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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No. 297 of 1986

Raghbir Singh Vs. Union of India

CORAM : The Hon'ble Mr. Justice J.D. Jain, VC

The Hon'ble Mr. Birbal Nath, AM

PRESENT: Mr. B.S.Bindra, Advocate, Counsel for the Petitioner.

Mr. P.S. Mahindroo, advocate, Counsel for the Respondents.

DATE : September 29, 1987.

JUDGMENT
(Delivered by the Hon'ble Mr. Justice J.D.Jain,VC)

Vide this application under Section 19 of the Administrative Tribunals Act, 1985, the Petitioner seeks to challenge the order dated December 27, 1984 (Copy Annexure-A) vide which he was compulsorily removed from service by the Disciplinary Authority.

2. The facts giving rise to the present application succinctly are that the Petitioner was employed as a skilled grade Mason in the Carriage & Wagon Department of Indian Railways at New Delhi Railway Station at the relevant time. He was on sick leave from 14-5-1982 to 3-6-1982 and was under medical treatment as an Outdoor Patient (Proforma G- 92) in the Central Railway Hospital . Delhi. So he was exempted from attending the duty at his work place. On 17-5-1982, his immediate boss Shri Iqbal Singh, Superintendent, Carriage and Wagon

lodged a report against him for gross misconduct alleging that at about 13.30 hours, the Petitioner entered his office in drunken state and started hurling abuses upon him saying that he had wrongly punished him in a case. Mr. Iqbal Singh tried to console him and advised him to submit an appeal against the punishment awarded to him. However, the Petitioner became furious and caught hold of Iqbal Singh from his Collar, manhandled him and even tried to assault him. However, S/Shri I.C.Gupta, Headclerk, Subash Chander, Ticket Examiner and O.P.Sehgal, Head Ticket Examiner intervened and saved Iqbal Singh from on-slaught of the Petitioner who then slipped away from the office premises.

3. Disciplinary Proceedings were initiated against the Petitioner and he was charge sheeted. The Disciplinary Authority served upon him the following statement of Article and imputationof misconduct/misbehaviour :-

"Statement of Article (Ann-I)

The said Shri Raghbir Singh Mason, working under CWS/NDLS is charged for insubordination, threatening to his supervisor on 17-5-1982. Thus failed to maintain absolute integrity, devotion to duty and he did an act which is unbecoming of a Railway or Govt. employee, thus violated Rule No.3(I) (i)(ii)&(iii) of the Railway Service Conduct Rules, 1966.

Statement of the imputationof Misconduct or Misbehaviour (Ann-II):

That Shri Raghbir Singh C&W Mason working under CWS /NDLS on 17-5-1982 at

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10/30 Hrs. entered in CWS Office in drunken condition and started shouting and abused Shri Iqubal Singh CWS/NDLS. Also became so furious that he caught hold, man-handled and tried to assault Shri Iqbal Singh CWS/NDLS."

4. The Petitioner denied the allegation of misbehaviour but he begged to be pardoned vide his representation dated 8-7-1983. An inquiry was held and the Inquiry Officer Shri Surinder Singh, C.W.S. submitted his report holding that in view of the evidence produced by the Department, the charges levelled against the Petitioner have been proved beyond doubt (except for the drunken condition). The Disciplinary Authority, accepting the report of the Inquiry Officer, imposed the penalty of removal of the Petitioner from service vide impugned order dated December 27, 1984. Feeling aggrieved, the Petitioner preferred an appeal against the findings of the Inquiry Officer and the penalty imposed by the Disciplinary Authority upon him. However, the appeal too did not yield any fruitful result and was dismissed by the Competent authority, Senior D.M.E.-II, New Delhi vide his order dated 16-4-1985. Being dis-satisfied, the Petitioner has come up with this application for setting aside the order of the Disciplinary Authority dated December 27, 1984 as also the Appellate order order 16-4-1985.

5. The respondent Union of India contend that the disciplinary proceedings were conducted in a very fair manner and in accordance with law.

They have denied the plea of ~~xxx~~ alibi of the Petitioner that he was in the hospital from 10.30 a.m. to 3.00 p.m. on the date of alleged occurrence as being false. They contend that the Petitioner was afforded adequate and reasonable opportunity to defend his case. Indeed, according to the respondent-department, the Petitioner in his somewhat contradictory representation (Annexre R-1) had indirectly admitted his guilt,(this representation not placed on the file of this application but is available on the inquiry file).

6. We have heard the Counsel for the parties at considerable length and perused the entire record including the file pertainingto the disciplinary proceedings against the Petitioner.

7. The very first submission of the learned Counsel for the Petitioner is that the Petitioner was admittedly on sick leave from 14-5-1982 to 3-6-1982. He was,therefore, exempted from attending the duty at his wrok place. Under the circumstances, there was no occasion for the Petitioner to go to the office of Iqbal Singh during lunch hours as alleged especially when he happened to be in the hospital from 10-30 a.m. to 3.00 p.m. on the said date in connection with his X-ray and blood examination report etc. However, we are not at all impressed by this argument because being an Outdoor Patient, the Petitioner could well move out and his contention that he was very much in the hospital from 10.30 a.m. to 3.00 p.m. on the alleged date of occurrence is purely a question of fact. On a perusal of the Inquiry Report, we find that the Inquiry Officer has specifically dealt with the plea of alibi raised by the Petitioner and has dis-believed

it. So this argument is not available to the Petitioner at this stage.

8. The next contention of the learned Counsel for the Petitioner is that the Petitioner was charge sheeted for misconduct under Section 3 of the Railway Service (Conduct)Rules, 1966 which is a residuary provision based on grounds of misconduct falling under any specific rule dealing with specified acts of misconduct. He has pointed out that Rule 22 of the said rules deals with the consumption of intoxicating drinks and drugsand as such, the Petitioner should have been charge sheeted under the said rule rather than under Rule 3 which isan omni-bus rule. He has further pointed out that the Statement of Article is totally vague being devoid of any facts and includes even the allegation of failure to maintain absolute integrity and devotion to duty falling under Clauses (i) and (ii) of Rule 3(1) of the Conduct Rules. This, according to the Petitioner's Counsel, shows total non-application of mind by the Disciplinary Authority while framing the Statement ofArticle.

9. There is no doubt a lot to be said about the perfunctory manner in which the Statement of Acticle has been drafted in the instant case. Clause (i) of Rule 3(1) requires that every Government servant shall at all times maintain absolute integrity. As is generally understood, the expression 'integrity' implies uprighteousness, honesty and purity in one's official dealings. We find that there

is no challenge to the integrity of the Petitioner in the instant case. Likewise, there is also no challenge to the maintenance of devotion to duty by the Petitioner as contemplated in Clause (ii) of Rule 3(1). Devotion to duty means faithful service. It is no body's case that the Petitioner was not performing his duties faithfully. Apparently, these two clauses were not attracted to the facts and circumstances of this case. All the same, there can be no room for doubt that Clause (iii) of Rule 3(1) will be squarely applicable to the facts of the case because vide said clause, a public Officer is required to keep himself within the bounds of administrative decency which goes by the name of civilized administration. Therefore, gross and improper misbehaviour on the part of a Government servant towards his superior which amounts to humiliation, intimidation and even assault, is surely highly un-becoming of a Public Officer. In the instant case, there is specific plea of violent action on the part of the Petitioner. Even if no charge of drunkness as such was made against the Petitioner under Rule 22, no prejudice can be said to have been caused to him especially when the alleged gross misconduct on the part of the Petitioner was much wider than the scope of Rule 22 which covers only the allegation of drunkness and nothing more. Besides, of course, the Petitioner used filthy and abusive language

towards his superior. So, even though clause (i) & (ii) of Rule 3(1) of the Conduct Rules were not attracted to the facts of the case, it cannot be gainsaid that clause (iii) is fully applicable to the facts of the instant case.

10. It was further contended by the learned counsel for the petitioner that the statement of Article suffers from vague. No doubt it is so, but this argument looses much of its significance as no prejudice can be said to have been caused to the petitioner in view of the statement of the Imputation of misconduct/misbehaviour served upon him which clearly states that he entered the office of C.W.S. in drunken condition at 13-30 hours on 17.5.1982 and started shouting and abused Shri Iqbal Singh, C.W.S. It further narrates that the petitioner became so furious that he caught hold of collar of Iqbal Singh, manhandled him and even tried to assault him. So the contention of the learned counsel for the petitioner that the statement of Article suffers from vagueness and total absence of application of mind by the concerned Disciplinary Authority, does not cut any ice because of clear allegation of misconduct contained in the imputation of misconduct. So, it cannot be concluded by any stretch of reasoning that there was any prejudice or mis-carriage of justice to the Petitioner.

11. Yet another contention putforth on behalf of the Petitioner's counsel is that the Disciplinary Authority failed to examine the complainant Shri Iqbal Singh as

a Prosecution witness even though a specific request to this effect was made by the Petitioner. Thus the Petitioner was deprived of his valuable right to cross examine Iqbal Singh. No doubt there is considerable force in this submission of the Petitioner's Counsel. Fairplay demanded that Iqbal Singh ought to have been put in the witness box not only as a star witness of the prosecution but also to afford an opportunity to the Petitioner to cross examine Iqbal Singh. All the same, we notice that all the three eye witnesses to the occurrence were duly examined and cross-examined by the Inquiring Authority as well as the Petitioner and all of them have supported the prosecution version. Of course, it is not for this Court to appreciate or reappraise the evidences of witnesses on merits. It was certainly the domain of the Inquiry Officer. Surely, it is not a case of "No Evidence". Hence, we are disinclined to interefere with the findings of the Inquiry Officer holding the Petitioner guilty after due appraisal of the prosecution evidence.

12. The learned Counsel for the Petitioner also invited our attention to the fact that theDisciplinary Authority has simply passed a stereo typed order on a printed form without appraising the evidence of the prosecution witnesses. It is no doubt true that the Disciplinary Authority has not discussed the prosecution evidences itself and has simply confirmed the findings of the Inquiry Officer but there is no requirement of

to record its independent
the disciplinary authority findings under the Railway Servants (Discipline and Appeal) Rules, 1968. Rule 10(3) of the said Rules lays down that the Disciplinary Authority shall, if it disagree with the findings of the Inquiry Officer on articles of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence of record is sufficient for the purpose. On its plain language, there is no requirement that the Disciplinary Authority should record its own findings even when it chooses to accept the report of the Inquiry Officer. Indeed it is well settled that in the absence of a requirement
relevant
in the provisions or rules, there is no duty cast on the disciplinary authority to give reasons where the order is one of affirmance of the finding of the Inquiry Officer. Hence, the mere fact that the impugned order of the Disciplinary Authority was couched in a printed format
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except, of course, filling up the blanks here and there, is hardly of any consequence in the instant case. Surely, the impugned order will not be vitiated on that count alone.

13. The learned Counsel for the Petitioner then urged that the Petitioner was served with charge sheets twice on the same allegations and facts - once in December, 1982 (copy Annexre -D) and again in May, 1983 (Copy Annexure -E). Thus the Petitioner was a victim of double jeopardy. He also pointed out that no specific dates were given in the Memos of Charge sheets.

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To this, the explanation furnished by the Respondent's Counsel is that initially the Statement of Article and Statement of Imputation of Misconduct/ Misbehaviour were served upon the Petitioner in English language vide Memo dated nil of December 1982. However, on a representation being made by the Petitioner that he was not conversant with the English language, he was served afresh with the same Statement of Imputation of Misconduct/Misbehaviour and the Statement of Article in Hindi language. So, according to the Respondent's Counsel, ay question of serving the Petitioner twice with the charge sheets on the same allegations and his being put in double jeopardy, does not arise. We find considerable merit in the explanation offered by the respondent's Counsel. Hence, this contention of Petitioner's Counsel is without any substance.

14. Yet another argument advanced by the learned Counsel for the Petitioner is that there was inordinate delay on the part of the Disciplinary Authority in initiating Disciplinary Proceedings and impose penalty etc., there being a long interval of more than two years. We do not think that much would turn on this aspect of the matter. No doubt the disciplinary proceedings should take as less time as possible in order to avoid harassment and monetary loss to the delinquent official but delay in this respect will have hardly any bearing on the merits of this case.

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15. Lastly, the learned Counsel for the Petitioner has urged that neither the Disciplinary Authority nor the Appellate Authority has given any cogent reason for imposing the extreme penalty of compulsory removal from service of the Petitioner. We find considerable merit in this contention. It is well settled that the punishment imposed upon a delinquent official must be commensurate with his guilt and the extreme penalty of dismissal or removal from service should be imposed only sparingly in cases of gross misconduct having regard to the antecedents and previous service record of the delinquent official. However, neither the Disciplinary Authority nor the Appellate Authority has considered this aspect of the matter, even though, Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968 in terms requires that the Appellate Authority shall consider whether the penalty imposed is adequate, inadequate or severe. In R.P.Bhatt Vs. Union of India (1986) 2 S.C.C. 651 , it was held that the word "Consider" as used in Rule 27(2) of the Central Civil Services(Classification, Control and Appeal)Rules, 1965 which provision is in parimateria with Rule 22(2) of the Railway Servants(D&A) Rules, 1968, imply "Due application of mind". In Ram Chander Vs. Union of India A.I.R. 1986 SC 1173, the gravamen of the charge was that the appellant was guilty of misconduct as on October 1, 1969, at 7-30 p.m. he assaulted his immediate superior. The question arose whether the Railway Board as an Appellate Authority had complied with the requirements of Rule 22(2) of the

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Railway Servants (D&A)Rules, 1965 while dismissing the appeal of the applicant. In that case their Lordships observed as under :-

> "To say the least, this is just a mechanical reproduction of the pharaseology of R.22(2) of the Railway Servants Rules without any attempt on the part of the Railway Board either to marshall the evidence on record with a view to decide whether the findings arrived at by the disciplinary authority could be sustained or not. There is also no indication that the Railway Board applied its mind as to whether the act of misconduct with which the appellant was charged together with the attendant circumstances and the past record of the appellant were such that he should have beenvisited with the extreme penalty of removal from service for a single lapse in a span of 24 years of service. Dismissal or removal from service is a matter of grave concern to a civil servant who after such a long period of service, may not deserve such a harsh punishment. There being non-compliance with the requirements of R.22(2) of the Railway Servants Rules, the impugned order passed by the Railway Board is liable to be set aside."

16. The instant case certainly appears to be a case of violence on the part of the Petitioner but we find that neither the disciplinary authority nor the appellate

authority has referred to the antecedents and previous service record of the Petitioner. No doubt intimidation and violence on the part of a Government servant towards his superiors cannot be permitted or ignored as it might create a situation when it might become a possible hazard for superior officers to work or in any case to discharge their duty in satisfactory manner. This may make the smooth functioning of an organisation well-nigh impossible. All the same, the basic question would remain whether the Petitioner deserves so severe a punishment having regard to the totality of circumstances. Normally, this Court would refrain from interfering with the quantum of punishment awarded to a delinquent official who is found guilty of misconduct but the fact that the compulsory removal from service deprives not only the delinquent official but his whole family of their source of livelihood, needs consideration. They may be rendered destitutes and find it difficult to make both ends meet. Under the circumstances, we consider that a lenient view in the matter of punishment should have been taken in the hope that the delinquent official would refrain from such like misbehaviour in future.

17. So considering all these aspects, we deem it fit to set aside the punishment of compulsory removal from service and alter it into that of reduction to the lower stage in the time scale of pay for a period of five years.

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However, on the expiry of the said period, the reduction will not have the effect of postponing the future increments of his pay. Hence, this application is allowed in part to the extent of the quantum of punishment inflicted on the petitioner as indicated above. The concerned authorities shall reinstate the petitioner w.e.f. the date he was removed from service and give effect to this order within three months from today. He shall also be entitled to all consequential benefits like salary and other emoluments etc. etc. as admissible under the Service Rules.

29/9/87

(Birbal Nath)
AM

(J.D. Jain)
VC

29-9-1987.