

CENTRAL ADMINISTRATIVE TRIBUNAL
(PRINCIPAL BENCH)
New Delhi

OA/TA No. 1778 OF 87

~~Dr. A. Khan~~ V/S ~~Worries~~

PART-I PERMANENT RECORD

INDEX Order Sheet/Judgements

Total Pages 1 to 7

I.	OA No. 1778 / 87	Pages	Remarks
	1. Order Sheets		
	Date — To —		
	2. Final Order/Judgement dated 11.12.87	1-9	Allowed/Dismissed/ Disposed off. Rejected
II.	R.A. No.		
	1. Order Sheets		
	dated To		
	2. Final Order dated		
III.	C.P.No.		
	1. Order Sheets		
	dated To		
	2. Final Order dated		
IV.	Any Other Orders dt.		
V.	Appeal/SLP/Writ, if any		
	S.L.P. No.		
	C.A. No.		
	1. Orders/Judgement Dated		
	2. Decree dated		

Prepared by :	Checked by:
Signature & Date:	Signature & Date:
Name: <i>DRW</i>	Name:
Designation: <i>Head</i>	Designation:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
T.A. No.

1773

198 7

DATE OF DECISION 11.12.1987

Shri D. N. Asthana

Applicant
Petitioner

Applicant in person.

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

None.

Advocate for the Respondent(s)

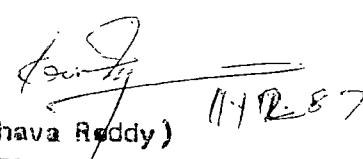
CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether to be circulated to all the Benches? No


(Kaushal Kumar)
Member


(K. Madhava Reddy)
Chairman

11th December, 1987

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

Date of Decisions: 11.12.1987.

Regn. No. O.A. 1778/87.

15.

Union of India, Respondent.

CORAM: Hon'ble Mr. Justice K. Madhava Reddy, chairman.

Hon'ble Mr. Kaushal Kumar, Member.

For the applicant: ... Applicant in person.

For the Respondent None

JUDGMENT
(delivered by Hon'ble Mr. Justice K.Madhava Reddy, Chairman).

The Central Bureau of Investigation apprehended the applicant for allegedly accepting a bribe of Rs. 150/- from one Shri R. D. Saxena, Train Examiner, North-Eastern Railway, Barauni on 22.4.1977 at about 7.00 p.m. Thereafter, his house was searched with a view to assess his assets and also to recover any other incriminating material. A case was registered on 26.4.1977 under Section 61(1)(a) of the Punjab Excise Act, 1914 and FIR No. 190/77 was issued. He was placed under suspension on 30.4.1977. The Central Bureau of Investigation, however, closed the case on 16.8.1977 and referred it to the Railway Board for departmental action and filed a final report in the Court of Special Judge, Delhi. Thereafter, the disciplinary proceedings were initiated and the applicant was served with a charge-sheet for imposition of a major penalty vide Secretary, Railway Board's Office Memorandum dated 27.4.1978. Two charges were framed against him,

firstly that he demanded and accepted a sum of Rs. 150/- by way of illegal gratification from one Shri R.D. Saxena, Train Examiner, Samastipur Division, North-Eastern Railway for showing him favour in the matter of regularisation of his services as train examiner. ~~xxxxxx~~ The second charge was that the applicant failed to send an intimation to the office regarding purchase of a Television set by his son Shri Arun Bahadur Asthana. The applicant denied the charges and requested for an early enquiry. At the enquiry, several witnesses were examined and documents were marked in support of the charges. Copies of the documents were also furnished to the applicant. The inquiry proceedings were closed with the submission of written briefs by the Presenting Officer and the applicant. The Inquiry Officer's report dated 6.1.1986 exonerated the applicant of both the charges. The Secretary, Railway Board, however, disagreeing with the finding of the Inquiry Officer in respect of charge No. 1 passed the impugned order of dismissal on 13.2.1986 effective from the date of its service.

In coming to that conclusion, he noted in particular that the bribe money was recovered from the person of the applicant. Aggrieved by that order, the applicant preferred an appeal to the Railway Board.

JK
Shri M.L. Khanna, Member Staff, Railway Board dealt with the several contentions raised in the memorandum of appeal and rejected the same and confirmed the order of dismissal made by the Disciplinary Authority.

2. In this application under Section 19 of the Administrative Tribunals Act, 1985, these proceedings are attacked on several grounds, the first and foremost being that neither the order of the Disciplinary Authority nor that of the Appellate Authority is a speaking order. A

mere reading of these orders will show that this contention is untenable. The Disciplinary Authority has, no doubt, disagreed with the finding of the Inquiry Officer. But he has given reasons for his disagreement and for holding the charges proved before imposing the penalty of dismissal. The reasons recorded and the operative portion of the order have to be read together. The Appellate Authority also considered the evidence in support of the charges and the propriety of imposing the penalty of dismissal from service. The Appellate Authority specifically dealt with each and every ground raised. It has thus gone through the evidence and recorded reasons how the evidence adduced established the charge.

No. 1.

3. The applicant who appeared in person, however, contends that the evidence on record is not such as could be accepted as sufficient to prove the charges. This Tribunal does not sit as an Appellate Court. That apart, the amount allegedly received as illegal gratification was recovered from the person of the applicant. Though some of the witnesses have recanted from their earlier statements, it was open to the Disciplinary Authority and the Appellate Authority to consider the evidence on its own merits and accept either the latter statement or the earlier statement to be correct. This being not a case of 'no evidence' or a case of acting on 'inadmissible evidence', we do not think that in the face of a speaking order, we would be justified in reappreciating the evidence and coming to a different conclusion. This is not a case where evidence to hold the charges proved was not gone into by the Disciplinary Authority or the Appellate Authority. This contention, therefore, fails.

4

4. It was next argued that the disciplinary proceedings were initiated by the Secretary, Railway Board and the penalty of dismissal was imposed by him/he was not competent to do so for the reason that the applicant was appointed to the Northern Railway and his services were merely lent to the Railway Board. If at all any major penalty was sought to be imposed, the borrowing department, namely, Railway Board, should have consulted the Northern Railway where the applicant's lien was still retained. If the Railway Board was of the opinion that penalty of dismissal was to be imposed, as envisaged by Rule 15 of the Railway Servants (Discipline and Appeal) Rules, 1968 it should have transmitted the proceedings to the lending department, that is, the Northern Railway. The Railway Board, which was the borrowing department, had no jurisdiction to inquire into these proceedings and impose the penalty of dismissal. Rule 15 reads as follows:-

"15. Provision regarding Railway Servants lent to State Governments, etc.-

(1) Where the services of a Railway servant are lent to any other Ministry or Department of the Central Government or to a State Government or an authority subordinate thereto or to a local or other authority (hereinafter in this rule referred to as "the borrowing authority"), the borrowing authority shall have the powers of the authority competent to place the Railway servant under suspension for the purpose of placing him under suspension and of the disciplinary authority for the purpose of conducting disciplinary proceeding against him;

6/2
Provided that the borrowing authority shall forthwith inform the authority which lent the services of the Railway servant (hereinafter in this rule referred to as "the lending authority") of the circumstances leading to the order of his suspension or the commencement of the disciplinary proceeding, as the case may be.

(2) In the light of the finding in the disciplinary proceedings conducted against the Railway servant-

(i) if the borrowing authority is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 6 should be imposed

6

on the Railway servant, it may, after consultation with the lending authority, make such orders on the case as it deems necessary;

Provided that in the event of a difference of opinion between the borrowing authority and the lending authority, the services of the Railway servant shall be replaced at the disposal of the lending authority.

(ii) if the borrowing authority is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 6 should be imposed on the Railway servant, it shall replace his services at the disposal of the lending authority and transmit to it the proceedings of the inquiry and thereupon the lending authority may, if it is the disciplinary authority, pass such orders thereon as it may deem necessary, or if it is not the disciplinary authority, submit the case to the disciplinary authority which shall pass such orders on the case as it may deem necessary;

Provided that before passing such orders, the disciplinary authority shall comply with the provisions of sub-rules (4) and (5) of Rule 10."

5. It would be clear from a close reading of the Rule that it would apply to the cases where the services of the Railway servants are lent to any other Ministry or Department of the Central Government or to a State Government or an authority subordinate thereto or to a local or other authority. This Rule would have no application to the case of a Railway servant like the applicant whose services, after being appointed to Northern Railway, were lent to the Railway Board and not to any other Ministry or Department of the Central Government. Both the Railway Board and the Northern Railway are under the Railway Ministry. In such a case Rule 15 which speaks of a borrowing authority and a lending authority, cannot be invoked. In our opinion, the Secretary, Railway Board was competent to take disciplinary proceedings and impose the penalty of dismissal.

JK

6. It was next contended that the appeal was submitted to the Railway Board and the Railway Board consists of more than one Members. As such Shri M.L. Khanna, Member Staff, Railway Board, sitting singly was not competent to dispose of the appeal. Any such

contention cannot be countenanced in view of Rule 19 of the Railway Servants (Discipline & Appeal) Rules, 1968 which defines the 'Appellate Authorities'. Reliance is placed upon the Schedule appended to the above-mentioned Rules in which the Railway Board is described as an Appellate Authority in respect of non-gazetted Railway servants in disciplinary proceedings. To ascertain who the Appellate Authority envisaged by the Rules is, the Schedule has to be read alongwith Rule 19. If the Railway Board is described as the Appellate Authority, proviso (ii) to Rule 19(2) is automatically attracted. In view of that provision where the Railway Board is constituted as an Appellate Authority, any Member of the Railway Board, who has not made the order appealed against is competent to dispose of the appeal on behalf of the Railway Board. As the appeal lies to the Railway Board, in view of/proviso to Rule 19(2), the powers of the Railway Board which is an Appellate Authority, may be exercised by any Member of the Railway Board who has not passed the order under Appeal. The contention that the entire Railway Board should have considered the appeal is, therefore, rejected. The impugned order was passed by/competent Appellate Authority.

7. Lastly, it was contended that the penalty imposed was out of all proportion to the gravity of the charges and that it was discriminatory inasmuch as some other Railway servants charged with having received illegal gratification were let off with a minor penalty. The applicant has quoted a few cases. The case of one Shri Babu Lal who was held guilty of having demanded and accepted illegal gratification of Rs. 50/- was visited with the penalty of withholding of two increments by the Railway Board. One

Dr. H.N. Mathur, ADMO, Northern Railway, similarly caught while he was accepting illegal gratification from a patient was merely ~~cautioned~~ ^{Section 68} cautioned not to commit ~~fact~~ in future. One Shri Vasudeva, Exhibition Officer, Railway Board, booked by the C.B.I. in September, 1979 for cheating and against whom major penalty proceedings were recommended is said to have been later charge-sheeted for minor penalty and that ended with a warning. It is unnecessary for us to go into the question whether the persons concerned were let off with minor punishments. Each case of misconduct has to be decided on its own facts and circumstances. We would, however, feel that a person proved to be guilty of receiving illegal gratification does not deserve to be retained in service. It is, therefore, unnecessary for us to go into the merits of each of the cases referred to by the applicant. The fact that some were let off with a lighter punishment is no ground to retain a Railway servant in service who has been found guilty of receiving illegal gratification. In any event, each disciplinary proceeding has to be adjudged on the facts and circumstances of that case. That order cannot be attacked on the ground that in some other case another officer has been let off lightly. The impugned order does not suffer from any vice of discrimination. On the facts and circumstances of this case, we are unable to hold that the order of dismissal is wholly disproportionate to the charges levelled and held proved against the applicant

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- 8 -

so as to warrant interference by this Tribunal.

8. In the result, we find no merit in this application; it is accordingly rejected. There will be no order as to costs.

K. Madhava Reddy
(KAUSHAL KUMAR) 11/12/87
Member.

K. Madhava Reddy
(K. MADHAVA REDDY) 11.12.87
Chairman.

11th December, 1987.