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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.NO.1926/94

New Delhi, this the 9th day of March, 1995

Hon'ble Shri J.P. Sharma, Member (J)
Hon'ble Shri B.K. Singh, Member (A)

Shri Harkesh Meena,
s/o Shri Badri Lal Meena,
Vill. and P.O.
Toksi.
Tehsil Gangapur City
Distt. Sawai Madhopur (Raj).

... Applicant

By Advocate: Shri B.N. Bhargava

Vs.

1. Union of India
through
the General Manager,
Northern Railway,
Baroda House, New Delhi.
2. The Manager,
Data Base (C.R.),
IRCA Building,
Northern Railway,
New Delhi.
3. Sr. Programmer,
IRCA Building,
Northern Railway,
New Delhi.

... Respondents

By Advocate: Shri P.S. Mahendru

ORDER

Hon'ble Shri J.P. Sharma, Member (J)

The applicant was appointed as Reservation Clerk in Northern Railway on 30.8.85. In May, 1986, while he was working in the second class reservation office in Northern Railway, he was served with the memo. of chargesheet dated 17.3.87 having been put under suspension w.e.f. 27.5.86. A regular enquiry for major penalty chargesheet was conducted against him. The Inquiry Officer held the applicant guilty of the charges framed against him and disciplinary authority agreeing with the findings of the Inquiry Officer passed the order of removal from service

w.e.f. 29.3.88. An appeal against this order was also dismissed by the Appellate Authority by the order dated 4.10.88. The applicant filed O.A.No.2046/89 in the Principal Bench which was decided by the judgement dated 4.3.93 by which the order of the Appellate authority dated 4.10.88 upholding the order of disciplinary authority was quashed and the case was remanded back to the Appellate authority to decide the appeal filed by the applicant against the order of the disciplinary authority as per law and as per observation made in the judgement of the aforesaid O.A. 2046/89.

2. The appeal of the applicant has since been decided by the Appellate Authority by the order dated 29.7.93 and the Appellate authority has maintained the order passed earlier by the disciplinary authority. The revision against this order was also filed and by the order dated 20.7.94, the competent authority has dismissed the revision upholding the punishment awarded to the applicant. Against the aforesaid orders, the present application has been filed by the applicant on 21.9.94. He has prayed for the quashing of the orders of punishment and for reinstatement in service with all consequential benefits.

3. The respondents in their reply did not deny the facts stated by the applicant and stated that the supplementary chargesheet dated 17.3.87 was given to the applicant and a regular enquiry was held. It is stated that the applicant has himself admitted his guilt and made a confessional statement of having fraudulently taken the refund of Rs.548/- and that amount he had deposited on his own volition. A copy of the said confessional statement is annexed to the counter as Annexure R-1.

It is said that the Appellate authority has considered the appeal of the applicant and given substantial reasons in rejecting the various grounds taken in the memo. of appeal. It is said that the applicant has been given due opportunity to defend his case before the Inquiry Officer and after full appreciation of the evidence the Inquiry Officer has held the charge established against the applicant. The applicant has no case. The applicant has also filed the rejoinder reiterating the facts already stated in the original application. Certain new averments have also been made in para 4.4 .

4. We have heard the learned counsel for the parties at length and perused the records.

5. The first ground taken by the applicant is that the Appellate authority has not applied his mind and did not follow the directions given in the earlier judgement passed in O.A. No.2046/989 on 4.3.93. We have gone through the order of the Appellate authority. The Appellate authority has gone through the whole records of the case and observed that the applicant has himself given a confessional statement of having fraudulently taken the refund of Rs.548/- and later on deposited the same amount at his own. This confessional statement was given before the S.S., CRS and V.I. The Appellate authority also observed that if such a statement was given under coercion, the applicant was free to examine his own witnesses before the Inquiry Officer and could have established that he has not deposited the amount of Rs.548/-. The Appellate authority also observed rejecting the plea advanced by the applicant that there being no ~~candid~~ evidence to prove that the particular EFT was prepared by the applicant is simply hollow and a vain attempt to off-load the offence committed by him.

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The Appellate authority has considered the depositions given by the PWs in the course of enquiry and accepted the same. Regarding the issue of the revised chargesheet, there is a provision in the circular of the Railway Board and copy of the same has also been annexed with the reply as Annexure R-2. The relevant circular of the Railway Board is RB No.E(D&A) 81 RG 6-28 of 27.6.81. This circular lays down that the disciplinary authority has power to review and modify articles of charge or drop some of the charges or all the charges after receipt and examination of the written statement of the defence. Moreover, it is not bound to appoint an Enquiry Officer for conducting an enquiry into the charges which are not admitted by the accused official but about which the disciplinary authority is satisfied on the basis of written statement; that there is no further case to proceed with. If in the case of the applicant the revised memo. of charge was issued, it did not at all change the nature of accusation levelled against him, in the earlier charge. The Appellate authority, therefore, in quite detail, considered every aspect of the matter with reasonings.

6. Though the order of the Appellate authority is very brief order but when the disciplinary authority has agreed with a conclusion drawn by the Inquiry Officer, it was not necessary to re-iterate the reasonings given by the Inquiry Officer. The disciplinary authority has gone through the relevant enquiry file and we have also summoned the same which was placed before us by the counsel for the respondents. The Inquiry Officer has given reasonable opportunity at every stage of the

departmental enquiry to the delinquent and principles of natural justice has been duly observed. In fact when the applicant filed the O.A.No.2046/89, the Principal Bench considered the material of the matter and adversely commented on the disposal of the appeal by the Appellate authority of the applicant, as a result of which the case was sent back to the Appellate authority and now the Appellate authority has considered the appeal. The Appellate authority has also reappreciated the evidence adduced before the Inquiry Officer. The Appellate authority has also confirmed the punishment imposed.

7. Coming to the various grounds taken by the learned counsel for the applicant, it is said that the confession given by the applicant was not free and he was compelled to make the confession. If it was a fact that either on certain assurances or under compulsion he was made to give something in writing which he never intended, the applicant was free to move the higher authority at that very moment. If the applicant has taken the stand that the confession was not free and fair and made a request to the Inquiry Officer, he can easily be termed after thought. A copy of the said confession written in the hand of the applicant himself has been annexed with the counter as Annexure R-1. There is a certificate of CRS Delhi that what he has written has been written voluntarily ^{by} / the applicant. The CRS is a responsible officer and bears no enmity with the applicant to falsely rope in the applicant and save another person Shri Chunni Lal as alleged by the applicant in his request to the Inquiry Officer. It was only in August, 1987 that the applicant in the statement of defence has taken certain defence.

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In the defence statement, the applicant has stated that he was called by Shri Chunni Lal, Reservation Clerk on duty at Counter No.19 and requested him to assist him in cancelling EFT No.587533 booked by 156 Dn. of 28.5.87 due to heavy rush at his counter. That EFT was handed over as alleged by the applicant with the requisition form. The applicant in the defence statement further stated that being a colleague of Shri Chunni Lal he cancelled the same and made an entry in the ROD Register and thereafter he returned the EFT and requisition form to Shri Chunni Lal alongwith ROD register. Shri Chunni Lal obtained the signatures of Shri Ram Kumar, a passenger in the ROD register and handed over the amount of refund to him. On 2.6.86 at about 11 hrs. CRS called him and gave him his suspension order without assigning any reasons. Thereafter, CRS took him to SS office. There SS pulled him up for the alleged connivance with Shri Chunni Lal, Reservation Clerk in giving refund to the passenger. It is further stated that the SS abused him also, and threatened if he did not give in writing and thereafter on his dictation he has written and thereafter he was allowed to leave the office. He also stated that subsequently on 16.6.86 Shri Sethi took him to SS office and obtained his statement confirming the earlier statement under threat. Now if this all happened in June, 1986 the applicant was free to move the higher authority about high-handedness against him forcing him to make write something to his own detriment but he did not do so. If he has taken the stand subsequently that his confession was got denied by him, if the Inquiry Officer has not believed his confession of resiling from the earlier statement the Tribunal cannot sit for to re-appreciate the same.

If the conclusion is possible that the applicant in good faith both either that a lenient view may be taken against him or that he may be forgiven from giving voluntary statement which amounted to admission of certain misconduct, then that has to be considered against him. If it was got recorded from him against his will or wish he should have moved the higher authority. He has not done. The conclusion drawn by the Inquiry Officer and accepted by the disciplinary authority as well as Appellate authority cannot be faulted with. The delinquent has also been examined by the Inquiry Officer on 3.8.87 and he has given the same statement and he further said that he did not deposit the refund of Rs.548/- while in the statement written in his own hand he has admitted this fact, a copy of which is annexed as R-1 to the counter. It goes to show that the applicant himself is not giving in such a manner that creditability be attached to his statements which he has been making at different occasions. The Inquiry Officer has not placed absolute on this statement alone but he has examined the witnesses, discussed their evidence and drawn the conclusion of the guilt of the applicant. The Inquiry Officer examined Shri Chuuni Lal, Reservation Clerk on duty at counter No.19, Shri Mahesh Kumar, Reservation Clerk on duty at Counter No.4, Shri Shemshed Ahmed, Reservation Clerk at counter No.19 in the morning, Mrs. Flourance Lagun, Chief Reservation Inspector and Shri G.K. Sethi, Investigating Inspector, Railway Board. The Inquiry Officer has also considered the documentary evidence which has been cited in the annexure to the chargesheet. We, therefore, find that the proceedings of the enquiry has been duly conducted according to rules and the applicant has been given due opportunity to place his case.

8. The contention of the learned counsel for the applicant that the handwriting expert was not examined, it was not necessary in the circumstances of the case as there was supporting evidence of the material witnesses who themselves witnessed the act which amounted to misconduct of the applicant in getting a refund of the aforesaid EFT in the name of passenger Ram Kumar and further depositing the said amount immediately which has been accepted by the Inquiry Officer. The law on the point has been clearly laid down by Hon'ble Supreme Court in recent decision of Govt. of Tamilnadu V. A. Rajapandian reported in JT 1994(7) S.C. 492 where the Tribunal has set aside the order of dismissal solely on re-appreciation of the evidence recorded by the inquiring authority and reaching the conclusion that the evidence was not sufficient to prove the charges against the respondent of that case. The Hon'ble Supreme Court held that the Administrative Tribunal fell into patent error in re-appreciating and going into sufficiency of evidence. The Hon'ble Supreme Court has also placed reliance on 2 earlier decisions in the case of Union of India V. Sardar Bahadur, 1972(2) SCR 218 and quoted the following para 9 of the reports, as under:-

" A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that Nand Kumar was a person likely to have official dealings, with the respondent was one which reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Art.226 to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court."

9. The Hon'ble Supreme Court has also relied upon on the case of Union of India V. Parma Nand reported in (1989) 2 SCR 19 and quoted the extract in para 10 of the reports which is as follows:-

"We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority."

10. The same view has been taken by Hon'ble Supreme Court in the case of State Bank of India and another V. Samarudra Kishore Endo reported in (1994) 27 ATC 149 as well as in the case of H.R. Kamath Vs. Railway Board reported in (1994) 27 ATC S.C. 460.

11. We have earlier remanded the matter to the Appellate authority also to go into the quantum of punishment and the Appellate authority in its wisdom has upheld the punishment and the Reviewing authority also upheld the same. We, therefore, find no reason to interfere in the quantum of punishment imposed against the applicant as that is the sole discretion of the administration. We could have only remitted the matter for re-consideration regarding the quantum of punishment and if the same has been again upheld.

Now there is no occasion to refer the matter once again for re-consideration of the quantum of punishment.

The application is dismissed as devoid of merit, with no order as to costs.

(B.K. SINGH)
MEMBER(A)

(J.P. SHARMA)
MEMBER(J)

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