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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA-679/88

Date of decision: 15.05.1992.

Shri S.L. Khurana

.... Applicant

Versus

Union of India & Ors.

.... Respondents

For the Applicant

.... Shri R.K. Kamal, Advocate

For the Respondents

.... Shri P.H. Ramchandani, Advocate

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. I.K. Rasgotra, Administrative Member.

1. Whether Reporter's of local papers may be allowed to see the Judgment? *Yes*

2. To be referred to the Reporters or not? *Yes*

(Judgement of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice-Chairman)

The applicant, who is working as Works Manager in the Northern Railway, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

(i) to set aside and quash the inquiry report dated 28.8.1984, the punishment order dated 29.4.1985 and the appellate order dated 11.3.1988; and

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(ii) to direct the respondents to grant to him all consequential benefits as a result of the said cancellation of punishment imposed on him.

2. The facts of the case in brief are that while working as Works Manager, Locomotive Workshop, Northern Railway, applicant of Amritsar, the was served with a memorandum dated 31.12.1982 proposing to hold an inquiry against him under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. The Article of Charge on the basis of which action was proposed to be taken against him, is as under:-

"Shri S.L. Khurana, while functioning as Assistant Works Manager, Locomotive Workshop, Northern Railway, Amritsar during the period from 1978 and 1979 caused the over-writing and cutting in the trade test forms taken for promotion to Grade I in respect of highly skilled Grade II namely Shri Krishan Lal, W.280, Shri Tarsem Lal - D-378, Shri Joginder Singh - R-120 and Shri Prakash Chand - F-35 in a manner that Shri Krishan Lal, Shri Tarsem Lal and Shri Joginder Singh who had passed the trade test but were declared as 'failed' and thus, their promotion was withheld and in case of Shri Prakash Chand who had failed was declared as 'passed' and it was done by him with the ulterior motive.

Shri S.L. Khurana, by his above acts, exhibited lack of integrity and devotion to duty and thereby contravened Rule 3(1) (ii) of the Railway Services (Conduct) Rules, 1966."

3. A departmental enquiry was held against the applicant and the Enquiry Officer found that the above Article of Charge against him had been established. He added that it has been proved that he exhibited lack of integrity and devotion to duty and thereby contravened Rule 3(1)(ii) of the Railway Servants (Conduct) Rules, 1966.

4. On 29.4.1985, the disciplinary authority passed the penalty order reducing the applicant from his post in the senior scale of Rs.1100-1600 (R.S.) to his class II post in the scale of Rs.650-1200 (R.S.) for a period of two years with the stipulation that the period of reduction shall operate to postpone future increments on restoration, for his failure to maintain absolute integrity and acting in a manner unbecoming of a Railway servant.

5. On 11.3.1988, the appellate authority rejected the representation made by the applicant on receipt of the advice of the U.P.S.C. dated 4.12.1987.

6. According to the applicant, the enquiry report, the punishment order, the advice of the U.P.S.C. dated 4.12.1987 and the appellate order suffer from serious legal infirmities and indicate serious violation of the principles of natural justice, resulting in gross miscarriage of justice and irreparable damage to his status. As against this, the respondents have contended in their counter-affidavit that the impugned orders are legal and valid, and that there had been no violation of the principles of natural justice or miscarriage of justice, as alleged by the applicant.

7. We have gone through the records of the case carefully and have heard the learned counsel for both the parties. We have also perused the decisions relied upon by both the sides. The Article of Charge on the basis of

* Case law relied upon by the learned counsel for the Applicant: 1991 (2) A.D.J. 518; A.T.R. 1986 (2) S.C. 252; Case law relied upon by the learned counsel for Respondents: 1988 (2) SLJ (CAT) 114.

which action was proposed to be taken against the applicant, contained the allegation that the applicant exhibited lack of integrity and devotion to duty which are dealt with in Rule 3(1) (i) and (ii) of the Railway Servants (Conduct) Rules, 1966. Rule 3, so far as it is relevant to the present case, reads as under:-

"(1) Every Government servant shall at all times -
(i) maintain absolute integrity;
(ii) maintain devotion to duty; and
(iii) do nothing which is unbecoming of a Government servant."

8. The learned counsel for the applicant argued that in the Article of Charge as well as in the finding of the Enquiry Officer, reference has been made to lack of integrity and devotion to duty, but the rule contravened has been mentioned as Rule 3(1) ~~xx~~ (ii) of the aforesaid Rules which deals only with maintenance of absolute integrity. As against this, the learned counsel for the respondents stated that the Rule has been correctly mentioned in the statement of imputations of misconduct or misbehaviour on the basis of which the action was proposed to be taken against the applicant. It has been stated therein that the applicant had contravened Rule 3(1) (i) and (ii) of the aforesaid Rules.

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9. With regard to the contention of the learned Counsel for the applicant that the disciplinary authority passed the impugned order of penalty on 29.4.1985 for the failure of the applicant to maintain absolute integrity and acting in a manner unbecoming of a Railway servant, the learned counsel for the respondents submitted that the ~~xxx~~ reference to the applicant acting in a manner unbecoming of a Railway servant, will not vitiate the validity of the order.

10. The appellate order dated 11.3.1988 passed by the President, whereby the appeal preferred by the applicant was rejected, refers to consultation with the U.P.S.C. The advice tendered by the U.P.S.C. in their letter dated 4.12.1987 also contained the observation that the integrity of the applicant was involved and he had acted in a manner unbecoming of a Government officer.

11. The question for consideration is whether in the above factual background, it can be concluded that the disciplinary proceedings in the instant case have been vitiated by the incorrect citation of the rule in the statement of Article of Charge accompanying the memorandum dated 31.12.1982 and the disciplinary authority and the appellate authority holding that the applicant failed to maintain absolute integrity and acted in a manner unbecoming of a Railway servant.

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12. It is true that in the Article of Charge framed against the applicant, there was no allegation that the applicant acted in a manner unbecoming of a Railway servant.

13. The issue raised in the application is not covered by any direct authority and has to be decided on first principles.

14. There is ample authority for the proposition that the wrong citation of the source of power will not vitiate the action taken if it can be justified under some other powers (vide P. Radhakrishna Naidu & Others Vs. Govt. of Andhra Pradesh and Others, 1977 (1) SLR 258 at 262-263; and Vice-Chancellor, Jammu University Vs. Dushini, 1977(1) S.L.R. 591). Therefore, the reference ~~xxx~~ in the Article of Charge, ~~xxxxxxxxxxxxxx~~ to Rule 3(1)(ii) and not to Rule 3(1)(i) and (ii) and reference in the enquiry report to Rule 3(1) (ii) of the Railway Services (Conduct) Rules, 1966, will not vitiate the action taken against the applicant as it can be justified under some other provisions. In such a case, it cannot be contended that there was no application of mind on the part of the authorities concerned.

15. The more fundamental argument is whether the disciplinary authority and the appellate authority can

impose the penalty for a misconduct not mentioned in
the ~~or~~ the alleged Articles of Charge which have been
held to be proved by the Enquiry Officer. In the instant
case, the penalty order refers to the failure of the
applicant to maintain absolute integrity and acting in
a manner unbecoming of a Railway servant, whereas the
Article of Charge did not refer to his acting in a
manner unbecoming of a Railway servant.

16. Normally, the Articles of Charge framed against a
Government servant in a disciplinary proceeding, consist
of two parts. In the first part, the acts or omissions on
his part, are set out. In the second part, the alleged
misconduct is spelt out. In our view, in case the acts
or omissions are proved in the enquiry, it is immaterial
as to whether the alleged misconduct falls under clause
(i) or (ii) or (iii) of Sub-Rule (1) of Rule 3 of the
Railway Services (Conduct) Rules, 1966.

17. In Union of India Vs. J. Ahmad, 1979 (2) S.C.C. 286 at 292, it has been observed that an act or omission
which runs counter to the expected code of code of conduct,
would certainly constitute misconduct.

18. The learned counsel for the applicant contended
that the disciplinary authority as well the appellate
authority had passed a non-speaking orders. We are not
inclined to agree with his contentions. When the
or

disciplinary authority has agreed with the Enquiry Officer, he is not required to pass a speaking order. With regard to the appellate authority, it may be stated that the appellate authority had before it all the relevant material, including the advice tendered by the U.P.S.C.

19. The applicant has also alleged in the application that the findings of the Enquiry Officer are based on no evidence. After going through the enquiry report, we are not inclined to agree with the above contention.

20. In the conspectus of the facts and circumstances of the case, we see no merit in the present application and the same is dismissed. There will be no order as to costs.


(I.K. Rasgotra)
Administrative Member


(P.K. Kartha)
Vice-Chairman (Judl.)