

Two

8

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI.

O.A.No.2285/89.

New Delhi, this the 8th day of August, 1994.

Hon'ble Mr Justice S.K.Dhaon, Acting Chairman

Hon'ble Mr B.N.Dhoundiyal, Member(A).

R.S.Gupta,
R/O C-16/A, Railway Colony,
Lajpat Nagar,
New Delhi. Petitioner.
(through Mr G.D.Gupta, Advocate).

vs.

1. Union of India
through General Manager
Northern Railway,
Hd.Qrs. Office, Baroda House,
New Delhi.
 2. Divisional Railway Manager,
Northern Railway, Delhi Division,
New Delhi.
 3. Divisional Personnel Officer,
Northern Railway, Delhi Division,
Office of the Divisional Railway Manager
Chelsford Road,
New Delhi.
 4. Sr.Divisional Personnel Officer
Northern Railway, Delhi Divisional,
Office of the Divsional Railway Manager
Chelmsford Road,
New Delhi.
 5. Additional Divisional Railway Manager-II,
Northern Railway, Delhi Division,
Chelsford Road,
New Delhi.
- Respondents.
(through Mr Romesh Gautam, Adv.).

ORDER (Oral)

Justice S.K.Dhaon, Acting Chairman

The petitioner, a Stenographer in the Northern Railway was subjected to disciplinary proceedings. An Inquiry Officer was appointed. He submitted his report. The Disciplinary Authority

Sdy

on 12.8.1988, while agreeing with the recommendations of the Inquiry Officer, passed an order punishing the applicant by reducing him to the lower grade of Stenographer in the scale of Rs.1200-2040(RPS) and fixed his pay at the minimum scale at Rs.1200/- permanently with loss of seniority. The appellate authority on 17.10.1988 dismissed the appeal preferred by the applicant and maintained the order of the disciplinary authority. The orders of the disciplinary authority and the appellate authority are being impugned in the present application.

2. The gravamen of the charge is that the petitioner submitted a false Travelling Allowance Bill (TA Bill) thereby defrauding the railway to the tune of Rs.200/- only. In substance, the charge is that, though the petitioner was posted on promotion to Tughlakabad, he realised the Travelling Allowance on the rate admissible to those who had been posted to perform the job of a Stenographer in a leave vacancy, on a higher grade with the change of the Headquarter at Tughlakabad. The charge further is that the petitioner was given an officiating appointment to a higher post.

3. The petitioner, in his defence, relied upon a Circular dated 24.4.1969. He made a specific reference to this Circular in his memorandum of appeal, but we find that in the appellate order there is not even a whisper of the same. The subject of the Circular is "Payment of Daily Allowance to Relieving Staff in addition to officiating pay/ allowance." Paragraph-2 of the Circular has relevance.

Sny

In substance, it states that relieving leave reserve staff, when deputed to relieve staff in higher grade, should be allowed daily allowance during their stay at the out station, in addition to the officiating pay/ allowance provided that other terms and conditions for the grant of daily allowance are satisfied.

4. The crucial question, therefore, to be considered is whether the petitioner was in the leave reserve staff. We may immediately state that this question was raised by him before the Appellate Authority and, if appears to us, that that Authority glossed over the question. In paragraph 4.11 of the O.A., it is categorically stated by the petitioner that, during the period from August, 1977 to October, 1977, he was officiating as a leave reserve stenographer in the scale of Rs.130-300(AS) in terms of Divisional Personnel Officer, Northern Railway, New Delhi's letter No.752-E/31-III (P-4) dated 2/71. A copy of this letter has been filed as Annexure A-10 to this O.A. We shall refer to the contents of the said letter immediately hereafter. However, we note that in the counter-affidavit filed, the specific averment has not been denied and the respondents have contended themselves by saying that the said averments are a matter of record.

5. Annexure A-10 is a notice issued by the Divisional Personnel Officer, New Delhi. It is recited therein that the petitioner, a typist (Grade 110-180) is promoted to officiate as Leave Reserve Stenographer in the grade of Rs.130-300 A/S purely on local basis. It is thus clear that, on the relevant date, the petitioner was a leave reserve Stenographer.

6. In the aforesaid back-drop, we may now read the notice dated 11.8.1977, issued by the Divisional Personnel Officer. By this notice, the petitioner was

transferred to Tughlakabad to work as Stenographer there. It is recited in it that the petitioner, a Stenographer working under Assistant Operating Superintendent (Chg.) and Assistant Operating Superintendent (Area Movement) Divisional Office, is appointed to officiate in the grade of Rs.425-700(RS). He is transferred to work under Senior Divisional Mechanical Engineer (Diesel) Tughlakabad vice Shri C.L. Soni Stenographer, who has been sanctioned 60 days leave. He will draw pay of Rs.425/- p.m. in the grade of Rs.425-700(RS) from the date he shoulders the responsibility of the above assignment. We have carefully considered the terms of the notice and we find that there is nothing in it to detract from the contents of the notice (Annexure-10). No change either expressly or implied has been introduced to affect the position of the petitioner as a leave reserve Stenographer. The only difference is that instead of grade of Rs.130-300, the petitioner has been put in the grade of Rs.425-700. Further his headquarter continued to be at Delhi.

7. In any view of the matter, the petitioner, in the facts and circumstances of the case, could have honestly and bonafide believed that he was entitled to T.A. in accordance with the said Circular.

8. The petitioner, during the relevant period, being a leave reserve Stenographer was entitled to the benefit of the Circular dated 24.4.1969, he, therefore, could not be accused of any misconduct for having realised T.A.irregularly.

9. The proceedings against the petitioner went ex-parte before the Inquiry Officer for some

ny

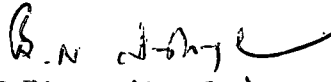
:-5:-


reason or the other. That officer, after taking into account the documentary evidence and the oral evidence produced before him and without referring to the said Circular and also without taking into account the fact that the petitioner was during the relevant period a leave reserve stenographer opined that the charges had been brought home to the petitioner. As already stated, the Disciplinary Authority and the Appellate Authority concurred with the view point of the Inquiry Officer.

9. In view of the fore-going discussion this O.A. succeeds and is allowed. The impugned orders are quashed. The pay etc. of the petitioner shall be computed on the basis that the impugned orders never came into existence.

10. There will be no order as to costs.

/sds/


(B.N.Dhoundiyal)
Member(A)


(S.K.Dhaon)
Acting Chairman.