

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

(6)

OA NO. 903/88

DATE OF DECISION: 23.11.1990.

SHRI J.C. SHARMA

APPLICANT

UNION OF INDIA & ORS.

VERSUS

RESPONDENTS

CORAM:

HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

ADVOCATES:

FOR THE APPLICANT

SHRI G.D. BHANDARI, COUNSEL

FOR THE RESPONDENTS

SHRI SHYAM MOORJANI, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY
HON'BLE MR. I.K. RASGOTRA)

Shri J.C. Sharma, Senior Booking Clerk (Rs.1200-2040) has filed this application under Section 19 of the Administrative Tribunals Act, 1985, against his transfer to Modi Nagar on his reversion to the grade of Rs.975-1540 and fixing his pay in the lower grade at Rs.1330.

The applicant was issued a major penalty chargesheet dated 20.12.1985 by the Divisional Traffic Superintendent, Northern Railway while working at Delhi (Main) Station. On completion of the disciplinary proceedings he was reverted from the post of Senior Booking Clerk grade Rs.1200-2040 to the post of a Booking Clerk grade Rs.975-1540 for a period of two years with cumulative effect, fixing his pay at the stage of Rs.1330 in the lower grade. The applicant contends that he was also transferred to Modi Nagar as a consequence of the above punishment imposed on him.

By way of relief the applicant has prayed for the following reliefs:-

i. "To set aside and quash the impugned reversion-cum-transfer orders Annexure A-8 followed by A-1

and rejection of Appeal Orders dated 26.10.1987
Annexure A-10.

ii) To command/direct the respondents to reinstate and treat the applicant in grade Rs.1200-2040 (RPS) in the post of Senior Booking Clerk from the date of reversion when impugned orders Annexure A-8, A-1 were passed and make immediate payment of the consequential arrears of pay and all allowances.

iii. To treat/convert the sick period from 1.4.1976 to 28.2.1987 as Half Average Pay leave, which has so far remained undecided."

2. Shri G.D. Bhandari, the learned counsel for the applicant submitted ^{that} in the garb of reversion to lower grade the applicant in fact has been subjected to three penalties consequent to the disciplinary proceedings initiated against him on the basis of the vigilance case.

They are:-

a. Reduction to the lower scale from Rs.1200-2040 to Rs.975-1540.

b. Reduction in pay to Rs.1330 and

c. transfer first to Mohiuddinpur from Delhi Main Station and from there to Modi Nagar.

The learned counsel also contended that while the chargesheet dated 20.12.1985 was issued by the Divisional Traffic Superintendent, the order imposing the penalty dated 13.8.1987 (Annexure A-8) was issued by the Divisional Commercial Superintendent, and finally the notice dated 17.8.1987, transferring the applicant to Modi Nagar was issued by the Divisional Personnel Officer. The learned counsel wondered as to who was

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really the competent authority for disciplinary purposes in the case of the applicant. He further drew our attention to the order dated 26.10.1987 of the appellate authority (Annexure A-10) and submitted that adequate reasons have not been adduced by the appellate authority, while partially upholding the penalty imposed. Admittedly, however, the penalty was reduced "to reduction to the lower posts of Booking Clerk grade Rs. 975-1540 at Rs. 1330 for a period of one year without cumulative effect." Referring to paragraph 6.8 of the application the learned counsel submitted that there was no complaint against the applicant nor did the alleged complainant participate in the enquiry. The disciplinary authority seems to have relied exclusively on the deposition of the Vigilance Inspector - PW - I. Shri Bhandari also narrated the circumstances in which Rs. 7 were left behind by the passenger in his hurry while buying the ticket which forms the basis of the vigilance case.

3. The respondents in their written statement have submitted that the notice dated 17.8.1987 at Annexure A-1 is merely a transfer order of the applicant from Mohiuddinpur to Modi Nagar.

Shri Shyam Moorjani, the learned counsel for the respondents submitted that three transfers which the applicant had to undergo were not ordered as a measure of punishment. In fact the applicant was transferred from Delhi (Main) to Mohiuddinpur on administrative grounds. The applicant neither challenged the said transfer nor did he make any representation against it. His transfer to Modi Nagar was ordered as he himself wanted to be posted to a place near Ghaziabd on account of his family problems. Finally, his transfer to Murad Nagar vide order dated 17.8.1987 was occasionned by his

restoration to the post of Senior Booking Clerk (Rs.1200-2040) on the expiry of the punishment period. The learned counsel also submitted that the applicant was given all reasonable opportunities to defend himself at the stage of enquiry and the orders of appellate authority were passed after considering his representation and after giving him personal hearing. He had himself participated in the enquiry and had not demurred against the facilities provided for defending himself. He has also not placed any document on record to challenge the punishment imposed on him. He was punished on the charge of misconduct and not misappropriation. The learned counsel also averred that the Divisional Traffic Superintendent, the Divisional Commercial Superintendent and the Divisional Personnel Officer all are of equal rank and are competent to pass the relevant orders.

4. We now briefly examine the judicial pronouncements cited by Shri G.D. Bhandari, learned counsel for the applicant:-

i) II(1989) ATLT (CAT) 123 R. Devadanam Vs. UOI & Ors.

In this case the disciplinary authority had only ordered reduction of the delinquent from the higher scale of pay to the lower scale of pay without indicating the stage at which he was to be fixed during the currency of the punishment, unlike the case before us.

ii. 1986 (1) SLR 556 Ashok Kumar Sapra Vs. Union Bank of India.

The learned counsel for the applicant had relied on paragraph 5 of the above judgement delivered by Delhi High Court on 4.11.1985. The facts of the case are slightly different as /the cited case two penalties had been imposed by the bank. One of demotion and the other one lowering him by five steps in the lower scale. The

respondents' case is that there were two sets of charges against the petitioner. The learned counsel for the respondents however, drew our attention to paragraph 6 of the judgement (supra) which reads as under:-

"6. The punishments are either to reduce the person concerned to a lower grade or post or to lower him in the time scale. What has happened in this case, is that the petitioner has been reduced to a lower post, and then lowered in the grade, the result will be different. The upper scale in this case happens to be Rs.1,875 to Rs. 2,250 and the lower scale happens to be Rs.1200-70- 1,550 -75-2000. If the petitioner was to be lowered five steps in the upper time scale before being lowered to the lower grade, his salary would be Rs.1,875. If he is lowered first to the lower time scale and then five steps down his salary becomes Rs.1,625. So, the result depends on which of the penalties is imposed first. There is something wrong in lowering the petitioner in the time scale in which the petitioner has never been or was not at the relevant time."

The above extract brings out the irrationality of the penalty imposed on the delinquent. In view of the conflict in the interpretation of the penalty the High Court gave a decision fixing the initial salary of the delinquent in the lower scale. Further the case relates to an employee of Union Bank of India, who is covered under different set of rules.

iii. 1988(6)ATC 421 Alexander Kurian V. Director Central Marine Fisheries Research Institute, Cochin & Another.

This case deals with the transfer of an employee in public interest. We need not detain ourselves here as

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the matter of transfer is adequately explained in paragraph 3 above by the learned counsel for the respondents.

5. We have heard the learned counsel of both the parties and considered the record carefully. There is no material before us to consider that the enquiry has not been conducted in accordance with the law. In any case the Tribunal is not an Appellate Court in the matter of apprising and reviewing the disciplinary proceedings etc. unless the orders passed are perverse and inconsistent with the law. We are also of the view that penalty imposed does not amount to three penalties and that there were justifiable reasons for the transfers which the applicant had to undergo from the date he was served the chargesheet till he was restored to his original position. The order of the appellate authority reducing the penalty to one year without cumulative effect and fixing the pay at the stage of Rs.1330 in the lower scale of Rs.975-1540 is in conformity with the instruction laid down in Railway Board's letter No. F(E)71 FR 1/2 dated 10.7.1961 and F(E) 60 FR 1/2 dated 22.8.1962 as extracted below:-

"(12) Reduction to a lower stage in a time-scale.-

Every order passed by a competent authority imposing on a Government servant the penalty of reduction to a lower stage in a time-scale should indicate-

(a) the date from which it will take effect and the period for which the penalty shall be operated;

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(b) the stage in the time-scale (in terms of rupees) to which the Government servant is reduced; and

(c) the extent (in terms of years and months), if any, to which the period referred to (a) above should operate to postpone future increments.

....."

In view of the above we are not persuaded to accept the plea that three penalties were illegally imposed on the applicant for the same charge.

Having regard to the above, we find no merit in the application which is accordingly dismissed without any order as to costs.

I. K. Rasgotra
(I.K. RASGOTRA)

Member (A)

23/11/90

Amitav Banerji
(AMITAV BANERJI)

CHAIRMAN

'SSM'