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CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench
New Delhi

Q.A. No. 1818 of 1994

New Delhi, dated the 29th Sept. 1995

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

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

Shri R.K. Vimal,
Station Supdt.,
Northern Railway,
Bangarmau, Railway station,
U.P.

... APPLICANT

(By Advocate: Shri R.K. Kamal)

VERSUS

Union of India through

1. The Secretary, Railway Board,
Rail Bhawan, Rafi Marg,
New Delhi-110001.

2. The General Manager,
Northern Railway, Baroda House,
New Delhi-110001.

3. The Divisional Rail Manager,
Northern Railway, Moradabad Div.,
Moradabad (U.P.)

... RESPONDENTS

(By Advocate: Shri H.K. Gangwani)

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

In this application Shri R.K. Vimal, Station Superintendent, Northern Railway, Bangarmau Rly. Station (U.P.) has impugned the legality and vires of Rule 10(3)(4) Railway Servants (Disc. & Appeal) Rule, as well as the order of 28.12.93 imposing the penalty of reduction in pay scale (Ann. A.2) and the appellate order dated 8.7.94 (Ann. A.3).

2. Shortly stated, the applicant while working as Station Supdt., Bangarmau was charged

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with misconduct in fraudulently securing employment for Shri Inder Pal and four others as substitute loco cleaners in Moradabad Division by misverifying the working period of the above mentioned employees in the absence of any genuine record and issuing working certificates to them although they did not work in Gangamau Railway Station. In the departmental proceeding drawn up against the applicant, the E.O. held that the charges against the applicant could not be established, but the applicant could not be relieved of his responsibility for the presentation of the relevant records at the form of making charge of the post to one Shri K.P. Singh and also taking over charge from Shri P.N. Yadav, ASM again when he took over the charge of the same station. A copy of the Enquiry report was endorsed to the applicant to enable him to file representation if any, and on receipt of that representation, the Disciplinary Authority by his impugned order dated 28.12.93 held that although the applicant had not been found to be " " fully responsible for the charges levelled against him, he should have been more vigilant while verifying the working period of the persons mentioned, and he had been found responsible by the E.O. for failing to make over and take over the relevant documents and also for failing to preserve them properly and holding him guilty of the charge, imposed the impugned punishment. In the impugned appellate order dated 8.7.94 the appellate authority observed

that the applicant had been found responsible for misverifying the working period Shri Inder Pal and four others and was also found to have issued working certificates to them even though they did not work at Bangarmau Station. Accordingly the appellate authority converted the disciplinary authority's order dated 28.12.93 reducing the applicant's pay from Rs.2750/- p.m. to Rs.2000/- p.m. in the scale of Rs.2000-3200 for a period of two years without postponing future increments to one of pay reduction from Rs.2750/- to Rs.2525/- for a period of two years with postponement of future increments against which this O.A. has been filed.

3. We have heard Shri Kamal for the applicant and Shri H.K. Gangwani for the respondents. We have also perused the materials on record and considered the rival contention carefully.

4. Other infirmities can also be detected in the conduct of the departmental proceedings. While the E.O. has held that the charge against the applicant could not be established, the disciplinary authority has, in the impugned order, observed on the one hand that the applicant has not been found "fully" responsible for charges, but in the same breath holds the applicant guilty of the charge. If the Disc. Authority disagreed with the findings of the E.O., he should have said so in clear terms, and informed the applicant ^{why} he was disagreeing with the finding of the E.O., and given the applicant an opportunity to show cause before

concluding ^{that} the applicant was guilty of the charge, as laid down by the Hon'ble Supreme Court in Narayan Mishra's case in 1969 (3) S.L.R. 657. Similarly, ^{as} the appellate authority has also held the applicant guilty of the charges, without assigning reasons for disagreement with the finding of the E.O.

5. ^{view} Without going into the ~~view~~ of Sub-Rule (3) & (4) of Rule 10 Railway Servants (Disc. & Appeal) Rules, the impugned orders are liable to be struck down in view of the infirmities pointed above, which fatally vitiates the departmental proceedings. Respondents' counsel Shri Gangwani has relied upon the ruling in State Bank of India Vs. S. S. Koshal 1994 Suppl. (II) SCC 468, but this ruling does not help the Respondents, as it does not cover ^{a1} the case where the departmental proceedings ^{are} vitiates for the reasons pointed out above.

6. In the result this O.A. succeeds and is allowed. The impugned orders of the disciplinary authority and the appellate authority are quashed and set-aside. It will be open to the Respondents if so advised, to proceed against the applicant departmentally afresh, in accordance with law. No costs.

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

S. R. Adige
(S. R. ADIGE)
Member (A)

/GK/