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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 1861/90

M.P. No. 2220/90

New Delhi, dated the 12th October, 1994

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Hon'ble Shri N.V. Krishnan, Vice Chairman (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri S.K. Gupta,
Sr. Luggage Clerk,
Western Railway,
Agra

.. Applicant

(None for the applicant)

V/s

1. Genl. Manager,
Western Railway, Church Gate,
Bombay.
2. The Divisional Railway Manager,
D.R.M. Office, Kota (Rajasthan)
3. The Sr. Sr. Divnl. Commercial Superintendent,
Western Railway, Kota.
4. Station Superintendent, Western Railway,
Agra Fort.

.. Respondents

(None for the respondents)

ORDER (ORAL)

(Hon'ble Shri N.V. Krishnan, Vice Chairman (A))

When this case was taken up for final hearing today, none was present from either side. Accordingly, we are disposing of this O.A. on the basis of the papers available on record.

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2. The applicant, a Parcel Luggage Clerk in the Railways, has been removed from service in disciplinary proceedings.
3. The applicant approached this Tribunal without first filing an appeal, in O.A. No. 616/90, which was disposed of on 5-6-1990 (vide Annexure-A-4 order) directing him to file an appeal. Thereupon, he filed Annexure A-5 appeal dated 14-6-90. That appeal has been dismissed by the Annexure A-1 order dated 27.7.1990.
4. In the circumstances, this O.A. has been filed to quash the impugned order.
5. The application was admitted on 24.9.1990 when notice was directed to be issued to the respondents. The respondents did not file any reply till 26.4.1991. The Bench directed that the pleadings of the case be taken as complete and the O.A. be listed for final hearing.
6. Subsequently, the respondents filed a reply on 1.5.1991 which has been added to Part 'C' of the file and not as part of the record.
7. We have perused the O.A. The charges against the applicant are as under:-
"
(i) he, on 7.12.1987 had demanded Rs 25/- per package from one Shri Yaseer for loading of 5 packages leather shoes booked under PW Bill No. 629126/2, 629127/2 and 629128/1 of 7.12.1987 ex-AF to PCR (BCT) into AF ECT SLR by 82 UP of 7.12.1987.

- (ii) On refusal to accede with this illegal demand of Rs 25/- per packages, he did not load the said 5 packages and further deliberately detained the same till 9.12.1987 ; and
- (iii) As a result of undue detention of the said parcels at Agra Fort Station and clearance of other packages booked later in AF BCT SLR from 7.12.1987 to 9.12.1987 caused unusual delay to this consignment to reach destination in addition to harrassment suffered by Shri Yasser

He by his above acts, failed to maintain absolute integrity and exhibited lack of devotion to duty and thereby violated Rule 3(1)(i)(ii) of Railway Service (Conduct) Rules, 1966."

After enquiry, the Enquiry Officer did not find any proof regarding demand of Rs 25/- per consignment from Shri Yasser S/o Suleman, of Agra. When asked to give corroborating evidence in support of his allegations, the complainant Yasser stated that there is no corroborating evidence, except that his consignments booked on 7.12.1987 were delayed only because the demand was not met with. However, it has been found that, out of the five cases of leather shoes booked by Shri Yaseer on 7.12.1987, 3 were actually detained till 9.12.1987. Thereupon this penalty was imposed which has been upheld in appeal.

8. In so far as ground No.5.3 is concerned that the General Manager alone is the competent authority to remove a Group 'C' employee and the complaint that a copy of the Enquiry Officer's report was not served on the applicant, these have no basis in the light of the judgments of the Supreme Court in this behalf.

9. The other grounds relate to appreciation/evidences, with which we are not concerned.

11. The applicant has alleged that the Sr.Divisional Commercial Superintendent, Kota has no authority to impose the penalty by issuing the order. The applicant also stated that Respondent No.3 had initially passed the order for the penalty of with-holding the increment temporarily for six months but changed that order to one of removal from service. We notice that even though this serious allegation has been made, the applicant has not impleaded the concerned Senior Divisional Commercial Superintendent in his personal capacity to answer this allegation. We are, therefore, not impressed by his plea of mala fide against the respondents.

The disciplinary authority has concluded that there is a
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deliberate mala fide in respect of the action taken by the applicant in detaining the parcel and, therefore, his action is uncalled for. The Appellate Authority has concluded that the detention of the packages from 7.12.1987 to 9.12.1987 proves that the applicant was harrassing railway user and he is unmindful of the loss caused to Railways.

13. We find that the applicant vide Annexure A-3 dated 19-3-90 made complaints to the Divisional Railway Manager i.e. Appellate Authority as follows:-

" That D.A.R. enquiry was completed on 21.11.89 on the findings of the said enquiry Sr.DCS Shri K.C. Singh issued orders for minor penalty (withholding) of increment for six months without future effect. The orders were despatched under F.S. No.752892 dt.10.1.90 by 81 Dn. and they were received by S.SAF on 11.1.90."

The applicant has also incorporated this same complaint in paras 12 and 13 of the appeal filed by him (Ann.A.5) which read as follows:-

" That the said punishment is too harsh to be imposed on a loyal Railway employee for a very very minor charge in support of which also there was no evidence. I have no inhibition to divulge before your honour that Shri K.C. Singh, Sr. D.C.S. have demanded a very high price from me and as a matter of fact had imposed penalty of withdrawing the increment for 6 months initially, but since I refuse to pay the

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illegal money to Shri K.C. Singh, Sr.D.C.S. he telephonically directed the Station Superintendent, Agra Fort to return the notice of imposition of penalty of withdrawing of increments for 6 months and thereafter went on to impose a capital punishment of removal from service for very very minor charge."

This particular fact has been narrated by me to the D.R.M. Shri Abtar Singh Thre on when he came on inspection to Agra Fort on 27.1.90 who assured me that the orders of withdrawing of increment for 6 months will not be changed and injustice will not be done to me. Unfortunately, for me Shri Abtar Singh was transferred to Bombay in H.Q Office and Shri K.C.Singh translated his nefarious designs in reality."

Yet we find that the Appellate Authority has not dealt with this serious matter in the Annexure A-1 Appellate Order. To our mind, the Appellate Authority ought to have taken this matter seriously particularly when it / ^{casts aspersions} ~~aspetious~~ on the disciplinary authority.

14. The applicant has made an allegation in this behalf in para 4.23 and 4.24 of the O.A. and taken this as a ground in para 5.6. As these allegations are serious, We wanted to find out what the respondents have to say in this regard.

Therefore, we have taken the belated reply on record. The averments made in the OA and the replies there-to are as follows:-

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Averment in OA

Reply

- 4.23. That the misconduct and prejudice on the part of the Sr.D.C.S., Kota is evident from the fact that after the receipt of inquiry report he had imposed the penalty of withholding of increment temporarily for 6 months and the notice of imposition of penalty was despatched to the Station Superintendent, Agra Fort under free service No.752892 dated 10.1.90 by 81 DN. Simultaneously the Sr.D.C.S. also sent a messenger to the applicant demanding a huge amount for letting of the applicant by imposing a minor penalty only. When the applicant could not meet with the heavy demand of amount made by the Sr. D.C.S., the Sr.D.C.S. telephonically directed the Station Superintendent, Agra Fort to return the notice of imposition of penalty and thereafter passed the impugned orders removing the applicant from service. A copy of the orders dated 16.2.90 is annexed hereto and marked as Ann.A.1
- 4.24 That the applicant made a complaint against the senior D.C.S. to the D.R.M. on 19.2.1990. A copy of the said complaint dated 19.2.1990 alongwith postal receipt and A.D. is annexed hereto and marked as Annexure-A-3.
- 5.6. That the Sr.D.C.S. had passed minor penalty of withholding of increment temporarily for 6 months but subsequently changed the orders to removal from service when the applicant could not satisfy his high illegal demand.

4.23 Para 4.23 is wholly incorrect, unwarranted and denied. The allegations are not only vague but after-though and uncalled from the facts on record. The allegations are baseless and imaginary. It is submitted that no such orders imposing the penalty of withholding of increments were passed and are a creation of the mind of the applicant with malafide intentions to make a story. It is also incorrect to say that Sr.D.C.S. ever demanded any illegal gratification from the applicant for imposing a minor penalty, and no such penalty was proposed or imposed.

Para 4.24 is a matter of record.

The grounds mentioned are non-existent and baseless in as much as that the appreciation of facts is in the sole realm of the Enquiry Officer and all other facts have already been rebutted in the form of the objections about the non-supply of Enquiry Report or the alleged change of orders which have been repeatedly rebutted.

The allegation is made against the then senior D.C.S. Shri K.C.Singh. The reply is filed by the successor in office. The reply to para 4.23 does not suggest that any enquiry was made. Nothing is

mentioned about Free service No.752892 dated 10-1-90 referred to in para 4.23 of the O.A. There should have been a specific reference to this in the reply. Further, reply to para 4.24 is vague. The reply implies that the complaint was received by the D.R.M. i.e. the appellate authority. The reply should therefore, have been furnished after ascertaining what happened to this complaint. We have already noted that the appellate authority has not dealt with this complaint in his order. In other words, he slept over the matter and did not make any enquiry.

15. We are, therefore, of the view that the allegation made by the applicant remains unrebutted, notwithstanding the averment in reply to para 4.23.

16. In our view the respondents have correctly found the applicant guilty. However, in the circumstances mentioned above, the penalty imposed on him is liable to be quashed.

17. In view of our findings in paras 13 to 15 (supra) it would be expedient to remit the matter to the Appellate Authority for passing an appropriate order regarding penalty. However, considering the circumstances

of the case, we are of the view that the Appellate Authority should be directed to consider again imposing any penalty other than a penalty involving a termination of the services of the applicant, in any manner.

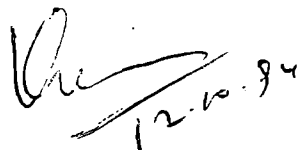
18. Accordingly, we allow this O.A. in part with the following orders/directions:-

- (i) The penalty imposed upon the applicant is quashed and he shall be reinstated in service within one month from the date of receipt of this order.
- (ii) Appellate Authority(i.e. respondent No.2) is directed to reconsider what penalty other than dismissal, removal or compulsory retirement should be imposed on the applicant and pass such order within two months from the date of receipt of a copy of this order.
- (iii) The third respondent shall, thereafter, pass appropriate orders, in accordance with law, as to how the period of absence of the applicant from the date of dismissal till his reinstatement should be regularised.

19. No costs.



(Lakshmi Swaminathan)
Member(J)


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(N.V. Krishnan)
Vice Chairman (A)

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