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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 808 of 1994

New Delhi, this the 19th day of July, 1999

Hon'ble Mr. Justice D.N. Baruah, Vice Chairman
Hon'ble Mr. N. Sahu, Member (Administrative)

Shri Gulab Singh,
Booking Supervisor,
Northern Railway,
Jhakar

- APPLICANT

(By Advocate : Shri B.S. Mainee)

Versus

Union of India : Through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.

- RESPONDENTS

(By Advocate : Shri R.L. Dhawan)

O R D E R (Oral)

By Baruah, J.-

In this application the applicant has challenged imposition of penalty, vide order dated 11.2.1993 (Annexure-A-1) and the order dated 5.11.1993 (Annexure-A-2) passed by the appellate authority.

2. The facts are:- at the material time the applicant was Booking Supervisor. The disciplinary authority, namely, the Senior Divisional Commercial Manager framed two articles of charges against the applicant and thereafter the articles of charges along with the statement of imputation were served on him and asked the applicant to show cause as to why disciplinary action should not be taken against him, on the aforesaid charges. The applicant replied

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to the show cause notice denying the allegations. The disciplinary authority not being satisfied with the reply, decided to hold an enquiry and accordingly an enquiry officer was appointed. The applicant participated in the enquiry. Enquiry was held, witnesses were examined and on conclusion of the enquiry proceedings, the enquiry officer submitted his report to the disciplinary authority holding that the applicant was guilty of charge no.1; and regarding charge no.2 the enquiry officer held that this charge could not be proved. On receipt of the report the disciplinary authority, however, passed the following order -

"....so I agree with the enquiry report of B.O. and hold you responsible for the charges proved in the enquiry. I have, therefore, decided to impose upon him the penalty of reduction to lower post/grade."

Being aggrieved, the applicant preferred an appeal before the appellate authority and the appellate authority vide order dated 5.11.1993 (Annexure-A-2) rejected the appeal. Hence the present application.

3. In due course the respondents have entered appearance and filed their counter statement to the averments made in the application. We have heard both the sides.

4. Mr. Mainee, learned counsel appearing on behalf of the applicant submits that the enquiry officer found the applicant guilty of charge no.1 and according to the enquiry officer the charge no.2 was not proved, however, the disciplinary authority found him guilty of both the charges without giving any reasons to come to the different findings. Mr. Mainee further submits that the appellate authority also did not consider this aspect of the matter and, therefore, according to him, the finding of the appellate authority was also erroneous. In this

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connection Mr. Mainee has invited our attention to a decision of the Apex Court in Punjab National Bank & ors. Vs. Sh. Kunj Behari Misra etc., 1999 (1) SLJ 271. Relying on this decision Mr. Mainee submits that though the disciplinary authority has every right to disagree with the conclusion arrived at by the enquiry officer, however, in that event the disciplinary authority is required to give reasons for coming to a different conclusion and this decision should be communicated to the delinquent employee before imposing him a penalty. His second submission is that since one charge was not proved and the finding of the disciplinary authority on the second charge is bad in law, the punishment imposed was also not proper, in view of the fact that the gravity of the offence must have lesser effect because of the failure to prove one charge. In this connection reliance has been placed before us by Shri Mainee in K.R. Bapure Vs. State of Karnataka, 1992 (2) SLJ (CAT) 189.

5. Mr. R.L. Dhawan, learned counsel appearing on behalf of the respondents, on the other hand, submits that in terms of Rule 10(3) of the Railway Servants (Discipline & Appeal) Rules, 1968 the disciplinary authority, if it disagrees with the findings of the inquiring authority on any articles of charge, is required to record its reasons for such disagreement and record its own findings on such charge, if the evidence on record, is sufficient for the purpose. The disciplinary authority passed the order in strict compliance with the same provision.

6. In view of the above, it is now to be seen whether the imposition of the penalty can be sustained in law. It is well settled that the disciplinary authority is not bound to accept the findings or

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conclusion arrived at by the enquiry officer, and the disciplinary authority has the right to disagree and come to a different conclusion. In this regard, Rule 10(3) ibid stipulates that "the disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any articles of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record, is sufficient for the purpose". From the above rule, it is true that the disciplinary authority has got the power, but the decision of the Apex Court in the case of Kunj Behari Misra (supra) has been that if the disciplinary authority comes to a conclusion different from the enquiry officer, then it has to be communicated to the delinquent employee. In Kunj Behari Misra's case the Supreme Court held that "it is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted." The Apex Court in the same case observed as follows -

"It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed."

The Apex Court in that case further observed that "the principle of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation

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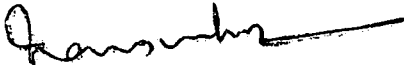
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before the disciplinary authority records its findings on the charges framed against the officer".

7. From the decision quoted above, it is abundantly clear that when the disciplinary authority differs from the findings of the enquiry officer, not only reasons should be recorded for the different conclusion but also he must give an opportunity to the delinquent employee to make a representation. In this present case this was not done.

8. In view of the above, we find that the penalty imposed is not just and proper and contrary to the decision of the Apex Court. We set aside both the orders dated 11.2.1993 (Annexure-A-1) and 5.11.1993 (Annexure-A-2). It is for the respondents to decide as to whether enquiry to continue in accordance with law. Considering the facts and circumstances of the case, we make no order as to costs.


(N. Sahu)
Member (Adminv)


(D.N. Baruah)
Vice Chairman

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