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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A.No. 685/1988

DATE OF DECISION 9-5-88

SHRI L.N.NIGAM

-- APPLICANT

VS.

UNION OF INDIA & ANOTHER

-- RESPONDENTS

CORAM

SHRI D.K. CHAKRAVORTY, HON'BLE MEMBER (A)

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

FOR THE APPLICANT

-- SHRI R.L. SETHI

FOR THE RESPONDENTS

-- SHRI O.N. MOOLRI

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*

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

J U D G E M E N T

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

The applicant, working as Chief Traction Foreman (in short CTF), assailed the order of punishment dated 14-7-1986 and the appellate order of 8-4-1987 by which the applicant has been awarded the punishment of withholding of an increment for a period of two years without postponing future increments in a departmental enquiry held under the Railway Servants (D.A.) Rules, 1968 for inflicting minor penalty. The applicant claimed the following reliefs:-

- (i) That this Hon'ble Tribunal may be pleased to set aside the impugned orders being illegal and unconstitutional.
- (ii) That this hon'ble Tribunal may be further pleased to pass other or further order under the facts of the case as may be deemed fit.
- (iii) Cost of the proceedings may be awarded to the applicant.

2. The facts of the case are that the applicant joined the Indian Railways on appointment as Electrical Chargeman in 1964 and he was promoted to the next higher grade of Rs.700-900 w.e.f. 27-6-1981. In August, 1984, the applicant was promoted on ad-hoc basis to officiate in the grade of Rs.840-1040 on a temporary measure against local arrangements. A memo of chargesheet was served on the applicant by Senior Divl.Elec.Engineer by a letter dt.18-2-1986. The applicant was chargesheeted as follows:-

(i) Irresponsible working

25 KV CB lying spare at HRS was shifted to SBB for installation and was reported to be in working order. But on checking at SBB on 29/30-1-1986 before installing, its mechanism was found jammed and it to be taken to Delhi Repair shop for rectification. It indicates irresponsible working.

(ii) Poor maintenance and careless working.

In view of bursting of 25 KV CB on 29-1-86 at SBB, instructions were given to check up CB's at HRS. Accordingly 25 KV CB's at HRS were checked on 1-2-86 but the said 25 KV CB's at HRS again failed on 13-2-86. This speaks of poor maintenance standard and carelessness in working.

Thus Shri L.N.Nigam has violated para 3.1(ii) & (iii) of Rly.Servants Conduct Rules, 1966.

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The applicant submitted the representation against the charges framed against him on 5.3.1986. The representation of the applicant was considered against the chargesheet by Senior D.E.E. and rejecting the representation, the punishment order (Exhibit-A 1) was passed as follows :-

"I, therefore, hold you guilty of the charges as mentioned in the memorandum and have decided to impose upon you the penalty of with-holding of increment. Your increment raising your pay from Rs. 1000/- to Rs.1040/- in the grade of Rs.840-1040 (RS) is, therefore, withheld for a period of 2 years without postponing your future increments."

The applicant preferred the appeal against the same to D.R.M., Northern Railway (Annexure-A 5), but it was rejected by the impugned order dt. 18.4.1987 (Annexure-A 2) which reads as follows :-

"I have gone through the case and penalty imposed is confirmed."

The applicant has since been reverted, the post of Sr.Traction Foreman as the interim order in O.A. 1774/87 xx was vacated on 3.6.1988. The applicant has challenged the enquiry on the ground that there was no justification to frame ^{the} charges and both the orders suffer from infirmity of non-application of mind in as much as the representation of the applicant was ^{not} properly considered and cryptic non-speaking orders were passed.

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The respondents contested the application and filed the reply stating therein that the applicant was chargesheeted when he was working as C.T.F. on ad-hoc basis. The chargesheet has been issued by Senior D.E.E. The applicant also made representation which was considered by the Senior D.E.E. who passed the punishment order against the applicant. Since the charges were proved^{and} the punishment was passed after the applicant was afforded due opportunity, the application is totally devoid of merit and is liable to be dismissed.

3. We have heard the learned counsel of the parties at length and have gone through the record of the case. The charges framed against the applicant quoted above goes to show that the applicant was working in a careless and irresponsible manner. The disciplinary authority has considered the various points raised in the representation, but found that these are not satisfactory. The disciplinary authority, however, did not give any reason. The appellate authority too passed^a cryptic order. The learned counsel for the applicant has placed reliance on the judgement

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in Shri D.P. Srivastav Vs. Director General,
Ordnance Factories, Calcutta and Another reported in
1991 Volume I ATJ P-502 in which the case of
Ram Chander Vs. Union of India-AIR 1986 S.C. 1173
was relied upon. It is held that while considering
appeal by the appellate authority, there must be
an objective consideration on the points raised in
the memo of appeal. By merely stating that the
appeal has been duly considered and that there is
no merit in the appeal and hence the penalty has
rightly been imposed, is not proper, of course.
The appellate authority's order must be a speaking
order. The Bench further observed in the judgement
that there is nothing in the order to indicate that
the appellate authority has made any attempt to
marshal the evidence on record for the purpose of
arriving at the conclusion about the truth of the
imputations, or to justify the imposition of extreme
penalty of dismissal from service.

4. However, in the present case in hand, the applicant
was chargesheeted for a minor penalty and so the
appellate procedure of holding a disciplinary enquiry

was not held. However, the fact remains that the charges against the applicant were of irresponsible and careless working. The appellate authority should have scanned minutely the conclusions arrived at by the disciplinary authority. The averment in a two line order that the penalty has been rightly imposed, does not show any application of mind.

5. Whether it is a case of major penalty or minor penalty, the appeal has been provided only to find out by the appellate authority that the disciplinary authority has conducted himself in a rightful judicial manner and the conclusion drawn by the disciplinary authority can be reached on the basis of objective analysis of the proceedings of the enquiry keeping in view the representation made by the delinquent employee. In the present case, the appellate authority has summarily dealt with the matter as if a punishment of withholding two increments can not warrant any interference ~~xxx~~ ~~xx~~. A person has been set back by two years in his service temporarily and he has been put to a financial loss and also he will not be assessed well by

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the D.P.C. for next promotional post. More care should have been exercised by the appellate authority in the matter.

6. We are, therefore, of the view that the impugned order cannot stand. The case is remanded back to the appellate authority to again decide the appeal of the applicant taking in view the representation filed by the applicant to the disciplinary authority and after making an objective analysis & marshalling the evidence, draw the conclusion whether the order passed by the disciplinary authority is sustainable. The appellate authority shall decide the appeal in a period of three months. The application is, therefore, allowed to this extent. If the applicant is still ^{feels} aggrieved by the order of the appellate authority, he will be free to come to the Tribunal again.

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(J.P. SHARMA)
MEMBER (J)

9.8.91

D.K. Chakravorty 9-5-1991

(D.K. CHAKRAVORTY)
MEMBER (A)