission from the Chargeman to leave headquarters. He has, therefore, submitted that a more lenient view should have been taken by the respondents and minor penalty could have been imposed. He relies on 1994 Supp. (3) SCC 755 Union of India & Ors. v. Giriraj Sharma; 1997 (3) SCC 657 Rae Barali Kshetriya Gramin Bank vs. Bhola Nath Singh & Ors. and 1995 (6) SCC 749 B.C. Chaturvedi vs. Union of India & Ors.

3. The respondents in their reply have controverted the above facts and submissions, stating that the penalty of compulsory retirement has been correctly imposed on the applicant for his unauthorised absence for the period 7.5.94 to 17.5.94 after following the relevant rules and holding the departmental enquiry. They have submitted that since the

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36

leave had not been sanctioned, he could not have left his headquarter. Learned counsel has submitted the original departmental enquiry records for our perusal. He has also submitted that the applicant cannot challenge his transfer to Roza station in these proceedings.


4. Although in the OA, issues had been raised that the Enquiry Officer's report was not supplied to the applicant and he was not provided a defence helper, at the time of hearing, Shri M.K. Gupta, learned counsel has submitted that he is not pressing these points. He had also submitted that since the OA had been drafted and filed by another counsel, he was not in a position to say how these statements had been made in the application. On the other hand, Shri P.S. Mahendru, learned counsel has submitted that as false statements have been made, as is evident from the original departmental proceedings record, which show that the applicant has in fact received a copy of the Enquiry Officer's report and has also been provided a defence helper to defend his case, the applicant should not be heard any further or given any relief by the Tribunal. Based on the departmental proceedings record, which show that not only he was given a copy of the Enquiry Officer's report, which, in any case, is not pressed by the learned counsel for the applicant, but he has also been given a defence helper to assist him in the departmental proceedings the applicant's contentions to the contrary are rejected. Having regard to the facts and circumstances of the case, the averments in the application to the contrary appear to be an attempt on the part of the applicant to mislead the Court which is impermissible in law. We are not impressed by the arguments advanced by Shri M.K.


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salary. In that case the order has been given effect to only from 13.5.94 and there is no illegality. His claim in para 8.2 for salary from 7.5.94 to 12.5.94 is also unsustainable and these grounds are accordingly rejected.

6. Considering the accepted principles of judicial review in departmental enquiries as laid down by the Supreme Court, including in the case of B.C. Chaturvedi (supra) relied upon by the applicant, we do not find any good ground justifying interference in this case either on legal infirmities in the procedural side or in the exercise of judicial discretion by the competent authority in imposing the penalty on the applicant.

7. In the result, for the reasons given above, the OA fails and is accordingly dismissed. No order as to costs.


(N. Sahu)
Member(A)


(Smt. Lakshmi Swaminathan)
Member (J)

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