

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 331/91

DECIDED ON : 20.4.1993

L. R. Sharma

... Applicant

Vs.

Union of India & Ors.

... Respondents

GRAM :

THE HON'BLE MR. I. K. RASGOTRA, MEMBER (A)
THE HON'BLE MR. J. P. SHARMA, MEMBER (J)

Shri B. S. Mainee, Counsel for Applicant
Shri O. P. Kshatriya, Counsel for Respondents

J U D G M E N T (ORAL)

Hon'ble Shri I. K. Rasgotra, Member (A) —

The applicant in this case was appointed as Assistant Station Master (for short ASM) on 27.9.1958. While working at Milak Station, he was served a chargesheet for major penalty on 13.2.1986. Broadly, the charges against him could be summarised as under :-

- (1) He failed to record the supply of wagons received by him.
- (2) He did not register the wagons loaded by him nor did he collect the registration fee.
- (3) He did not deposit the cash bags with CR notes daily during November, 1985.

Certain other procedural irregularities in maintenance of records at the Station have also been alleged. The statement of imputation was concluded by stating that "He has thus failed to maintain absolute integrity and devotion to duty. He is responsible for temporary misappropriation of cash and for not maintaining proper records & thus violated para 3 (i, ii & iii) of Railway Service (Conduct) Rules, 1966." An inquiry was held



and the penalty of withholding of one increment from the stage of Rs.2050/- to Rs.2000/- in the grade of Rs.1600-2660 due on 1.8.1988 was imposed for three years without postponing future increments. The reasons for imposition of the said penalty are given in the remarks which were enclosed with the order of punishment. The same are reproduced below :-

"REMARKS

I agree with the findings of Enquiry Officer. He has clearly brought-out your responsibility of careless and negligent working as reported by TI & CMI/Bareilly (at that time). Thus it is proved that you did not fill-up follow-up action, un-purposeful conducting of night inspection, incomplete filling of assurance register, station mirror, safety circulars etc. You have been given adequate opportunity to defend yourself. Your malafide intention has been proved beyond doubt and as per E.O., it appears to be case of careless and negligent working rather than fraudulent working. Such negligence from a Supervisor is not permitted."

2. The petitioner filed an appeal before the competent authority on 28.3.1986. The same was disposed of vide order dated 9.7.1987. It will be expedient to reproduce the operative portion of the order of the appellate authority :-

"DRM has passed the following orders :-

- "(a) Procedure laid down in D & AR has been followed.
- (b) Findings are warranted by evidence on record.
- (c) Penalty is hereby confirmed being adequate.

You may submit Revision Petition against these orders to COPS/NDLS direct, if you so desire."

3. The applicant filed a revision petition on 2.6.1988. The same has not been disposed of despite the orders of the Tribunal dated 22.9.1989 directing the reviewing authority to dispose of the applicant's review petition within three months from the date of receipt of the order. The petitioner was given liberty to re-agitate the matter, if he was aggrieved by the disposal of the review petition.

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4. The learned counsel for the applicant, Shri B. S. Mainee, referred to the findings of the inquiry officer dated 15.1.1987. The learned counsel submitted that the applicant was held guilty of only carelessness and negligence even in regard to the non-despatch of cash bags every day. The inquiry officer's finding is that "no amount of Railway earning was detained by him for some considerable period. The delay of about four days was accounted for due to non-running of TC safe and cash bags was merely his slackness and negligence." The inquiry officer further held that these omissions on the part of the applicant constitute only gross negligence but do not carry any intention of defrauding the Railways. The other charges with regard to the careless and tardy maintenance of Railway records were proved, and it was concluded that these irregularities were due to the carelessness and negligence of the applicant. The learned counsel for the applicant submitted that despite the inquiry officer's clear findings holding the applicant guilty of only carelessness and negligence, the disciplinary authority came to the conclusion that the "malafide intention" of the applicant "has been proved beyond doubt" and in that background imposed penalty of withholding of ^{an} increment, for three years without cumulative effect. The learned counsel submitted that this is a case of non-application of mind by the disciplinary authority. On a query from the Bench whether this point was agitated by the applicant in appeal, the learned counsel submitted that this was a legal plea, although admittedly it had not been raised in the appeal filed by the applicant. Learned counsel for the applicant further attacked the order of the appellate authority as unreasoned and without any substance as it did not deal with the various issues raised by the applicant in his appeal. The learned counsel submitted

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that the appellate order is also bad in law as it does not contain the reasons for affirming the penalty imposed nor does it show any application of mind by the appellate authority. In support, the learned counsel referred us to Ram Chander vs. Union of India & Ors. : ATR 1986 (2) SC 252 wherein the order of the respondents was set aside by the Hon'ble Supreme Court as the Railways had failed to marshal evidence on record with a view to decide whether the findings arrived at by the disciplinary authority could be sustained or not. Shri O. P. Kshatriya, learned counsel for the respondents, submitted that the applicant had sent his review petition direct to the competent authority and not through proper channel and, therefore, the same is not traceable in the office of the respondents. The applicant has also not made a copy thereof available. Therefore, the review petition could not be decided. The learned counsel fairly, however, conceded that the applicant has been sending frequent reminders to the competent authority for disposal of his review petition.

5. Be that as it may, the order for disposal of the review petition was passed on 22.9.1989 when the respondents were directed to dispose of the appeal within three months. It is now too late to again direct the respondents to take action to dispose of the review petition. We have heard the learned counsel for both the parties and considered the matter carefully. We find force in the argument of the learned counsel for the applicant that there is non-application of mind by the disciplinary authority. Although the inquiry officer has not held him guilty for any malafide intention, the disciplinary authority in its remarks has recorded that the applicant's malafide intention has been proved beyond doubt. In case the disciplinary authority was ^{to} differ from the findings of the

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inquiry officer, the proper course was to issue show cause notice to the applicant before imposing on him the penalty. The disciplinary authority cannot impose a finding which is not there in the inquiry officer's report. The learned counsel for the respondents has relied on para 4.3 of the counter affidavit of the respondents to prove that there was malafide intention. Para 4.3 of the counter affidavit, however, deals with only the irregularities regarding the maintenance of records at the Station, which according to them was in deplorable condition.

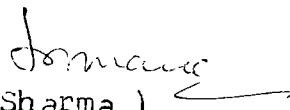
6. In the above facts and circumstances of the case, we are of the opinion that the order passed by the disciplinary authority dated 12.3.1987 and the order passed by the appellate authority dated 9.7.1987 suffer from the infirmity of non-application of mind as no sufficient reasons have been given for imposing/confirming the penalty imposed on the applicant. There is also ^{basis and} ~~no~~ justification for importing the malafide intentions in the remarks of the disciplinary authority. The applicant has ^{not} been held guilty of malafide intention by the inquiry officer. The orders referred to above are, therefore, set aside and quashed. Since, the report of the inquiry officer held the petitioner guilty of carelessness and negligent working, we leave it open to the disciplinary authority to consider the evidence on record and pass a fresh reasoned order on the basis of the findings of the inquiry officer within a period of two months from the date of receipt of a copy of this order. If no action is taken within this period, the disciplinary proceedings in this case would lapse. The applicant shall also be given an opportunity to file an

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appeal before the appellate authority, if such an occasion arises. The appellate authority shall also pass a reasoned order in case an appeal is filed before him.

7. With the above observations, the O.A. is disposed of leaving the parties to bear their own costs.


(J. P. Sharma)
Member (J)


(I. K. Rasgotra)
Member (A)

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