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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. 1038/86

Date of decision: 15/11/91

Surinder Kumar Ahuja .. Applicant.

Versus

Union of India & Others .. Respondents.

Sh.G.D.Bhandari .. Counsel for the applicant.

Sh.O.N.Moolri .. Counsel for the respondents.

CORAM:

The Hon'ble Sh.Justice Ram Pal Singh, Vice Chairman(J).

The Hon'ble Sh.I.P.Gupta, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement?.
2. To be referred to the Reporter or not?
3. Whether their 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 Sh.I.P.Gupta, Member(A)).

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In this application filed U/s/Administrative Tribunals Act, 1985, the applicant joined the Railway on 13.6.69 and was appointed as an Assistant Station Master in the Grade of Rs.330 - 560 (RS). He is presently working as Assistant Station Master in Grade Rs.425 - 640 (RS).

2. The applicant was suspended on 20.12.82 in connection with collusion of 75 UP with DOS Crack at Muradnagar Station on 19.12.82. The suspension was revoked on 9.3.83. Annexure A/16 refers. No chargesheet was issued either before the issue of the suspension order or before its revocation.

3. On 1.6.83 the applicant was served with a major penalty chargesheet dated 26.4/21.5.83. A departmental enquiry called D.A.R. enquiry was conducted. The Enquiry

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Officer submitted his findings to the Disciplinary Authority. The findings are at annexure C/18. It is observed therefrom that the Enquiry Officer came to the conclusion that the imputations levelled were not substantiated. However, there was also a mention that non compliance of S.R. 37/8 in its literary sense is substantiated, although it was perforce of circumstances and impracticable from the operational point of view'.

4. The disciplinary authority on consideration of the chargesheet and the enquiry report inflicted the penalty of withholding of increment permanently (W.I.P.) for two years to be effective and operative from 1.6.84. The orders of the disciplinary authority are at Annexure D/20. Though the conclusion of the Enquiry Officer was that the imputations levelled were not substantiated yet the disciplinary authority did not give any reason for differing with the enquiry report.

5. The applicant submitted an appeal to the appellate authority who reduced the punishment to W.I.T. (withholding of increment temporarily) for two years instead of W.I.P. (withholding of increment permanently).

6. The applicant was promoted in Grade Rs. 425 - 650 (RS) as Assistant Station Master on 10.5.83 i.e. before the issue of chargesheet on 21.5.83 and after the revocation of suspension order on 9.3.83. The applicant joined the promoted post and worked there upto 6.7.83 including leave from 29.6.83 to 6.7.83. In supersession of the earlier order of promotion the respondents issued another order dated 1.7.83 cancelling the earlier promotion order on the ground that the conduct of the applicant was under verification. The applicant contends that as a result of cancellation of his promotion he also

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suffered subsequently in the matter of promotion consequent of restructuring of the cadre of Assistant Station Master.

7. The relief sought is that:-

- i) The order imposing the penalty of W.I.P./W.I.T. for two years be quashed, as being bad in law.
- ii) The orders cancelling his promotion reverting him be quashed, as no chargesheet was pending against him at that time.
- iii) The consequential benefits should be given to him.

8. The learned counsel for the respondents brought out that:-

- i) The applicant was not ~~exonerated~~^{exonerated} and he was held responsible for non-compliance of S.R. 37/8 and his defence to the chargesheet was not satisfactory.
- ii) The Appellate Authority had already reduced the penalty and a further reduction in the penalty is indeed asking for too much.
- iii) The promotion orders were issued erroneously as disciplinary proceedings were pending against the applicant and therefore, the mistake was corrected.

9. The issues involved in this particular case are discussed below. Though compliance of S.R. 37/8 in literary sense has been mentioned in the enquiry report, the Enquiry Officer has also observed that compliance of S.R. 37/8 was impracticable from the operational view point in the existing circumstances.

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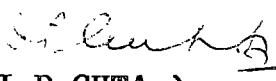
The final conclusion of the Enquiry Officer is that the imputations are not substantiated. As observed in Narain Mishra Versus State of Orissa (~~1969~~ S.L.R. 657) when a disciplinary authority differed with Enquiry Officer and without warning to the employee, the action of the disciplinary authority was bad and violative of principles of natural justice and fair play.

10. Therefore, the orders of penalty in this case are bad in law.

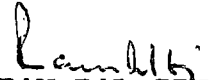
11. As regards promotion it may be mentioned that the orders of promotion were issued on 10.5.83 when no chargesheet existed and the orders of suspension had also been revoked. Therefore, it cannot be concluded that at the time of promotion the applicant was undergoing penalty. Therefore, the reversion order dated 1.7.83 is also bad in law. Further, as observed in Sohan Lal Sharma Versus Union of India (1990 (1) A.T.J. 540, Chandigarh) as also in Parveen Kumar Versus I.C.A.R. 1983(3) S.L.J. (C.A.T.) 694 it has been held that denial of promotion to a delinquent officer during the currency of minor penalty of withholding of increment will amount to double punishment which is totally unwarranted by the Rules.

12. In the conspectus of the above view of the matter in this case, we direct that the order of penalty dated 25.1.84 and the appellate order dated 12.6.84 be quashed and so also the reversion order dated 1.7.83. The consequential benefits arising out of the setting aside of the aforesaid orders should also be given to the applicant.

13. There is no order as to costs.


(I.P.GUTA)

MEMBER(A)


(RAM PAL SINGH) 15.11.91

VICE CHAIRMAN(J)