

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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(6)

O.A. NO. 2496/1991

DATE OF DECISION : 21.2.92

SHRIS. BHAGWAN RASTOGI

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

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SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SHRI R.K. KAMAL

FOR THE RESPONDENTS

...SHRI ROMESH GAUTAM

1. Whether Reporters of local papers may be allowed to see the Judgement? *Ys*
2. To be referred to the Reporter or not? *Ys*

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant, Assistant Superintendent (Commercial) in the office of D.R.M., Northern Railway, Moradabad filed this application assailing the order of penalty imposed upon him on 5.9.1989 (Annexure A3) passed by Sr.DCS, order dt.21.5.1990 (Annexure A2) passed by ADRM on his appeal and finally the order dt. 26.4.1991 (Annexure A1) passed on revision under Rule 25 of Disciplinary and Appeal Rules, 1968.

2. The applicant in this OA claimed the relief for quashing the aforesaid orders with all consequential reliefs of promotion as well as monetary benefits.

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3. The applicant was served with a memo of charge dt. 8.8.1989 for imposing minor penalties (Rule-11 of RS(D&A) Rules, 1968). The statement of imputation against the applicant was of misconduct while working as Assistant Supdt.(Commercial) dealing with complaints upto 24.7.1989 that he failed to maintain devotion to duty as much as in a number of cases he failed to carry out the written orders of the disciplinary authority as indicated in the charge. The above act of omissions and commissions by the applicant is said to have contravened the provisions of Rule 3(i)(ii) of the Railway Service Conduct Rules, 1966. The applicant made his defence reply dt. 28.8.1989, but it appears to have been submitted by the applicant on 5.9.1989 (Annexure R1) wherein it is indicated 'Received on 05.9.89 at 18 hrs.' In the bottom of this document also, firstly the typing is 9.89, but it is made to read 28.8.89. The case of the applicant is that the disciplinary authority took no notice of the defence reply and passed the impugned order of penalty on 5.9.1989, stated to be ex-parte order. His increment was withheld from 1.8.1990 for a period of three years. The applicant appealed and in that event, the appellate authority did not pass a speaking order as is evident by the order dt. 21.5.1990 (Annexure A2). The appellate order is reproduced below :-

"Have read the case in detail, have also heard the appellant and inspected the desk.

There is to be no change in punishment."

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4. The revisional order dt 26.4.1991 also according to the applicant does not meet the requirement of law in dealing with the representation of the applicant dt.28.8.1989 to the SF-11 as no reasons are given in this order.

5. It is stated by the applicant that the impugned order deserves to be quashed also in view of the judgement of the Principal Bench of the Tribunal dt.16.4.1991 (Annexure A6).

6. The respondents contested the application and stated that the jurisdiction of the Principal Bench is barred as the applicant is posted in Moradabad and the jurisdiction lies with the Allahabad Bench of the Central Administrative Tribunal. There is no permission of the Hon'ble Chairman under the Act to retain this case on the file of the Principal Bench. It is further stated that the applicant was found responsible for the misconduct as he failed to carry out the orders of the disciplinary authority in the cases mentioned in the chargesheet dt. 3.8.1989. The applicant was asked to submit the defence reply within ten days of the receipt of the chargesheet as per para'h) of Rule 11 of the Railway Servant (Discipline and Appeal) Rules, 1968. Since the applicant did not submit his reply in time, so the exparte order of punishment was passed withholding of

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increment temporarily for three years. The applicant did not submit the defence reply on 23.8.1989, but he submitted the same on 5.9.1989 when the applicant came to know about the notice of imposition of penalty. Regarding the application of the judgement of the Principal Bench (Annexure A6), it is stated that the punishment in the case of the applicant is to be complied by 31.7.1993, while his date of retirement is 31.7.1995 and as such, he will be on original position on 1.8.1993 much before the retirement. Thus he will not be looser in any retirement benefits including pension. Regarding the non speaking orders of appeal and revisional authorities as alleged by the applicant, it is stated that the applicant was heard in person and his desk was checked before passing of the order of rejection of appeal filed by the applicant. The applicant was given personal hearing. The applicant was also given personal hearing at the stage of revision and only after that the revision petition was decided. Since the applicant did not submit any defence reply within time, so no enquiry was required to be done. The orders have been passed by the appellate and revisional authority after the application of mind. It is, therefore, prayed that the application is devoid of merit and be dismissed.

7. I have heard the learned counsel for the parties at length and have gone through the record of the case. The

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first point raised by the learned counsel for the applicant is that the defence statement dt. 28.8.1989 filed in reply to the chargesheet issued by the order in August, 1989 has not at all been considered by the disciplinary authority. In this context, the applicant has received the charge memo on the same date, i.e., 8.8.1989 and as per Rule 11(h) of AS(D&A) Rules, 1963, the applicant should have filed his reply within ten days. Though the reply is dt. 28.8.1989, but there is a material difference regarding the date of receipt in the reply by the applicant (Annexure A5) and by the respondents as Annexure B1 to the counter. Annexure A5 does not bear any date of receipt by the respondents and also there is some over writing on the date at the bottom of this reply at p-2 of the said reply wherein it appears that 9 was typed, which was made to read 8 as August, 1989. In the case of reply filed by the respondents (Annexure B1), there is clear endorsement on the top, 'Received on 05.9.89 at 18 hrs.' In the rejoinder, the applicant has asserted that the endorsement has been added as an after thought. However, there is no endorsement of submitting the reply before the disciplinary authority on the Annexure A5 filed by the applicant. The order passed by the disciplinary authority dt. 5.9.1989 is on a printed form and is clearly written, "You have failed to submit your explanation in reply to the memo of charge sheet number even dt. 8.8.1989. I,

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therefore, take ex parte decision and hold you guilty of the charge for failing to carry out written orders in finalising complaint cases." This order has been received by the applicant on 6.9.1989. In the appeal preferred by the applicant in October, 1989, the applicant has only referred to the fact that the punishment notice was served on 6.9.1989 as an ex parte decision without considering explanation dt. 23.3.1989 submitted through Superintendent (Commercial). The applicant has not at all referred to the fact that he has filed this reply on 23.3.1989 before the proper person nor has referred to any fact that he should be given another opportunity by the disciplinary authority so that his reply dt. 23.3.1989 be considered. There is another factor in this case that the punishment order also bears date 23.3.89, but it appears that the date has been changed to 5.9.89 to wait for the defence statement of the applicant and since that was not furnished in time, so the impugned order dt. 5.9.1989 has been passed on that date. Thus it is evident from the record that the applicant did not submit his explanation to the memo of chargesheet dt. 3.3.1989 within the stipulated time under Rule 11(h) of RS (D&A) Rules, 1968 and the disciplinary authority had no option, but to pass ex parte order.

8. Regarding point that the appellate authority did not pass the speaking order, it goes to show that it was an

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appeal against minor punishment. But the appellate authority as is evident from the order, heard the applicant in person 'and inspected the desk'. This clearly goes to show that the only charge against the applicant was that he was having a number of disciplinary cases on which the punishment orders had been passed, but he failed to carry out the written orders of the disciplinary authority as is indicated in each of the cases. There is a list of about 8 such cases. This is a material question of inspection on record than to any further evidence. After inspection of record and hearing the applicant, it is evident that the Supreme Court judgement of Ramjan Vs. UOI, 1986 (3) SCC 103 has been fully complied with. A speaking order does not mean that it should be a lengthy order, but the order must be such which should show that the appellate authority has applied its mind. In this case, the applicant has been heard as well as the relevant records have been inspected by the appellate authority. In view of the above facts, it cannot be said that the appellate authority has not applied its mind properly. However, the revisional authority has also given an opportunity to the applicant and passed well worded order as is evident from Annexure B3 to the counter and is quoted below :-

"I have carefully considered the revision petition filed by Shri Bh gwan Rastogi Asstt. Supdt. and entire records pertaining to this case. On the fact of clear admission made by the employee in his defence reply

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dated 23.8.89 to the SF-11 that he dealt with all the complaint cases for which he was charge-sheeted, plea now taken by the employee in his revision petition as well as during the course of personal hearing on 17.12.90 are untenable and after-thought. I am, therefore, unable to find any infirmity in the orders passed by the Disciplinary Authority and appellate authority and do not find any good ground to accept this revision petition and the same is hereby rejected."

9. The revisional authority has also given a personal hearing to the applicant. In these circumstances, the contention of the learned counsel for the applicant that there was no application of mind by the appellate or revisional authority does not stand judicial. The third point raised by the learned counsel is that the pension of the applicant was likely to be effected and no enquiry was proceeded against him as in the case of chargesheet for major penalty. This is not the case here. According to the own contention of the applicant, his date of retirement is 31.7.1995 and the increments are to be withheld w.e.f. 1.8.1990 for a period of three years. The facts of the case relied by the applicant of CA 1937/88 decided by the Principal Bench on 16.4.1991 are totally different. In that case, though punishment of withholding of three increments w.e.f. 1.1.1985 was imposed, but the date of retirement of the applicant of that case was 31.1.1987 and actually he retired before the judgement was delivered. So it was held that a regular enquiry as is required to be held for imposing a major penalty, should have been held in this case also. The basic

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question that remains in the two cases before us, one of the reported cases and the other case in hand is that in the present case, ex parte decision has been taken in default of the applicant filing in time the defence statement. Thus the applicant cannot have any effect on his retirement benefits as the punishment period will expire much earlier.

10. The learned counsel has also urged that it is a case of double jeopardy because besides holding the increments, the promotion of the applicant has also been withheld as the applicant was seniormost in the pay scale of Rs.1600-2600 and was due for promotion on 10.3.1990 in the pay scale of Rs.2000-3200 and by the punishment imposed, the applicant shall not be considered fit for promotion w.e.f. 1.8.1990 for three years and that will result in loss of three increments in higher scales. According to the learned counsel for the applicant, the retirement benefits of the applicant will also be effected. Here the question of double jeopardy does not arise because the punishment imposed on the applicant is to be carried out, if it is legal and valid on the basis of available records with the disciplinary and appellate authority. The revisional authority has also considered even the defence statement alleged to have been filed by the applicant on 28.3.1989, though denied by the respondents, having received after the

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order dt.5.9.1989. In fact the applicant in his defence statement also admitted that there has been delay, but the said delay has been due to certain reasons, which the concerned authorities did not consider plausible and acceptable. When the punishment is maintained, then it cannot be said that the applicant is being punished twice for the same acts. The subsequent non promotion, if not given to the applicant, shall be only because of the punishment imposed upon him in view of the Memo of charges dt. 8.8.1989.

11. In view of the above facts, I find that there is no merit in the application and is dismissed leaving the parties to bear their own costs.

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21.2.92
(J.P. SHARMA)
MEMBER (J)

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