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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.1639 of 1990

This 27 day of July, 1994

Hon'ble Mr. J.P. Sharma, Member (J)

Hon'ble Mr. B.K. Singh, Member (A)

Chiranjeevi Surya,
R/o Village & P.O. Sisarka,
Tehsil Bisauli,
District Badayun (UP)

..... Applicant

By Advocate: Shri P.M. Ahlawat along with
Shri B.D. Thareja, Counsel

VERSUS

Union of India, through:

1. The General Manager,
Northern Railway Headquarters,
Baroda House,
New Delhi.

2. The Principal,
Zonal Training School,
Chandausi,
District Moradabad (UP)

..... Respondents

By Advocate: None present

O R D E R (Oral)

Hon'ble Mr. J.P. Sharma, M(J)

By an order dated 10th November 1982 the applicant was given ad hoc promotion to the post of Welfare Inspector but he was not relieved by the Zonal Training School, Chandausi and the Principal gave him local promotion in the same grade on the post of School Sergeant. The applicant joined that post in the year 1982 and he was made in charge of stores. On a checking of the items it was found that many items were missing and were not accounted for as well as there were over-writings,

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interpolations and cuttings in the various registers which necessitated holding of DAR proceedings against the applicant under Rule 9 of the Rules for major penalty referred to in Rule 6 of the said Rules. Shri A.D. Khanna was appointed as Inquiry Officer and on his retirement he was succeeded by Shri S.C. Sharma who conducted and completed the inquiry holding the applicant guilty of both the charges on the basis of which the Disciplinary Authority passed the order of punishment dated 2.5.1988 imposing the penalty of reduction to lower post in the scale of Rs.1200-2040 (Sr. Clerk) for a period of 5 years with postponement of future increments. A shortage was also established in the Stores and an amount of Rs.9,740.00 as value of the same was ordered to be recovered on account of loss caused to the Railways. The applicant being aggrieved by this order filed an OA No. 1871/89 without exhausting departmental remedies or filing an appeal. This OA was dismissed on 26.9.89 with the liberty to file an appeal under Rule 18 of the Rules within 15 days from the date of the order of dismissal of the OA with the directions to the respondents to dispose of the appeal after condoning the delay. The applicant thereafter preferred an appeal on 6.10.89 but since it was not accompanied by certain documents, the same was returned to the applicant by the Principal, Zonal Training School, Chandausi. Thereafter he filed the appeal on 23.11.1990. But without waiting for the result of the appeal the applicant filed the present OA in August 1990 and has prayed for grant of reliefs that the impugned order be quashed with the directions to the respondents to deem the applicant to have continued on the post of Head Clerk without any break.

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2. The respondents contested this application and filed their reply stating therein that the applicant willingly accepted the post of School Sergeant which is equal in grade to that of Assistant Welfare Inspector and was in charge of stores where he manoeuvred and interpolated the registers of stores. There were certain items which were missing and could not be accounted for by the applicant. The DA agreeing with the findings of the I.O. awarded the punishment to the applicant of reduction to lower grade for five years. The appeal of the applicant was dismissed by the competent authority on 29.11.1990 holding that the applicant has no case.

3. We heard the learned counsel for the applicant at length and also considered the relevancy of certain documents which the applicant has desired to be produced. However, we do not find that any documents at this stage are required. None is present on behalf of the respondents. Shri N.K. Aggarwal, counsel, filed the reply to the OA on behalf of the respondents. The matter has been on board. Since this is an old matter and the applicant has already retired on 30.6.1993, we are disposing of this application on merits.

4. It was expected that the Railways would depute their legal assistant so that he may note all the cases pending and being attended by the lawyers in their panel or entrusted with briefs. However, this case cannot be adjourned indefinitely when the parties are duly represented and are hotly contesting the case.

5. The learned counsel for the applicant has firstly argued that the breach of Rule 9(b) of the rules in as much as the subsequent inquiry officer was not duly

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appointed by the Disciplinary Authority.

5. We have gone through the grounds and the facts of the case. We have devoted a considerable time along with the applicant's counsel to have a microscopic view of the grounds taken in the OA. We feel that no such ground has been taken, while in para 4.15 (h) of the counter affidavit of the respondents it is stated that Shri S.C. Sharma was appointed as inquiry officer by Chief Safety Superintendent after the retirement of the earlier I.O., Shri A.D. Khanna. In fact, the Principal, ZTS, was Disciplinary Authority of the applicant, though this fact has also been disputed by the applicant in the rejoinder. Be that as it may, there is nothing on record to show that the I.O., S.C. Sharma, was not duly appointed. In fact after retirement of A.D. Khanna Shri S.C. Sharma succeeded him. In any case the applicant has also earlier filed an OA referred to above and he should have taken that ground assailing the order of punishment dated 2.5.1988. Now it is not open to him to take this ground when the proceedings of the case are over.

6. The next ground taken by the learned counsel for the applicant is that the applicant was not given adequate opportunity in the departmental inquiry. From record we do not find any such material that the applicant has not been duly represented or that he has not cross-examined the witnesses examined on behalf of the administration. However, this matter we are leaving open in view of the order we are going to pass hereinafter:

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7. The contention of the learned counsel that the punishment awarded is against the rules, i.e. Rule 6(vi) of the Rules. However, it is not so. The recovery of losses is not a punishment and the major punishment inflicted upon the applicant is of reduction to lower post. The applicant will gain the increments of the post from which he has been reverted, after five years.

8. Further, we do not find that the appeal preferred by the applicant on 6.10.89 has enumerated a number of grounds in 5 to 6 pages and the respondents, i.e. the appellate authority, has not taken an objective view of the various grounds taken in the memo of appeal. In fact, this Tribunal cannot interfere in the quantum of punishment and the administration itself has to see the circumstances under which the type of punishment can be imposed. Moreover, the appellate authority can also go through the departmental files and consider the same on the various grounds taken in the memo of appeal. However, in judicial review no comparative analysis and assessment of the evidence can be done. It was therefore, all the more necessary that the appellate authority should have applied his mind and should not have acted in a ^{manner} routine in communicating to the applicant that 'the competent authority has rejected the appeal'. We are not aware of the orders the competent authority has passed. We are only having a communication addressed to the applicant saying that his appeal has been rejected by the competent authority. We are handicapped by non-presence of the respondents or their representatives or legal advisor or lawyer, and, therefore, cannot see what actual order was

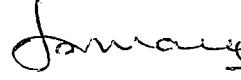
passed by the appellate authority. There are a catena of judgements on the point in issue which must have come to the knowledge of the Railway authorities that an appeal has to be decided by a speaking order and even personal hearing has to be given in suitable cases. Further, the Hon'ble Supreme Court has also considered the point in Ram Chandra vs. Union of India, (1986) vol 3 SCC page 103. In that case the railway employee was dismissed from service but his appeal was not considered on the ground taken by him in the memo of appeal. A cryptic order was passed. The Hon'ble SC held that the appellate authority should give personal hearing to the appellant and dispose of the appeal.

9. We are conscious of the fact that in the OA the applicant has not taken this ground about appellate order but the meritorious case cannot be left to the lawyers and should be decided on its merits. The present lawyer Shri P.M. Ahlawat, has not filed this OA. It was drafted by Shri BD Thareja. Even the applicant has filed a rejoinder in which he has taken the ground in para 4.16 that the order of the appellate authority is a non-speaking order and that mind has not been applied in passing the same. This rejoinder was filed on 26.5.1991. It has been taken on record by the order dated 9.10.91 when none appeared for the respondents. In view of this the respondents should be on their guard and should have considered the additional grounds taken in the rejoinder. In any case since the order of the appellate authority

cannot be sustained and therefore we quash and set aside the same and remand the case to the appellate authority to consider the various grounds taken in the memo of appeal dated 6.10.89 and dispose of the appeal within a period of six months from the receipt of this judgment. In case the applicant gets successful in the appeal, he will be entitled to the benefits he was deprived of due to the order of the punishment. In case any adverse order is passed against the applicant, he can approach the Tribunal, if so advised, subject to the law of limitation and according to rules.

In the circumstances, the applicant will bear his own cost.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J)

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