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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 1348/97

New Delhi, this the 5th day of April, 1999

HON'BLE SHRI T. N. BHAT, MEMBER (J)
HON'BLE SHRI S.P.BISWAS, MEMBER (A)

Shri J.R. Dhiman s/o Sh. Raghbir Chand,
R/o 110/10, Thompson Road,
Railway Colony,
New Delhi.Applicant.

(By Advocate: Shri G.D.Gupta)

Vs.

Union of India through:

1. The General Manager,
Northern Railways,
Baroda House,
New Delhi.
2. The Chief Medical Director,
(Earlier known as Chief Medical Officer)
Northern Railways,
Baroda House,
New Delhi.
3. The Divisional Railway Manager,
Northern Railways,
Chelmsford Road,
New Delhi.
4. The Assistant Personal Officer (Engg.)
Office of Divisional Railway Manager,
Northern Railway,
Chelmsford Road,
New Delhi.
5. Dr. A.K. Jolly,
Ex-Chef Medical Director,
Northern Railway,
Baroda House,
New Delhi.

....Respondents

(By Advocate: Shri R.L.Dhawan)

O R D E R

Hon'ble Shri T.N.Bhat, Member (J):

The applicant who was at the relevant time working as a Pharmacist in the Railway Hospital at Delhi was served with a chargesheet on 3.6.1983 with the

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allegation that on 26.3.1983 he had committed serious misconduct and had failed to maintain devotion to duty, in as much as he entered the casualty room between 2200 hours and 2230 hours without being called and misbehaved with Dr. A.K. Jolly, ADM/Rad who was on duty at the material time and the applicant snatched the Railway telephone and threw the same on the face of Dr. A.K.Jolly thereby causing physical injuries to him on the face. Together with the chargesheet the applicant was served with a statement of imputation of misconduct/misbehaviour as also the list of witnesses on whose depositions the department proposed to rely. The list of witnesses contained the names of Dr. A.K. Jolly, Dr. R.K. Agarwal, Sh.Latoori Singh and Shri Rampal and two other persons. Annexure IV to the chargesheet contained the list of documents by which the Articles of charge were proposed to be sustained.

2. Admittedly, a fact finding enquiry was held prior to the service of the chargesheet on the applicant during the course of which the statements of witnesses were recorded. Those statements included the statements of the applicant, one Shri Devbrat Ghosh as also Sh. Latoori Singh, Dr. A.K. Jolly, Shri Ram Pal & Shri Prakash Chand. A regular enquiry was held and the enquiry officer submitted the report according to which the allegations/charges were found established against the applicant. Accepting the report of the Enquiry Officer the punishing authority passed the order dated 18.12.1987 holding the applicant guilty of the alleged "offences".

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3. The punishing authority awarded the punishment of removal from service on the applicant against which the applicant preferred an appeal. Several grounds were taken in the appeal but the appeal was disposed of with a brief and cryptic order wherein it was stated that there was preponderance of evidence to establish the fact that the applicant had committed serious misconduct and had not maintained devotion to duty and that his misconduct was unbecoming of a Railway servant. The appeal was accordingly dismissed.

4. The applicant filed a revision petition. The Revisional authority vide its order dated 24.6.1989 agreed with the Enquiry Officer and the punishing authority that the charges against the applicant had been established and ^{held} further that the penalty imposed on the applicant was [^] commensurate with his misconduct. However, taking a lenient view on the ground that the applicant was young in age and he was entitled to a chance to improve his conduct the revisional authority reduced the penalty of removal from service to that of reduction in time scale of pay by two stages for a period of two years which would have cumulative effect.

5. Aggrieved by the order of the revisional authority the applicant filed OA 784/90. After hearing both the parties this Tribunal by its judgement dated 28.9.1993 disposed of the OA with a direction to the revisional authority to hear afresh and dispose of the revision petition of the applicant in accordance with law and in the light of the observations made in the aforesaid

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judgement. The respondents were directed to maintain status-quo qua the applicant till the final order is passed by the revisional authority.

6. After passing of that judgement the applicant submitted a fresh revision petition and was also given personal hearing by the revisional authority. By the impugned order dated 10.4.1995, as at Annexure A-6, the revisional authority passed a detailed order the operative part of which reads as under:-

"16. Taking all facts and circumstances of the case into account, I hold that on the basis of evidence produced at the inquiry excluding that held by CAT, as inadmissible, the crux of the charge that Shri Dhimman misbehaved with Dr. Jolly and caused injury to him is conclusively established. In my view this charge constitutes commission of grave misconduct which renders him unfit for retention in service as continuing such a person in service will not be conducive to office discipline and in my considered view imposition of the penalty of removal is warranted and I hereby order for Shri Dhimman's removal from service."

7. We may mention that the Tribunal had vide its judgement dated 28.9.1993 made certain observations. It was held that neither the appellate authority nor the revisional authority had properly applied their mind to the

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contentions raised by the applicant in his memos of appeal and revision. It was further observed that the depositions made by those witnesses who either did not appear before the Enquiry Officer or recited from the depositions made earlier before the Fact Finding Authority could not have been made use of by the Enquiry Officer or the punishing authority. According to the observations made by the Tribunal the Enquiry Officer had erroneously relied upon those depositions which had been made by the witnesses in the absence of the applicant before the Fact Finding Officer when the applicant had no opportunity of cross-examining the witnesses. It was, therefore, directed that the revisional authority shall address himself to all the contentions raised by the applicant regarding the legality of the manner in which the enquiry was held. The revisional authority was further directed to dispose of the revision by a reasoned and speaking order.

8. The impugned order passed by the revisional authority is being assailed in this OA on two grounds. Firstly, it is contended that after excluding the evidence which had been recorded during the Fact Finding Enquiry there was no other evidence which would connect the applicant with the commission of the alleged misconduct. In other words, according to the applicant, this was a case of "No Evidence" and the finding recorded by the enquiry officer and accepted by the punishing authority as well as the higher authorities were perverse.

9. Secondly, the contention of the applicant is that even assuming that there was some evidence against the applicant it was not open to the revisional authority to

impose upon the applicant punishment in excess of what had been awarded by the revisional authority earlier. We may recall that by the earlier order passed by the then Revisional Authority the punishment of removal from service awarded by the disciplinary authority had been reduced to reduction in pay by two stages for two years with cumulative effect.

10. The respondents have resisted the claim of the applicant on the grounds, firstly, that there was sufficient evidence on the basis of which the alleged misconduct of the applicant could be said to have been established and, secondly, that once the order passed by the revisional authority earlier had been quashed by the Tribunal and the revisional authority was directed to pass a fresh order it was open to the revisional authority to consider all the circumstances and award any punishment which according to the revisional authority would be commensurate with the gravity of the charges. According to the respondents, the revisional authority had found the alleged misconduct of the applicant to be grave and had also considered the applicant to be unfit for retention in Railway service.

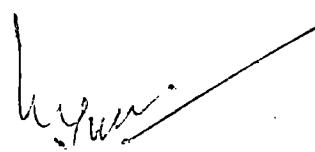
11. We have heard at length the arguments of the learned counsel for the parties and have also perused the material on record.

12. Learned counsel for the applicant has been at great pains to emphasise that there was no evidence connecting the name of the applicant with the alleged commission of offence/misconduct. Learned counsel has

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tried to extensively quote from the depositions made before the Enquiry Officer. He has further sought support from certain observations made by the Tribunal in its judgement dated 28.9.1993, more particularly those portions which relate to the depositions made by Sh. Latoori Singh and Shri Ram Pal. Learned counsel for the applicant has urged before us that both these witnesses stated to be the only eye witnesses apart from Dr. Jolly had resisted from the depositions attributed to them which they had allegedly made before the Fact Finding Officer and according to the counsel for the applicant once these two witnesses are excluded from consideration the entire edifice built against the applicant would fall like a house of cards.

13. We have carefully considered the contention made by the learned counsel for the applicant and the reply thereto given by Mr. R.L. Dhawani and we are of the considered view that the finding of the enquiry officer is based upon some evidence and that this is not a case of "no evidence". The revisional authority in its order impugned in this O.A. appears to have done a commendable job in separating the grain from the chaff. Those portions of the evidence which had not tested on the touchstone of cross-examination have rightly been excluded. Even so according to the revisional authority there was sufficient evidence to prove the misconduct. On going through the detailed order made by the revisional authority, we find ourselves in agreement with the aforesaid view. We may give some reasons for this.



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14. It is true that Shri Laturi Singh and Shri Ram Pal had recanted from their earlier depositions. But it is equally true that on being examined during the departmental enquiry they had supported the complainant, namely, Dr. A.K. Jolly on some important facts. They had not denied that the applicant was found present in the room of Dr. Jolly at the time of the alleged incidence. They had also not disputed that Dr. Jolly had received some injuries. The fact that the telephone instrument was found in the hand of the applicant had also not been denied by them, though they had tried to bring out that the telephone instrument was handed over by Dr. Jolly to the applicant voluntarily. But the fact remains that the important facts relating to the alleged incidence have been corroborated by these two witnesses though they have expressed their ignorance about the actual occurrence.

15. The complainant Dr. Jolly has fully supported the contention of the prosecution and his deposition is corroborated in material particulars by Dr. A.K. Aggarwal who attended to the injuries received by Dr. Jolly immediately after the alleged incidence. There are, no doubt, some contradictions and minor discrepancies in the depositions of the prosecution witnesses. But such minor contradictions and discrepancies cannot be considered to be fatal so far as disciplinary enquiry is concerned. We may state here that even according to the applicant there was an exchange of hot words between him and Dr. Jolly, though the applicant would further assert that the altercation took place only when the applicant sought permission of Dr. Jolly to use his telephone so that the applicant could inform his wife that he would not be able

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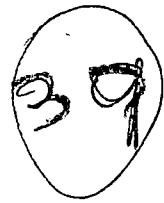
to come home and when Dr. Jolly refused that request of the applicant. The enquiry officer and the revisional authority have rightly disbelieved this version of the applicant and we have no ground to take a contrary view.

16. Without feeling the necessity to cite judgements on the point, we take it as fairly well settled that this Tribunal cannot substitute its own conclusions for those drawn by the enquiry officer and the disciplinary authority from the evidence recorded during the course of the enquiry, even if two conclusions could be possible on the same evidence. It is only when there is no evidence whatsoever upon which the findings recorded by the disciplinary authority/enquiry officer could be based that the Tribunal can interfere. We are convinced that this is not a case of "no evidence".

17. In view of the above the first contention raised by the applicant is liable to be rejected.

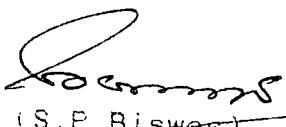
18. The other contention does appear to have much force. As already stated, the revisional authority had on earlier occasion considered the applicant's case to be one where the punishment should be reduced from the original punishment awarded by the disciplinary authority. The revisional authority had accordingly reduced the punishment to reduction in time scale of pay by two stages for a period of two years with cumulative effect. It is true that the aforesaid order passed earlier by the revisional authority was held to be a non-speaking order passed without application of mind to the various contentions raised by the applicant in his revision

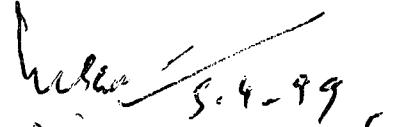
petition. But that by itself would not justify the successor revisional authority to impose any punishment in excess of the one imposed by the predecessor authority. If according to the successor revisional authority, on consideration of all the relevant material and the merits of the contentions raised by the applicant the findings recorded by the enquiry officer and accepted by the disciplinary authority were correct, propriety would demand that the revisional authority should have confirmed the order passed by the predecessor revisional authority instead of awarding an enhanced penalty. In our considered view the penalty awarded by the revisional authority now smacks of vindictiveness. The possibility that the applicant has been awarded an enhanced penalty only on the ground that he had shown the audacity to come to the Tribunal cannot be entirely excluded in this case. In this regard, we may further mention that even after the penalty of removal from service had been awarded to the applicant by the disciplinary authority which penalty was upheld by the appellate authority, the appellate authority had passed an order appointing the applicant as a fresh candidate and had thereby shown some mercy to the applicant. The then revisional authority showed more magnanimity and reduced the punishment to reduction in pay by two stages for two years. This was done keeping in view the young age of the applicant and the need to give him a chance to improve himself. All these measures taken earlier should not have been washed away in this manner by the successor revisional authority. We are convinced that this is one of those rare cases where we must hold that the penalty awarded shocks the judicial conscience of the Tribunal.



19. In view of what has been held and discussed above, we partly allow this O.A. and quash the impugned order passed by the revisional authority to the extent it awards the penalty of removal from service and hereby reduce the aforesaid penalty to reduction in pay by two stages for two years with cumulative effect, which is the penalty that had been imposed by the revisional authority earlier. The applicant will be entitled to all the consequential benefits.

20. With the above order, the OA is disposed of, leaving the parties to bear their own costs.


 (S.P. Biswas)
 Member (A)


 (T.N. Bhat)
 Member (J)