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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Regn. No. O.A. No. 572/91

Date of decision: 14.8.1991

Mangal Prasad

Applicant

vs.

Union of India

Respondents

PRESENT

Shri A. Siddiqui, counsel for the applicant.

Shri Romesh Gautam, counsel for the respondents.

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Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J).

Hon'ble Shri D.K. Chakravorty, Member (A).

(Judgment of the Bench delivered by Hon'ble Shri
Justice Ram Pal Singh, Vice-Chairman (J).)

JUDGMENT

By this O.A., filed under Section 19 of the Administrative Tribunals Act of 1985 (hereinafter referred as 'Act'), the applicant prays for quashing the findings of the departmental enquiry against the applicant as they are against the established law. He also prays for reinstatement with back-wages and other benefits.

2. The applicant was employed as a Parcel Porter in the Railway Department on casual appointment and was paid wages on daily basis. The applicant continued working as casual Parcel Porter upto 31st December, 1989. The applicant was screened along with the others and was declared successful. He was then empanelled at Sl. No. 132 (Annexure 'A') and thus he acquired a temporary status by order dated 13.6.88. According to the O.A., the applicant was allegedly discharged from service on 31.12.88, but he was never communicated with the discharge order. According to the applicant, no disciplinary proceedings were initiated ^{against} him. On 2nd August 1989 he was issued a charge sheet wherein it was alleged that the applicant had intentionally not filled up the relevant column of the attestation form for employment and resultedly concealed the vital fact that his services had been discharged. The charge-sheet is at Annexure 'C'. Subsequently, the discip-

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linary proceedings were initiated and the Enquiry Officer presented his report that the charges against the applicant stood proved (Annex. 'D'). The preamble of this enquiry report indicates that in terms of Rule 9(2) of the Railway Services (Discipline & Appeal) Rules, 1968, the Inquiry Officer was appointed by the disciplinary authority by order dated 29.8.89 to inquire into the charges against the applicant. This inquiry report also contains a statement that the applicant was discharged from service while working as casual Parcel Porter at New Delhi on 31.12.88 because he dishonestly concealed the fact and got the employment as Luggage Porter in a fraudulent manner. In that inquiry, three witnesses were examined against the applicant and the applicant also examined three witnesses. The Inquiry Officer, Shri D.R. Manchanda, concluded that the charge against the defendant is proved. It does not appear from Annexure 'D' that he was supplied with a copy of the inquiry report before the report was submitted to the disciplinary authority. The disciplinary authority by order dated 14.9.90 (Annex. 'E') decided to impose the penalty of removal from service. The applicant filed an appeal under Rule 18 of the Railway Servants (Discipline & Appeal) Rules, 1968 before the Divisional Traffic Superintendent, inter alia, raising several points in the memorandum of appeal and challenging the evidence which was adduced against him during the departmental inquiry. This appeal was submitted on 26.10.90 (Annex. 'F'). On 26.11.90, vide Annex. 'G', the appeal was dismissed. The order of the appellate authority is being reproduced as it is not only telegraphic but also cryptic:

"Your appeal dated 26.10.90 has been carefully considered by the appellate authority who rejected the same"

The applicant thus contends that the appellate order failed to consider the grounds raised by him in the memorandum of appeal. He further contends that the entire inquiry is illegal and unconstitutional and is also vitiated because a copy of the inquiry report was not supplied to him.

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3. The respondents, on notice, submitted their counter and raised a preliminary objection that the applicant has not availed of the departmental remedies available to him and hence this O.A. is liable to be dismissed under Section 20 of the Act. What the respondents want to say is that after the appeal being dismissed, the applicant should have filed revision under Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968. They have denied the contents of the O.A. and, inter alia, maintain that the appellate order was passed exhaustively. They have produced a photo copy at Annexure R-1 and contend that this is the speaking order though Annex. R-2 only was supplied to the applicant which contained the statement that his appeal is dismissed.

4. Before taking up the matter on merits, we propose to deal with the preliminary objection of the respondents. The provision of revision and review is given in Part VI of the Railway Servants (Discipline & Appeal) Rules, 1968. The revision is provided in Rule 25 under this part and indicates that after the dismissal of the appeal, the applicant could have filed a revision before the Government in authority for redressal before coming to this Tribunal. Undoubtedly, the applicant availed the remedy of appeal and rushed to this Tribunal for getting relief. Rule 24 deals with the special provisions for non-gazetted staff and sub-rule (3) of Rule 24 of Railway Servants (Discipline & Appeal) Rules, 1968 provides that:

"A Class IV Railway servant, who has been dismissed, removed or compulsorily retired from service **may**, after his appeal to the appropriate appellate authority, has been disposed of, and within two months thereafter, apply to the Divisional Railway Manager and where he is not under the control of the Divisional Railway Manager, to the concerned Inter Administrative Grade Officer, if there is one, failing which, to the concerned Junior Administrative Grade Officer, for a revision of the penalty imposed on him. The Divisional Railway Manager, the Inter Administrative Grade Officer or the Junior Administrative Grade Officer, as the case may be, shall thereafter review the case in accordance with the said rules and pass such orders as he may think fit;

Provided that the procedure mentioned in this sub-rule shall not apply in cases where the Divisional Railway Manager, the Inter Administrative Grade Officer or the Junior Administrative Grade Officer, as the case may be, or a higher authority, is the appellate authority."

Sub-rule (3) of Rule 24 contains the word "**may**" which indicates that instead of filing the O.A. the applicant "**may**" also avail the remedy

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of revision provided in Rule 25. It is a settled principle of law that the right to file an appeal is the right of the party while the power of revision lies in the hands of the revisional authority. That is why, the word "may" has been used in sub-rule (3) of Rule 24 instead of "shall". Thus it was not obligatory upon the applicant to file any revision after his appeal was dismissed. Two forums were available to him for challenging the order before the Tribunal under Section 19 of the Act or before that remedy was available to him, he could have, if he so desired, to avail the revision. If the applicant did not file the revision, it cannot be said that Section 20 of the Act debars him from filing this O.A. Furthermore, the word "ordinarily" in Section 20 of the Act clearly indicates that there may be extraordinary circumstances which may impel a party aggrieved to directly go for the redressal before the Tribunal under Section 19 of the Act. We are, therefore, of the view that this preliminary objection raised by the respondents must be rejected.

5. We now proceed to take up the arguments of the applicant at the Bar. The applicant who was working on 31.12.88 as casual Parcel Porter was discharged from service while working at New Delhi by orders passed by the respondents on 31.12.88. It is said that these orders were communicated to him verbally through Shri G.R. Chaudhary, Parcel Supervisor, on the same day. Normally, the applicant, who had acquired the status of a temporary employee, should have been conveyed about his discharge from service in writing. It is strange that the orders were conveyed through a third person verbally. Furthermore, before discharging the applicant from service on 31.12.88, no enquiry was held and he was offered no opportunity of being heard before his discharge from service. Hence, the orders passed with regard to the discharge from service on 31.12.88 are not only violative of the principles of natural justice but also of the Railway Servants (Discipline & Appeal) Rules, 1968. On perusal of Annex. 'C', it is evident that the inquiry was directed to be started by an order dated 18.1.89 after the applicant was discharged. This inquiry (Annex. 'C') was conducted after 18.1.89 in which the reasons for the discharge from service were considered and full inquiry was held. Such inquiry has no meaning in law and it is vitiated because the inquiry was held

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after the punishment was imposed.

6. The contention of the learned counsel for the applicant that this subsequent inquiry, on the strength of which the disciplinary authority imposed the punishment upon the applicant, no copy of the inquiry report was supplied to him, but that point was not raised in the O.A. nor before the arguments through any application for incorporating this amendment in the O.A. It is only due to this reason that the respondents could not reply this argument in their return. We shall not consider any oral statement with regard to a particular fact which is not contained in the pleadings in the O.A. Another reason for not accepting this argument is that the respondents had no opportunity of rebutting this fact in their return. Hence, we are rejecting this contention of the learned counsel for the applicant.

7. The next contention is that the appellate order (Annex.'G') which was passed by the appellate authority is not only cryptic and telegraphic but also contains no reason for rejecting the appeal and thus it is not a speaking order. We refuse to place any reliance on Annexure R-1 which has been filed by the respondents. No affidavit has been filed by any departmental representative that the order of the appellate authority which was issued contained the matter reproduced in R-1. The learned counsel for the applicant with regard to Annex. R-1 has contended that this is a forged document and has been produced to defeat his argument that the appellate order is cryptic and mechanical. Be that as it may, the appellate order communicated to the applicant does not contain any matter mentioned in Annex. R-1. That is why, we conclude that the matter mentioned in R-1 was not part of Annex.'G' which was conveyed to the applicant. Law has been settled finally in the case of **Ram Chander vs. UNION OF India and others** (A.I.R. 1986 S.C.p. 1173) in which the apex court has observed:

"Where, in appeal under R. 18(ii) against the penalty of removal under R. 6(viii) imposed by the General Manager against a railway servant, the Railway Board dismissed the appeal by an order which was just a mechanical reproduction of the phraseology of R. 22(2) without any attempt on the part of the Railway Board to marshall the evidence on record with a view to decide about the sustainability of the findings recorded by the disciplinary authority and, further, in the order itself there was no indication that the Railway Board applied its mind as to whether the act of misconduct with which the railway servant concerned (appellant) was charged together with the attendant circumstances and the past record of the appellant were such that he should have

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been removed from service for a single lapse during the period of 24 years of his service, there being non-compliance with the requirements of R. 22(2), the order passed by the Railway Board was illegal and must be set aside."

8. It is thus imperative for the appellate authority not only to examine evidence, not only to give reasons but also to consider the grounds raised in the memorandum of appeal. Thus, if the appellate authority shirks from this responsibility, then the order is not in accordance with law. We, therefore, are satisfied that the appellate authority has abdicated its powers while passing the order (Annex. 'G').

9. Another point raised at the bar is that the punishment imposed is disproportionate to the gravity of the misconduct alleged, but this Tribunal shall not consider this aspect on the face of the observations of the apex court in the case of **Union of India vs. Parma Nanda (1989 (10) A.T.C. 30).**

10. To conclude, we are satisfied that this O.A. must be allowed. Therefore, we allow and direct

- (i) that the departmental enquiry held against the applicant was vitiated and hence quashed; and
- (ii) the appellate order passed by the appellate authority is also quashed.

The parties shall bear their own costs.

D.K.Chakravorty
(D.K. Chakravorty) 14/8/1991

Member (A)

Ram Pal Singh
(Ram Pal Singh)

Vice-Chairman (J)