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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.474/97

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

New Delhi, this the 8th day of May, 2000

Dinesh Prasad Thakur
Ex-ASM
Headquarters Babugarh
Northern Railway
r/o C/2/304, Janakpuri
New Delhi.

.... Applicant

(None)

Vs.

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| 1. Union of India through
The General Manager
Northern Railway
Moradabad. | 2. Divisional Railway Manager
Northern Railway, Moradabad. |
|--|---|

3. Senior Divisional Operation Manager
Northern Railway
Moradabad.

... Respondents

(By Shri P.S.Mahendru, Advocate)

O R D E R (Oral)

By Reddy. J.

While the applicant was working as Assistant Station Master, he was served with the charge-sheet for major penalty on 11.7.1995. The disciplinary authority, after agreeing with the findings of the enquiry officer's report, imposed the punishment of removal from service by order dated 14.11.1995. The appeal filed by the applicant was rejected by order dated 30.11.1995. The further revision was also dismissed on 20.2.1996.

2. None appeared for the applicant nor any representation is made on his behalf. However, it is brought to our notice that Shri H.K.Gangwani, learned counsel who was appearing for the applicant, has mentioned, yesterday, that he was not appearing in the



-2- (12)

case as the applicant has taken the brief from him. Shri P.S.Mahendru, learned counsel appears for the respondents. Since this is a matter of 1997, we have decided to dispose of the matter on merits, even in the absence of the learned counsel for the applicant, as per Rule 15 of the CAT (Procedure) Rules, 1987.

3. It is urged in the OA that the order of removal by the disciplinary authority is not only speaking order but also suffers from non-application of mind. It is also urged that there was a hostile discrimination inasmuch as the real culprits responsible for the incident were let off with lesser punishment.

4. The learned counsel for the respondents, refuting the contentions, submits that the applicant was responsible for the accident and on the basis of evidence on record, the impugned orders were passed and that this Court in the exercise of judicial review jurisdiction will not normally interfere with the orders of the disciplinary authority as confirmed by the appellate and revisional authority.

5. We have given careful consideration to the pleadings and the points raised in the OA and the arguments advanced by the learned counsel for the respondents as per Rule 15 of the CAT (Procedure) Rules, 1987. The main allegations against the applicant are as under:

Article-I:

The said Sh. Dinesh Prasad Thakur, ASM-HQ/Babugarh working at Kuchesar Road on 13.6.95 in 15/- to 22/- shift acted in a most careless and

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-1- 13

indisciplined manner insofar that he did not apply ferrules on the relevant slide when loop line No.1 was blocked by UP NNO Spl.

Article-II:

Sh. Dinesh Prasad Thakur while functioning in the aforesaid capacity, failed to verify physically the clearance of loop line No.1 by visual observation before releasing slot for Home signal and arranged reception of 2HM DN Passenger on Loop Line No.1 which was not clear and free from obstruction since it was occupied by UP NNO Spl. which resulted 2HM DN Passenger collided Head on with standing UP NNO Spl. in loop line No.1 at 19/54 hrs. on 13.6.1995. He also left his duty without/being properly relieved after accident.

Article-III:

The said Sh. Dinesh Prasad Thakur ASM HQ/BBO working at QXR is therefore considered responsible for failing to maintain absolute integrity devotion to duty and also said to have acted in such a manner that was unbecoming of a Rly. Servant and is therefore said to have violated clause (i)(ii)(iii) of Sub-rule-I of Para-3 of Rly. services conduct Rules-1966. He is also said to have violated Para 6.2 and 6.4.31 of station working rule page No.9 of Kuchesar Road, GR-3.38(C), SR-5.19/8 and SR 5.01/2 of G&SR Book-1990."

6. The enquiry officer after examining the witnesses found that the charges were established against the applicant and the disciplinary authority agreeing with the findings reached by the Enquiry Officer, passed the impugned order. It is true that the disciplinary authority has not elaborately discussed the evidence and has not given reasons in the impugned order but it should be noted that the enquiry officer has given elaborate reasons after discussing the evidence for reaching to the conclusions. Hence, it is not necessary for assigning any reasons in the order of the disciplinary authority, as it agreed with the findings of the enquiry officer. It is also seen from the order of disciplinary authority that the applicant had also admitted the enquiry report.

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7. The order of the appellate authority, however, appears too cryptic and does not reveal that he has applied his mind to the order. The order of the appellate authority is as follows:

"The Appellate Authority, i.e., Sr. DOM/MB has considered your appeal and passed the following orders:-

"He is directly responsible for head on collision. His appeal is regretted. His appeal for mercy cannot be granted at cost of safety."

8. As per Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, which is the relevant rules for consideration of the appeal is as follows:

"In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider-

- (a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
- (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
- (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders-
 - (i) confirming, enhancing, reducing or setting aside the penalty; or
 - (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case:

9. On a reading of the order, it is clear that the appellate authority has passed the order in breach of Rule 22(2). It should be noticed that appellate authority is the only forum for the applicant to make a representation as regards the ~~validity~~ ^{severity} of the punishment, whether it is excessive or not. ~~It~~ ^{He} has not considered whether the penalty was excessive or not

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-5- 15

Under Rule 22(2) it was enjoined upon the appellate authority to give reasons how the orders of the disciplinary authority were warranted by the evidence on record. No such attempt has been made by him.

10. In the circumstances, we set-aside the order of the appellate authority and remit the case back to the appellate authority for fresh disposal, in accordance with law. The appellate authority is directed to dispose of the appeal after hearing the applicant and pass proper order within a period of three months from the date of the receipt of a copy of this order.

11. It is needless to say that it is open to the applicant to question the order that may be passed by the appellate authority if he is aggrieved by the same. The OA is accordingly disposed of. No costs.

12. Office is directed to send a copy of the order to the appellate authority within 15 days from today.

Shanta Shastri
(SMT. SHANTA SHASTRY)
MEMBER(A)

V. Rajagopala Reddy
(V. RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

/RAO/