

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 571/89
~~TAXNO~~

199

DATE OF DECISION 3.4.91

<u>Shri Inder Dev Thakur</u>	Petitioner
<u>Shri B.B. Srivastava</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Ors.</u>	Respondent
<u>None</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. I.K. RASGOTRA, MEMBER (A)

The Hon'ble Mr. J.P. SHARMA, MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. ~~Whether the Lordships wish to see the fair copy of the Judgement?~~
4. ~~Whether it needs to be circulated to other Benches of the Tribunal?~~

J U D G E M E N T

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

The applicant, working as Fitter, under Senior Electrical Foreman, Electrical Multiple Unit (E.M.U.) Nizamuddin Railway Station, New Delhi has filed this application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the orders dated 31.8.1988 passed by Disciplinary Authority, dated 17.11.1988 passed by Senior D.E.E. in appeal and dated 6.2.1989 passed by A.D.R.M. reducing his rank from the

post of Fitter Grade II in the scale of Rs.1200-1800 to the lower post of Fitter Grade III in the scale of Rs.950-1500 permanently affecting the applicant's seniority.

2. By way of relief, the applicant has prayed for the impugned orders passed by Disciplinary Authority, Appellate Authority and Revisional Authority respectively be quashed and with further direction to the respondents to restore the applicant to the original rank of Fitter Grade II retrospectively with all consequential benefits.

3. The facts of the case are that since 1986, the applicant was rendering service as Fitter Grade II, having been promoted from the post of Fitter Grade III where he was working from July, 1982. The applicant was originally appointed as Khalasi on 16.7.1973. On 29th June, 1987, a complaint (Annexure A-3) was made by Shri Promod Kumar, A.E.F.C. (R.M.U.) to S.E.F.C. making false allegations against him that "the applicant used unparliamentary language to him in a rough manner". A fact finding inquiry was conducted by Shri M.L. Sharma, S.L.I. who submitted his report on 29th September, 1987.

(Annexure A4). On the basis of this fact finding report the applicant was served with charge sheet with the following articles of charges:-

ARTICLE:1

The said Sh. Inder Dev Thakur while performing the duty as Fitter Grade II in shift 14/22 hrs. on 29.6.87 abused and misbehaved with Shri Parmod Kumar, AEFO at N Z M outfit amounting to gross indiscipline and serious misconduct violating rule 3(1) (i) and (iii) of Railway Servants Conduct Rules 1966.

ARTICLE:2

On 1.7.87, the said Sh. Inder Dev Thakur refused to submit his explanation to SEFO/EMU/NZM when the latter asked him to do so, thus disobeying him. He failed to maintain devotion to duty contravening Rule 3(i) (ii) of Railway Services Conduct Rules, 1966.

ARTICLE:3

The said Sh. Inder Dev Thakur is found in the habit of finding faults with his superiors and interfering in their day-do-day administration & distorting facts for

extracting undue advantages. This habit of Shri Thakur is unbecoming of a Railway servant thus, contravening Rule 3(i) (iii) of Railway Services Conduct Rules, 1966.

4. The applicant made a request to the Inquiry Officer to leave the inquiry as he is going to represent to the Disciplinary Authority, D.E.E., T.R.D. that an inquiry might be made by the Personnel Authorities. This request was rejected by the Inquiry Officer and he submitted his report to the Disciplinary Authority dated 6.5.1988 (Annexure A-12) imposing penalty as said above. The applicant's appeal dated 27.9.1988 was rejected by the Appellate Authority by a cryptic order reproduced below :-

"Punishment awarded is sustained and there are no grounds for mercy or consideration."

The Revisional Authority also by the order dated 6.2.1989 rejected the revision without applying his mind by the following order :-

"I do not find any reasons to reduce the punishment given by D.E.E., T.R.D. I would have not hesitated in awarding higher punishment, but keeping in view the promise made by Shri Inder Dev Thakur to me that he will improve in future, I uphold the punishment of reversion

from Fitter Grade II to Fitter Grade III permanently affecting seniority".

5. In their written statement filed through Shri B.K. Aggarwal, Advocate, the respondents have contested the application. In reply, it is stated that the applicant used unparliamentary words against the officer though the actual words used have not been reproduced. These are mentioned in the Enquiry Officer's report (Annexure A-4). Regarding the change of the Inquiry Officer and appointing one from the Personnel Branch, it is stated by the respondents, the applicant should have moved the higher officer for the change of Inquiry Officer if the applicant felt that the inquiry in the case would not be fair and impartial. It is further stated by the respondents that the higher authorities have considered appeal and revision and have passed the order after due application of their mind. The application according to the respondents has no merit and is liable to be dismissed.

6. The applicant in para L of the application has taken the specific plea in his grounds of attack that the applicant was not supplied the copy of the inquiry report before imposing the penalty of reduction in rank. The

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applicant has also referred to the Full Bench judgement of the Tribunal-Prem Nath K.Sharma Vs. Union of India and Others reported in S.L.J. 1980 Vol.III CAT P-449 to 471 in support of his case. The respondents have in their reply stated that this ground of attack is wrong and denied. No specific averment has been made as to how this ground of attack is wrong.

7. In view of the above re^ply of the respondents, it is clear that the respondents did not meet this ground of attack successfully. In the case of Prem Nath K.Sharma (Supra), it has been held as follows :-

"28. For the aforesaid reasons, we hold the findings of the Disciplinary Authority are bad in law because the applicant was not given a copy of the report of the Enquiry Officer and was not heard (given an opportunity of making his representation) before arriving at the finding."

"29. Hearing of course does not mean 'oral hearing'. An opportunity to make a representation to the disciplinary authority against the report in writing would constitute hearing and would amount to affording a reasonable opportunity to the charged officer. Such an opportunity not having been given, we must answer the question in the affirmative."

"30. For the aforesaid reasons, we hold the inquiry is vitiated and the order imposing the penalty of removal from service must be quashed."

8. We heard the learned counsel for the applicant at length and we agree with the contention of the learned counsel that it was necessary for the Disciplinary Authority to furnish the copy of the Inquiry Officer's report before imposing the punishment.

9. The learned counsel for the applicant has relied on the judgement of this Tribunal in O.A. No.1615 of 1988 decided on 31st December, 1990-V.M. Gupta Vs. Union of India in which one of us (Shri I.K. Rasgotra) was Member. It was observed that the Disciplinary Authority shall not be precluded from revising the proceedings and continuing the same in accordance with law from the stage of supply of the copy of the Inquiry Report to the applicant and give him an opportunity of making a representation to the Disciplinary Authority. In this above noted judgement of the Tribunal, the reliance was placed on the Full Bench judgement of the Tribunal in Prem Nath K. Sharma Vs. Union of India (1986, 6 ATC P-904) and Supreme Court decision in the case of Union

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of India Vs. V.E. Bashayan (1983 (7) ATC P-285) and the decision of the Division Bench of the Tribunal in O.A. 1791 of 1989-Kulbhushan Vs. Union of India dated 20.9.1988. The Full Bench explained the meaning of the word "hearing" and held that a copy of the Inquiry Officer's report must be given before imposing a penalty so that he may have an opportunity to make representation to Disciplinary Authority before it decides to impose the penalty. An S.L.P. was filed against the decision and it was numbered as 2725 of 1988. This matter along with several other matters came up before Bench of S.C. in the case of Union of India and Ors. Vs. Momd. Ramzan Khan (J.T. 1990 (4) SC 456 the Supreme Court after considering the matter observed as follows :-

"We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the Disciplinary Authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter."

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10. In view of the above discussion, we are of the opinion that the orders passed by the Disciplinary Authority, Appellate Authority as well as Revisional Authority are to be set aside as non-supply of the copy of the Inquiry Officer's report has vitiated the whole proceedings of imposing penalty on the applicant. Accordingly, the order of punishment dated 31.1.1988, the Appellate Order dated 17.11.1988 and the Revisional Order dated 6.2.1989 are quashed and set aside. The applicant has already received the copy of the Inquiry Officer's report and he shall be entitled to make a representation to the Disciplinary Authority explaining his case. The Disciplinary Authority shall give due opportunity to the applicant and shall decide the case after considering the representation of the applicant, if any, within the period of three months from the date of communication of this order. In the circumstances, the parties shall bear their own costs.

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

3.4.91

I. K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A)