

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./XXX. No. 1369/1994

Decided on:

11.11.96

(19)

Shri M.P. SinghApplicant(s)

(By Shri Anis Suhrawardy Advocate)

Versus

U.O.I. & OthersRespondent(s)

(By Shri Romesh Gautam Advocate)

CORAM:

THE HON'BLE ~~SIR~~ MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter *98*
or not?

2. Whether to be circulated to the other *100*
Benches of the Tribunal?

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(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. 1369 of 1994

New Delhi this the 11th day of November, 1996

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri M.P. Singh
R/o 11-C/191 Nehru Nagar,
Ghaziabad (U.P.).Applicant

By Advocate Shri Anis Suhrawardy

Versus

1. Union of India through
its General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Senior Divisional Personnel Officer,
Northern Railway,
DRM Office,
State Entry Road,
New Delhi.
3. Smt. Kusum Singh
Divisional Personnel Officer,
DRM Office,
Northern Railway,
State Entry Road,
New Delhi. ...Respondents

By Advocate Shri Romesh Gautam

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

The applicant is aggrieved by the impugned
order of removal from service, Annexure A-1 page 15 and

has prayed that the said order may be set aside with the direction to the respondents to reinstate the applicant with all arrears of salary with interest.

2. The brief facts in this case are that the applicant while working as a Clerk in the office of the Divisional Railway Manager, New Delhi was served with a charge-sheet. The charge dated April, 1993 was that he absented himself from duty with effect from 9.12.1992 without sanction of leave by the competent authority. The officer was placed under suspension by a separate order with effect from the same date. It is also stated in the statement of imputation of misconduct in/ articles of charge that the applicant did not attend the office on 9.12.1992 nor had he given any representation or reason for his absence till date, i.e., April,

1993. After due enquiry under the provisions of Railway Servants (Discipline and Appeal) Rules, 1968, the Enquiry Officer returned the finding that the charge of unauthorised absence against the applicant was not proved. However, the disciplinary authority differed from the findings of the Enquiry Officer for the reasons stated in the order of disciplinary authority dated

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18.4.1994, Annexure-B at page 15. By the said order, the applicant had been imposed the punishment of removal from service. The appeal against this order was also rejected by the appellate authority vide his order dated May, 1994.

3. The applicant contends that on 8.12.92, he attended the normal duties and on that day, he applied for 2 days' leave with permission to leave the headquarters. He submitted that the application was recommended by the Superintendent of the Branch. After he proceeded on leave, the respondents placed him under suspension and started the disciplinary proceedings against him. He alleges that although the leave was originally recommended for sanction, but was subsequently cancelled and he was placed under suspension, which was followed by the aforesaid charge-sheet. He also contends that the suspension order was never served on him by the Department and had not become effective. He also strongly contends that the enquiry resulted in the Enquiry Officer's returning the finding that the charges are not proved. He contends that the disciplinary authority should have accepted the finding of the enquiring authority and on the other hand, he had disagreed with the finding and had even imposed the punishment

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on him on account of the hostility of the disciplinary authority against him as he was the Organising Secretary of the Uttar Railway Mazdoor Union and had to organise several meetings against the high officials of the respondents as well as against the respondent No.3 because of which the applicant alleges that the disciplinary authority had harboured a grudge against him. The applicant further contends that the appellate authority had also passed a non-speaking order. The applicant further contends that the bias of the disciplinary authority against him could be evident from the fact that he was denied privilege passes and that the subsistence allowance was also not enhanced to 75% as provided under the rules. The applicant also states that he was also served with another memorandum of charges altogether on different charges in February, 1994 which also shows the extent of bias against the applicant.

4. The respondents in their reply contend that the order of removal from service was passed after following the due process of law as laid down under the Railway Servants (Discipline & Appeal) Rules, 1968. The disciplinary authority had recorded the reasons for disagreement with the findings of the Enquiry Officer and had passed

a speaking order. The respondents also contend that though the applicant had initially applied for 2 days' leave, the same was never sanctioned and it was incumbent on the part of the applicant to get his leave sanctioned first prior to his staying away from duty. They have also averred that the applicant absented himself from his duty every since 9.12.1992A. The respondents also denied that there had been any bias or grudge against the applicant and had denied all other allegations made by the applicant in his averment. In regard to the contention of the applicant that he was also served with another charge-sheet for certain misconduct, it is contended by the respondents that the competent authority had recorded detailed reasons while passing the impugned order of punishment and had given detailed speaking order. The appellate authority had also passed a very detailed and speaking order by his order dated 4.5.1994.

5. We have heard the learned counsel for the parties and have carefully perused the records.

6. We find that the enquiry has been held in accordance with the procedure outlined in the Railway Servants (Discipline & Appeal) Rules, 1968. The applicant had also participated in the enquiry. We also find that the disciplinary authority while disagreeing with the findings of the Enquiry Officer has given reasons of the Enquiry for his disagreement with the findings / Officer. We

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also find that the appellate authority had considered the appeal and had given detailed reasons/indicates due application of mind/ and has rejected the appeal and he has rejected the appeal. In the circumstances, there is nothing on record to show that there had been any irregularity in the procedure adopted nor has there been absence of application of mind or denial of opportunity to the applicant to defend etc. There is no material on record to indicate that the respondents have acted under personal bias or malice. In the disciplinary matters, the functioning of the Tribunal is one of judicial review and is not an appeal from a decision but a review of the manner in which the decision is made. In Union of India vs. P. Upendra Singh, JT 1993(1) SC 658, the Supreme Court has held that the Courts and Tribunals cannot examine the correctness of the findings and the decision in the departmental proceedings. Their Lordships have relied on the observations of the Apex Court in H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal and Others vs. M/s Gopi Nath and Sons and Others, 1992 (Supp)(2) SCC 312, to point out that the purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial

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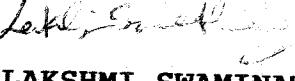
review is not an appeal from a decision but a review of the manner in which the decision is made. Their Lordships further observed that "it will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself". In the case of **Government of Tamil Nadu and Another vs. A. Rajapandian**, AIR 1995 (3) SC 561, it was held by their Lordships of the Apex Court that "the Tribunal cannot reappraise the evidence and cannot arrive at an independent finding on the material placed in the enquiry and the question of adequacy or reliability of the evidence cannot be canvassed before the High Court." From the perusal of the record, we find that the decision making process has not been vitiated in this case and the applicant had been given full opportunity for defending this case and the disciplinary and appellate authority had also given due reasoning before giving their orders on the disciplinary case.

7. In the light of the foregoing and in view of the law laid down by the Apex Court in such cases, we do not find that there is any ground for interfering with the decision of the

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disciplinary and appellate authorities in this case. Accordingly, this application fails and is dismissed. In the circumstances, there shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(SMT. LAKSHMI SWAMINATHAN)
MEMBER (J)

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