

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A. No. 2768/97

New Delhi: this the 17 day of October 2000.

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A).

HON'BLE DR. A. VEDAVALI, MEMBER (J)

Asif Raza,

S/o Shri Syed Raza Muhamad,

Chemical & Metallurgical Assistant

Diesel Shed,

Northern Railway,

Shakurbasti,

Delhi-34

.....Applicant.

(By Advocate: Shri K.K. Puri)

Versus

Union of India through

ACMT/Diesel /

Diesel Shed,

N.Rly,

Shakurbasti,

Delhi-34.

2. DME/Diesel /

Diesel Shed,

Northern Railway,

Shakurbasti,

Delhi-34

3. Dy. CME/Diesel /

Diesel Shed,

N.Rly,

Shakurbasti,

Delhi-34

4. General Manager,

N.Rly,

Baroda House,

New Delhi

.....Respondents.

(By Advocate: Shri R.L. Dhawan)

ORDER

Mr. S.R. Adige, VC (A):

Applicant impugns the disciplinary authority's order dated 17.6.97 (Annexure-A-1); the appellate authority's order dated 1.9.97 (Annexure-A-2); and the revisional authority's order dated 6.11.97

(A)

(Annexure-A-3)

2. Heard both sides.

3. CAT PB in para 60 of its order dated 23.2.95 while disposing of OA No. 1246/90 filed by one Shri Het Ram, found, on the basis of circumstantial evidence that affidavits filed by various persons, including the present applicant which had been exhibited collectively by Shri Het Ram in an MA, were unreliable. It gave liberty to respondents to proceed departmentally against them for having filed affidavits in support of a false claim though it was made clear that this allegation would have to be established independently in such proceedings.

4. Pursuant to the above, respondents issued charge sheet dated 1.2.97 (Annexure-A7).

5. Applicant denied the charge vide his reply dated 15.12.97 (Annexure-A10), upon receipt of which the disciplinary authority after considering the same found it unsatisfactory and imposed the penalty of withholding one increment for two years, against which applicant's appeal petition as well as revision petition was rejected.

6. We have heard applicant's counsel Shri K.K.Puri and respondents' counsel Shri Dhawan.

7. The first ground taken is that the CAT PB's conclusion in its order dated 23.2.95 that the affidavits submitted by applicant were unreliable, was arbitrary and hence the chargesheet based upon the same is infructuous. It is not open to this Bench to question the conclusion arrived at by another coordinate

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Bench. Hence this argument fails.

8. The next ground taken is that no opportunity was given to applicant to show cause against the penalty. Applicant was given full opportunity to show cause against the chargesheet and as it was only a minor penalty that was inflicted, no further opportunity to show cause was necessary under rules. Hence this ground also fails.

9. It has next been urged that the complainant was not examined. As action was initiated on the background of certain conclusions arrived at by CAT PB in its order dated 23.2.95 in OA No. 1246/90 the question of examining the complainant, if any does not arise.

10. It was next urged that no enquiry was held in respect of charge. As only a minor penalty was inflicted, it was not necessary under rules to conduct a full fledged inquiry and respondents were competent to issue penalty order to applicant on the basis of applicant's reply to the charge memo, which respondents found unsatisfactory.

11. It has next been contended that proceedings were not instituted under Rule 8 Railway Servants (Disc. & Appeal) Rules and hence imposition of a penalty under Rule 6 (iv) is arbitrary. Proceedings were instituted against applicant for imposing minor penalty under Rule 11 as is clear from ~~Annexure-A6~~ Memo dated 13.12.97 (Annexure-A6) furnishing to applicant the imputation of allegations. Hence this ground has no merit.

12. The next ground taken is that applicant was chargesheeted for misconduct, but penalised for

(b)

negligence coupled with violation of rules. A Govt. servant is required to conduct himself properly at all times, and proper conduct includes due attention to work and to detail. Hence misconduct which is not conducting oneself properly includes absence of attention to work and to detail which amounts to negligence.

13. The next ground taken is that prejudice has been caused to applicant. Nothing has been shown by applicant to establish that any prejudice has been caused to him while imposing the penalty. The penalty has been imposed because applicant's explanation was not found satisfactory. Hence this ground also fails.

14. It has next been urged that the charge sheet has not been served by the Disciplinary Authority. The Disciplinary Authority may serve the charge sheet himself, or cause it to be served. The latter does not vitiate the proceeding. Hence this ground also fails.

15. The next ground taken is that the appellate order is illegal, because the appellate authority has used the word 'offence' in describing the alleged misconduct. It is contended that the word 'offence' relates to a crime, and cannot be used to describe alleged misconduct. Merely because the appellate authority used the word offence to describe the alleged misconduct, does not make the appellate order per se illegal. Hence this ground also fails.

(1)

16. It has next been urged that the revision petition was disposed of not by the revisional authority but by the appellate authority himself. A perusal of Annexure-A3 order dated 6.11.97 reveals that the appellate authority has merely communicated the operative portion of the revisional authority's order. Hence this ground also fails.

17. It has next been urged that applicant was not permitted to be assisted by a defence assistant. As major penalty proceedings were not initiated against applicant, the question of permitting applicant to retain a defence assistant did not arise.

18. Lastly it was urged that in respect of others who had also been found to have filed false affidavits, a different punishment was imposed in appeal. Even if the alleged misconduct was the same, respondents cannot be legally faulted for imposing a more severe punishment for a functionary who was more senior and whose responsibility was therefore greater. Hence this ground also fails.

19. The OA therefore warrants no interference. It is dismissed. No costs.

A. Vedavalli
(DR. A. VEDAVALLI)
MEMBER (J)

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN (A)

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