

19

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 1968/89

New Delhi this the 20th day of February, 1995.

Shri N.V. Krishnan, Vice Chairman(A).

Dr. A. Vedavalli, Member(J).

B.S. Thakur  
S/o Shri R.C. Singh,  
Qr.No. MA/P-85, A-B West Railway  
Colony, Bhopal (MP). ...Petitioner.

By Advocate Shri B.S. Bhatia.

Versus

1. Division Commercial Superintendent,  
Central Railway,  
Jhansi (UP):
2. Assistant Commercial Superintendent  
(Catering),  
Central Railway,  
Jhansi (UP):
3. Senior Divisional Superintendent,  
Central Railway,  
Jhansi (UP):
4. Divisional Railway Manager,  
Central Railway,  
Jhansi (UP):
5. General Manager,  
Central Railway,  
Bombay V.T. (Maharashtra):
6. Chairman,  
Railway Board,  
Rail Bhawan,  
New Delhi: ...Respondents.

By Advocate - None.

ORDER (ORAL)

Shri N.V. Krishnan:

The applicant was an employee of the Railways under the first Respondent, Divisional Commercial Superintendent, Jhansi. While so, disciplinary proceedings were initiated against him by the memo dated 21.12.1983 (Annexure A). The applicant with the O.A. has not annexed / the statements of the charges and the statements of imputations. It is stated that by a further order dated 18.5.1984 (Annexure B) the memo of charge (Annexure A) was withdrawn which

2

was without prejudice to the issuing of a fresh charge-sheet. That also appears to have been done. The memo of charges so issued are also not exhibited by the applicant. It is stated that he denied the charges and an Inquiry Officer was appointed who submitted a report finding him guilty.

2. Based upon the Inquiry Officer's report, the Divisional Commercial Superintendent, Jhansi, first Respondent, issued the order dated 29.1.1986 (Annexure C) in which he agreed with the Inquiry Officer's report and <sup>him</sup> after holding / guilty of the charges made against him the penalty of removal from service was imposed.

3. The applicant submitted an appeal to the Divisional Railway Manager, the fourth respondent, though by the Annexure 'C' order he was advised that the appeal would lie to the Senior Divisional Commercial Superintendent, Central Railway. The appeal was rejected by the Annexure 'E' order by the Senior Divisional Commercial Superintendent, Jhansi. The appellate authority did not interfere with the penalty imposed by the Divisional Commercial Superintendent. The applicant submitted a representation to the Divisional Railway Manager, Annexure 'F' on 17.5.1986 but that has not been disposed of. He made a representation to the Chairman, Railway Board also which has also not been disposed of. Hence, this O.A.

4. The respondents have filed a reply contesting the claims made in the O.A.

5. When the matter was taken up today for final disposal, none was present for the respondents. We, therefore, heard the learned counsel for the applicant Shri B.S. Bhatia and we have proceeded to pass this order. At this stage Shri U. Srivastava, proxy counsel

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for Shri H.K. Gangwani, Counsel for the respondents appears and states that Shri Shyam Moorjani would be appearing in the case. We have heard the learned counsel for the applicant.

6. The only point pressed by the learned counsel for the applicant was that the penalty imposed was totally disproportionate to the acts of omission and commission in respect of <sup>which</sup> the applicant was found guilty. It is stated that on 12.12.1983 the applicant was found sleeping while on duty in the parcel room at about 9.30 p.m. The learned counsel for the applicant submits that the applicant was not well, as would be clear from the representation dated 28.2.1986 (Annexure D) which he submitted to the appellate authority. It is stated therein that the applicant was a T.B. patient in 1963 and a day before the incident, there was a very cold weather and as he had remained in verandah of the Parcel Office, he was feeling feverish on 12.12.1983. The learned counsel points out that no consideration has been given to the circumstances in which the applicant was found sleeping nor to the earlier record of the applicant. The only point that the learned counsel for the applicant, <sup>is</sup> therefore, makes/that the penalty is harsh and, therefore, it should be reconsidered.

7. We notice from the reply of the respondents that the applicant had admitted the charge and tendered apology and sought to be excused. This is in reply to para 6(iii) of the O.A. We further notice that the disciplinary authority has not chosen to give any consideration as to what penalty would be proper in this case, after holding that he finds the applicant guilty of the charges, as has been brought in the Inquiry Officer's report. The disciplinary authority imposed the penalty of removal from service. The appellate authority too has not devoted any attention to the

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question of penalty though he indirectly refers to the applicant not being well on that date. He points out that if he was not well then he should have informed his seniors and could have gone to see Railway Doctor. He further observes that being unwell and not performing duty is an after-thought. It is not clear whether the appellate authority believed that the applicant was not well on that date or he came to the conclusion that the applicant was only malingering. We notice that Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968 specifies as to how the appeal should be considered. Clause (c) of sub-rule (2) of Rule 22 enjoins upon the appellate authority to specifically consider whether the penalty is adequate, inadequate or severe and pass appropriate orders. This has not been done in this case.

8. We are of the view that while imposing the penalty, the competent authority should consider the previous record of an employee. If an employee has a good record and the misconduct for which he has been found guilty is only an aberration, the good service rendered by him in the past should also be taken into account when the quantum of penalty is to be determined. In other words, the nature of service rendered earlier is not only to be considered when an employee is to be promoted or he is to be permitted to cross E.B. etc. but is also to be considered when an occasion arises to impose the penalty on him. The nature of charges is also another important aspect which should also be considered.

9. In the circumstance, we are of the view that the appellate authority has failed to discharge his duty and, therefore, it is necessary to remand the case to the appellate authority on this limited issue.

13

23

Accordingly, we quash Annexure 'E' order dated 7.4.1986 of the appellate authority in so far as it confirms the punishment imposed by the disciplinary authority and remit the matter to that authority for reconsideration of the penalty to be imposed upon the applicant keeping in view the observations we have made above. This shall be done within a period of two months from the date of receipt of a copy of this order. The modified penalty, if any, imposed by him will take effect from 28.1.1986 when he was dismissed from service.

10. The O.A. is disposed of accordingly. No costs.

*A. K. Vedaulli*

(DR. A. VEDAVALLI)  
MEMBER(J)

*N. V. Krishnan*  
20.2.85  
(N.V. KRISHNAN)  
VICE CHAIRMAN(A)

'SRD'

*for A.K. Vedaulli  
for N.V. Krishnan*