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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 2046/89

DATE OF DECISION : 4.3.1993

Shri Harkesh Meena ... Applicant

vs.

Union of India & Ors. ... Respondents

CORAM :

THE HON'BLE SHRI J. P. SHARMA, MEMBER (J)

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

1. Whether Reporters of local papers may *Ys*
be allowed to see the judgment ?

2. To be referred to the Reporter or not? *Ys*.

In folio
• S. R. Adige)
Member (A)

Domane.
(J. P. Sharma)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.2046/89

Date of Decision : 04.03.93

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Shri Harkesh Meena

...Applicant

Vs.

Union of India & Ors.

...Respondents

CORAM :

Hon'ble Shri J.P. Sharma, Member (J)
Hon'ble Shri S.R. Adige, Member (A)

For the Applicant

...Shri B.N. Bhargava

For the Respondents

...Shri Romesh Gautam

Judgement (Oral)
(Delivered by Hon'ble Shri J.P. Sharma, Member (J))

The applicant after a major penalty enquiry under Rule 9 of the Disciplinary and Appeal Rules, 1968 was removed from service by the order of the Disciplinary Authority dt.29.8.1988 passed by Senior Programmer/CR, IRCA Building, Northern Railway, New Delhi. The applicant preferred an appeal during the statutory period which has also been rejected by the order of the Manager Data Based IRCA Building, New Delhi by the order dt.4.10.1988. The present application has been filed by the applicant against the aforesaid orders on 5.10.1989.

The applicant in this application has prayed that the penalty of removal from service imposed upon the applicant by the subordinates of respondents Nos.1 and 2 may kindly be quashed and the Hon'ble Tribunal may kindly be pleased to reinstate the applicant in service as reservation clerk from the date of removal. The facts of the case relevant to the

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decision of the case are that the applicant was employed as reservation clerk in 1986. While working as such in May, 1986 in the second class reservation office in Northern Railway, he is said to have removed illegally from counter No.4 on 23.5.1986 EFT Book containing EFT No.587501 to 587550. From the said EFT Book passenger foil of EFT No.587533 of 156 down of 28.5.1986 in the waiting list of counter No.19 and was presented by the applicant along with an outsider. He himself arranged refund of Rs.548 by making entries in the ROPD register. On detection of this fraudulent act, he deposited Rs.548. He has been, therefore, charged of cheating the Railway administration by fraudulent act and thereby acted in a manner unbecoming of a Railway servant contravening the Railway Servants (Conduct) Rule 3-1(i), (ii) and (iii) of Rules, 1986. An enquiry officer was appointed. However, he was issued a fresh chargesheet in lieu of the earlier one and Shri J.L. Sharma conducted the enquiry as per extant Rules after giving adequate opportunity to the applicant and submitted the report to the Disciplinary Authority. The Disciplinary Authority by the order dt.29.8.1988 passed the following order :-

"I, therefore, hold you guilty of prompted wilful and proven fraud on the Railway administration and have decided to impose upon you the penalty of removal from service with immediate effect."

The Disciplinary Authority also informed the applicant that he is free to prefer the appeal within 45 days of this order. An appeal has been preferred by the applicant, but the Appellate Authority by the order dt.4.10.1988 rejected the

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appeal with the following order :-

"I have carefully considered your appeal dt.16.9.1988 against the imposition of penalty imposed upon you by Sr.Programmer/CR vide order quoted above. I do not find any reason to refuse the punishment. Hence the punishment of removal from service stands."

It appears that the applicant as alleged by him in the OA preferred a mercy petition dt.28.10.1988 to the Chief Commerce Superintendent, Northern Railway, Baroda House followed by a mercy petition dt.21.11.1988 addressed to the General Manager. The respondents in their counter have issued an order from the office of Manager Data Base IRCA Reservation Complex dt.17.12.1988 informing the applicant that his mercy petition dt.28.11.1988 to the General Manager, Northern Railway does not lie since his review has already been undertaken at the level of CCS. He may submit a memorial to the President under Rule 31 of DAR, 1968.

The respondents in their reply have contested the grant of the relief, prayed for, by the applicant on a number of grounds inter-alia that the applicant has himself confessed his guilt and his confessional statement has been filed by the respondents as Annexures R1 and R2 to the counter. On a perusal of the aforesaid confessional statement, the applicant has undertaken to deposite Rs.548 and further requested that he may be pardoned for his mistake for which he shall ever be grateful throughout his life. In fact the applicant has

already deposited Rs.548 as is evident from the memo of charge served on the applicant. Neither party has filed any order passed on the mercy petition submitted to the CCS and it cannot be judged as to the conclusion arrived at by the authority concerned on the aforesaid mercy petition which appears to have been treated as a review.

We have heard the learned counsel for both the parties at length. The learned counsel for the applicant has raised objection that before passing any punishment order, the delinquent has not been supplied with a copy of the Enquiry Officer's report which prevented him from making an effective representation with regard to the findings arrived at by the Enquiry Officer. However, this point cannot go in favour of the applicant after the decision of the case of S.P.Vishwanath Vs. Union of India, reported in 1992 SCC (L&S) p-155, which has expressly laid down that the benefit of the non supply of the copy of the Enquiry Officer's report as laid down by the Hon'ble Supreme Court in the case of Union of India Vs. Ramzan Khan, reported in JT 1990(4) SC 456 applies only after 29.11.1990. The order of the Disciplinary Authority passed in the case is dated 29.8.1988.

The learned counsel for the applicant further argued that the order of the Appellate Authority is a very criptic and succinct, an order which does not show any application of

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mind on the various grounds taken in the memo of appeal preferred by the applicant. It is not disputed that the applicant has preferred the appeal within time. It is also not disputed that the appeal was considered by the Appellate Authority and disposed of by the impugned order, the text of which has been reproduced in the earlier part of this order. In fact, an administrative authority has to dispose of appeal as an authority acting in a quasi judicial manner. The principles of natural justice require the same. The appreciation of evidence cannot be done at the stage of judicial review has to be kept in mind by the Appellate Authority while disposing of the appeal. In the present case what we find is that only by four words "Appeal considered and rejected", the chapter of appeal has been closed by the Appellate Authority. In the case of Ramchandra Vs. Union of India, reported in 1986(2)SLR 608, the Hon'ble Supreme Court held that the Appellate Authority sitting as a quasi judicial forum should dispose of the appeal with application of mind. It was further held that even an opportunity of personal hearing in a case of removal/dismissal from service should be given to the delinquent employee. This is also important in view of the decision of the Hon'ble Supreme Court in view of the decision in the case of Union of India Vs. Tulsi Ram, reported in 1985 (2) SLJ 145 where the necessity of issuing second show cause notice under Article 311(2) of the Constitution of India has been dispensed with.

We arrive at a conclusion that the Appellate Authority

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should have applied its mind because of the two reasons. Firstly, that the judicial review cannot take place for appreciation of the evidence recorded by the Enquiry Officer before it and secondly that the judicial review cannot enter into the quantum of punishment awarded to the delinquent employee.

The learned counsel for the respondents, however, argued that the applicant has confessed the guilt and in view of this, there was no formal necessity of holding a detailed enquiry. These facts apart, confession and mercy also sometimes take their own course in the mind of quasi judicial authority in a case where the services are likely to be terminated by an order of removal or dismissal. The Tribunal cannot exercise that discretion because it appears from the record that the applicant opened his cards before the Enquiry Officer of having committed the mistake and squarely admitted the blame or accusations levelled against him even by depositing an amount of Rs.548 alleged to have been cheated by defrauding the Railway administration.

In view of the above facts, we do not want to enter into the merits of other contentions which the learned counsel for the applicant wants to press about the confession recorded either by coercion or by any promise of being given a lenient view in the matter by the authorities.

The application is, therefore, partly allowed only to

the extent that the order passed by the Appellate Authority dt.4.10.1988 is set aside and quashed. The case is remanded back to the Appellate Authority. Before passing the operative part of the order, it is necessary to deal with the order passed, if any, on the mercy petition as well as on another petition to the General Manager, which has not been forwarded on the pretext that the mercy petition filed earlier by the applicant has already been treated as review. Since that has been dealt with as such, the only remedy available to the applicant could have been for a memorial to the President under Section 31 of the Disciplinary and Appeal Rules, 1968. Any such order passed in those proceedings is also hereby quashed. The Appellate Authority, therefore, shall be free not to deal with the appeal filed by the applicant against the order of the Disciplinary Authority.

As said above, the OA is partly allowed quashing the order of the Appellate Authority with the direction to the respondents, i.e., the Appellate Authority to dispose of the appeal of the applicant dt.16.9.1988 and if the said appeal is not available, then a copy thereof shall be furnished by the applicant to the Appellate Authority within a period of one month from the date of receipt of this order. The Appellate Authority shall dispose of the appeal of the applicant on merits within a period of four months from the date of supply of a copy of the appeal, giving reasons on various averments made in the memo of appeal. There is ample direction to the

Appellate Authority to decide the appeal by a reasoned order, but it should be decided on the principles of natural justice keeping in view the relevant law on the point. Since the order of the Disciplinary authority has not been quashed, the status-quo as of today shall be maintained. In the circumstances, the parties shall bear their own costs.

Adige
(S.R. ADIGE)

MEMBER (A)

J. P. Sharma
(J.P. SHARMA) 4.3.93
MEMBER (J)