IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

(10)

O.A. No. 2619/1990 199
T.A. No.

DATE OF DECISION 13th ~~February~~ March, 1997.

Shri S.C. Debnath — Petitioner

Shri B.S. Mainee — Advocate for the Petitioner(s)

Versus

UOI & Ors. — Respondent

Shri O.P. Kshatriya — Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Dr. Jose P. Verghese, VC(J)

The Hon'ble Mr. S.P. Biswas, 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 ?

JUDGEMENT

(S.P. Biswas)
Member(A)

CASES REFERRED:

1. Narayan Misra Vs. State of Orissa
   1969 SLR (Vol.3) SC 657
2. UOI Vs. Md. Ramzan Khan
   AIR 1991 SC 471
3. Managing Director, ECIL Vs. B. Karunakar
   (1994) SCC 727
4. State of Orissa Vs. Dr.(Miss) Binapani Dei
   AIR 1967 (SC) 1269
5. Cooper Vs. Wandsworth Board of Works
   1863 (14) ER 414

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

(41)

OA 2619/1990

New Delhi, this 13th day of March,.. 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri S.P. Biswas, Member(A)

Shri S.C. Debnath
Head Booking Clerk
Railway Station, Shahjahanpur .. Applicant

(By Advocate Shri B.S. Mainee)

versus

Union of India.

1. General Manager
Northern Railway
Baroda House, New Delhi

2. Chief Commercial Superintendent
Northern Railway
Baroda House, New Delhi

3. Divisional Railway Manager
Northern Railway
Moradabad .. Respondents

(By Advocate Shri O.P. Kshatriya)

ORDER

Hon'ble Shri S.P. Biswas

The applicant, a Head Booking Clerk of Shahjahanpur station in Northern Railway, is aggrieved by Annexure A-1 order dated 25.7.89 by which he has been punished with withholding of increment from Rs.1350/- to Rs.1380/- due on 1.9.89 for a period of two years without any cumulative effect. Consequently, the applicant has sought for quashing the impugned order with all consequential benefits.

2. The main plank of applicant's attack is that the EO did not examine the vigilance inspector who was instrumental in framing the case against him. The Enquiry Officer(EO in short) also did not examine the statement of main prosecution witness who had submitted an affidavit for substantiating the charges. Since the disciplinary authority did not agree with the findings of the EO, it was

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a fit case for the respondents to remit the matter for further examination. It is also the case of the applicant that as per rules, a copy of the enquiry report should have been given to him keeping in mind the peculiar circumstances of the present case. The applicant would further argue that the imposed penalty of withholding the increment, in the background of the findings of the EO exonnerating the applicant from the charges, should have been at least preceded by supply of EO's report and also an opportunity to defend his case.

3. In the counter, the respondents have submitted that the applicant had shown a fictitious ticket number 00361 issued from Shahjahanpur booking office which was not in the serial number order of the original book, whereas the passenger had reserved his berth against ticket number 13220 which was available in the appropriate series. As such, the applicant has been rightly punished by the disciplinary authority. Respondents have further submitted that as per D&AR procedure and practice followed in 1989 the copy of the enquiry report was supplied to the charged officer alongwith the notice of punishment and not before taking final decision in the case.

4. Heard counsel for both parties.

The question for determination is whether the disciplinary authority, while disagreeing with the findings of the EO can impose punishment without recording reasons and whether promotions, falling due on a date prior to the date the punishment has to take effect, can be withheld. It is particularly significant in the instant case since the

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order of punishment, as aforesaid, has been issued by the respondents while the enquiry officer has exonnerated the applicant of all the charges levelled against him.

5. We find that since the order of punishment was made earlier to the date of decision in Ramzan Khan's case (UOI Vs. Md. Ramzan Khan AIR 1991 SC 471 decided on 20.10.90), non-supply of enquiry report would not vitiate the enquiry. This view has been confirmed by a decision of th constitution bench of the Hon'ble Supreme Court in Managing Director, ECIL Vs. B. Karunakar (1994) 4 SCC 727. It was, thus, not incumbent on the part of respondents to suply a copy of EO's report before imposing the said punishment. This does not, hnowever, absolve the respondents of the responsibility to adhere to the procedure of "Audi Alteram Partem". In the instant case, the disciplinary authority disagreed with the findings of the EO and yet did not offer the applicant any opportunity of defending his case before communicating the order of penalty. In support of his contention, the learned counsel for the applicant has cited the decision of the Apex Court in the case of Narayan Misra Vs. State of Orissa 1969 SLR (Vo.3) SC 657, wherein their Lordships of the Hon'ble Supreme Court held that if the punishing authority deferred from the findings of the EO and held the official guilty of charge from which he was acquitted by the EO and no notice or opportunity given to delinquent official about the attitude of punishing authority, the order could be against all the principles of fairplay,, natural justice and liable to be set aside. The same situation prevails here.

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6. Sir Edward Coke described requirements of natural justice as the duty "to vocate, interrogate and adjudicate". It has been said that:

> "Even God did not pass a sentence upon Adam, before he was called upon to make his defence". (Cooper Vs. Wandsworth Board of Works) 1863(14) ER 414.

The Hon'ble Supreme Court of India has highlighted this requirement in a long line of decisions e.g. of State of Orissa Vs. Dr. (Miss) A.Bina Pani Dei, AIR 1967 (SC) 1269.

7. Administrative and quasi-judicial authorities will do well to remember that a decision made in contravention of principles of natural justice cannot stand in the eye of law.

8. Relying on the ratio of the judgement of the Hon'ble Apex Court aforequoted, we are of the view that the disciplinary authority should have recorded reasons for taking a different view from that of the enquiry officer's findings and given an opportunity of representation to the applicant. The impugned punishment order is, therefore, against the principles of natural justice and liable to be set aside. We also find that the applicant had sent appeals against the order of punishment but the same have not been decided by the appellate authority in terms of Rule 22 of Disciplinary & Appeal Rules (Railways) 1968. The applicant thereafter submitted his review petition to Respondent No.2 in February, 1990, which was also followed by a reminder in September, 1990 but all these representations did not evoke any reply from the respondents.

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9. There are even contradictions in the submissions of respondents. It has been submitted that copy of the enquiry report was supplied to the delinquent officer alongwith the notice of punishment. At the some time, it has been averred in the reply statement that the copy of the enquiry report was given to the applicant on 2.8.89 as it could not inadvertently be attached with the notice of punishment dated 25.7.89 posted to the applicant.

10. We also find that the applicant was selected for the post of Guard and sent for appropriate training in the zonal training school. He also successfully completed the training that took place from 21.4.86 to 3.6.86. The results declared by the respondents, as at Annexure A-7, show that the applicant had passed the training course (T-3 Probationary Guard). He, however, was not promoted as Guard although he made a series of representations between 2.1.89 and 17.6.89. Those juniors to the applicant selected as Guards were, however, offered promotion in this category. The contention of the responsents that since the applicant was already working in the higher grade(Rs.1200-2040) and should have sought reversion for working in lower grade (Rs.975-1540) as Guard cannot be accepted because Commercial Clerks of even higher grade were eligible to work as Guards provided they were prepared to forgo the said grades of Rs.1200-2040 and Rs.1400-2300. It is not in dispute that the punishment was made effective only from 1.9.89 and the applicant was selected and trained successfully as a Guard in 1986 and did not receive the official communication to work as Guard, though purported to have been issued in time.

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11. The impugned order at Annexure A-1 mentions that the penalty of withholding increment for two years was to commence from 1.9.89. The order of punishment was however issued on 25.7.89. It is also not in dispute that the applicant was recommended for promotion to the grade of Guard by order dated 11.8.86 (A-7). There are no explanations as to how juniors were promoted between 1986 and 1.9.89 ignoring superior claim of the applicant. Necessary declaration could have been obtained from the applicant (as he was working in the higher grade) before promoting juniors. This was not done. Since the penalty imposed was intended to operate from a future date, the employee concerned should have been promoted if the same fell due to him before the order of penalty could start operating. Respondents appear to have ignored this rule. The learned counsel for the respondents did not controvert this rule position.

11. We also find that the disciplinary authority did not accept the findings of the EO for the following reasons: "(1) The EO did not examine the Vigilence Inspector (2) the EO also failed to examine the statement of Shri S.P. Tyagi who had submitted an affidavit dated 1.2.86." In view of the above position, the respondents should have referred the case back to EO to continue with the proceedings from the stage of examining the vigilance inspector and main prosecution witness. The proceedings, therefore, got vitiated because of the aforementioned infirmity.

12. In the circumstances, we are of the view that after the disciplinary authority intended to take up the applicant on the basis of charges of which he was acquitted, it was necessary that the order pertaining to imposition of penalty

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should have been backed by recorded reasons and that attention of the applicant ought to have been drawn to this fact and his explanation, if any, called for. Thus priniplers of fairplay and natural justice appear to have been ignored altogether.

13. In the result, the application is allowed with the following orders:

(i) Annexure A-1 and Annexure A-8 (so far as the applicant is concerned) orders dated 25./.89 and 28.7.89, respectively, are set aside.

(ii) Subject to applicant's fresh willigness, he shall be considered for promotion as Guard for the category as in A-7 from the date he had given the declaration i.e. 29.3.90 when the applicant accepted the conditions as laid down in DRM's letter dated 18.8.89 (A-10) with all consequential benefits like fixation of pay and seniority.

(iii) The respondents will also have the liberty to go ahead with the proceedings from the stage of consideration of EO's report as per rules laid down on the subject.

(iv) Necessary actions shall be taken and the entire exercise completed within six months from the date of receipt of a copy of this order. The applicant shall also be informed accordingly within the time limit provided.

(v) There shall be no order as to costs.

(S.P. Biswas)
Member(A)

(Dr. Jose P.Verghese)
Vice-Chairman(J)

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