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Central Administrative Tribunal, Principal Bench, New Delhi

O.A.No.2470/2004

Hon'ble Mr. Justice M.A. Khan, Vice Chairman(J)
Hon'ble Mr.D.R. Tiwari, Member(A)

New Delhi, this the 7th day of October, 2005

Pradeep Kumar Sharma,
Working as Section Engineer (W),
At Northern Railway Station,
Pathankot

....Applicant

(By Advocate: Shri Yogesh Sharma)

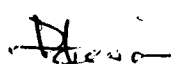
Versus

Union of India through:

1. The General Manager,
Northern Railway, Baroda House,
New Delhi
2. The Chief Engineer (General),
Northern Railway Headquarters,
Baroda House, New Delhi
3. Divisional Railway Manager,
Northern Railway, Firozpur Division,
Firozpur (Punjab)
4. The Divisional Superintending Engineer ©,
Northern Railway,
Firozpur (Punjab)

....Respondents

(By Advocate: Shri R.L. Dhawan)



Order

By Mr. D.R. Tiwari, Member (A)

By this O.A. filed under Section 19 of the A.T. Act, the applicant has prayed for quashing the impugned order dated 24.2.2003, appellate order dated 10.7.2003, revisional order dated 21.6.2004 and the charge-sheet dated 16.4.1993. He has further prayed for all the consequential benefits including the arrears of pay and allowances.

2. Shorn of details, the necessary factual matrix to decide the controversy is that the applicant while working as I.O.W.(W) at Northern Railway Station, Pathankot, was served with a major penalty charge-sheet vide memo dated 16.4.1993 under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 (Annexure A-9). The charges vide Annexure-1 of the charge memo are as under:

"Statement of articles of charges framed against Sh. Pardeep Kumar Sharma, IOW/Kathua now IOW/PTK.

Shri Pradeep Kumar Sharma, IOW/Kathua while functioning as such and recasting the final bill for the work of "Repair by M/S Satish Khosla Contractor under agreement No.72-DEN/JAT dated 8.6.89, during the year 1990 failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway Servant in as much as:-

- 1.) He connived with the contractor, M/S Satish Khosla and Shri G.K. Kalsi, AEN/B/PTK in order to render undue benefit of over Rs.Two lacs to the contractor.

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For the purpose, he recasted the final bill for the work of "Repair to Right Guide Bund of Bridge No.81, Ujh River" and recorded certificates in the MB without any Base and Authenticity.

- 2) He allowed payments for Earth work in excavations for 'preparation of Bed for receiving Pitching stone encased in wire Net Trungers,' in the recasted final bill which were otherwise not admissible under the contract Agreement.
- 3) He allowed payments for the costly item of wire net trungers in a wrong manner and without taking and recording its measurements in the MB resulting in over payments to the contractor.
- 4) He affected recovery for rusty wire net trunger without taking and recording any measurements in the MB and made recovery for less quantity than actually existed at site.
- 5) He allowed payments for Boulders encased in wire net trunger, which did not form part of the work and were not of any purposeful use to the Railway.

Shri P.K. Sharma, IOW/Kathua now IOW/PTK has thus contravened rule 3.1(i), (ii) and (iii) of the Railway Service Conduct Rules, 1966.

Sd/-
(PIYUSH AGARWAL)
SR. DIVISIONAL ENGINEER"

Annexure-2 contains the statement of imputation and misconduct in support of each charge mentioned in the Articles of Charges framed against the applicant while Annexure-3 gives the list of relied upon documents and Annexure-4 thereto contains the list of witnesses.

3. The enquiry was conducted and charges were not proved. The disciplinary authority furnished the report of the enquiry giving applicant 15 days' time to make any representation or submission on the enquiry report. The disciplinary authority also stated that he

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does not agree with the enquiry officer's report and observation of disagreement was also enclosed along with the enquiry report. On receipt of the representation from the applicant, the disciplinary authority after going through the charges against the applicant and taking into account the enquiry report and the representation along with other relevant papers, imposed a penalty of reduction of pay from the stage of Rs.8700/- to the stage of Rs.8100/- in the pay scale of Rs.6500-10500/- for a period of one year from the date of the order. It was also provided that his future increments will also be postponed (Annexure A-1). The applicant filed an appeal dated 2.4.2003 which was rejected by the appellate authority vide order dated 10.7.2003 (Annexure A-2). Undaunted by these orders, the applicant filed a revision petition dated 6.8.2003 which also met the same fate and was rejected by order dated 21.6.2004 (Annexure A-3).

4. Aggrieved by the above orders, the instant O.A. has been filed on various grounds mentioned in paragraph 5 of the application. The main ground of challenge, inter-alia, is that there has been unexplained delay in finalizing the disciplinary proceedings as the incident occurred in 1989-90, the charge-sheet was issued in the year 1993 and punishment order was passed in the year 2003. It has been pleaded that such an unexplained delay has prejudiced the applicant. Consequently, the whole proceeding is liable to be

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quashed in view of the law laid down by the Hon'ble Supreme Court in the case of State of Andhra Pradesh v. N. Radhakrishnan, JT 1998 (3) SC 123. It has been further argued that the charge-sheet is vague, uncertain and does not specify the impugned misconduct. Non-supply of copies of the statement of listed witnesses has caused great prejudice to the applicant. In addition to this, it has also been pleaded that the impugned orders are illegal, arbitrary and without application of mind and the disciplinary authority, appellate authority as well as the revisional authority have not adverted to the points raised in the representation, the appeal memo and the revision petition. As such, it has been argued that the O.A. deserves to be allowed on merit.

5. The respondents on the other hand resisted the O.A. and have filed a detailed counter affidavit wherein they have hotly contested the contentions of the applicant. They have submitted that the applicant has been punished in accordance with the procedure prescribed. A charge-sheet was issued to him, enquiry was held, he participated in that enquiry, he was given all possible reasonable opportunity to defend himself and to prove his innocence. On the question of unexplained delay, it has been submitted that to complete various procedures and instructions, normally time is taken so that principles of natural justice are not violated. The case of N. Radhakrishnan (supra) cited by the

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applicant is not applicable in the instant case. They have cited the case of Deputy Registrar, Co-operative Societies, Faizabad vs. Sachindra Nath Pandey & ors., JT 1995 (2) SC 407 wherein it was held that even 16 years of delay does not prejudice the case of the applicant in disciplinary proceeding. Disciplinary authority was within his rights to agree or disagree with the enquiry report under rule 10 sub-rule 3 of the Railway Servants (Discipline and Appeal) Rules, 1968. The orders of the disciplinary authority as well as that of the appellate authority and revisional authority cannot be faulted on the ground that they have not adverted to the points raised by the applicant. Hence they have pleaded that the O.A. is devoid of merit and be dismissed.

6. During the course of the arguments, counsel for the applicant as well as the counsel for the respondents reiterated the facts and the legal pleas from the O.A. and the counter affidavit, respectively. The counsel for the applicant placed heavy reliance on rule 10 (3) of the Rules ibid in order to show that the disciplinary authority has not given any reasons while disagreeing with the report of the enquiry officer. He also argued vehemently that the disciplinary authority while passing the punishment order did not at all consider the points raised in the representation. He further reiterated the point that appellate order is a non-speaking order and has been passed without application of mind. Respondents, on the

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other hand, have refuted the contentions of the counsel for the applicant and have drawn our attention to page 20 of the counter affidavit and have submitted that disagreement note of the disciplinary authority contains the reasons for disagreement with the findings of the enquiry officer. He has also emphatically denied the charge of the appellate order as well as revision order of being an order of non-speaking nature. He strongly relied on the decision in the case of State Bank of Patiala vs. S.K. Sharma, JT 1996 (3) SC 722. He has submitted that no procedural lacuna, which is of mandatory character, has been pointed out. Relying on the above judgment, he has submitted that this is not a case falling under 'no notice', 'no opportunity' and 'no hearing'. The complaint of violation of the procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. On this ground, the learned counsel for the respondents contends that no such prejudice has been caused to the applicant in view of the fact that he was afforded all reasonable opportunities to defend himself at every stage of the disciplinary proceeding. As such, the O.A. be dismissed.

7. We have heard very carefully and considered the rival submissions made by the counsel for the parties. We have perused the pleadings on record.

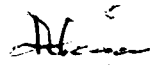
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8. The only question which falls for consideration is whether the action of the respondents is justified by which they have passed the impugned orders reducing the pay of the applicant for one year and future increments have been postponed. The settled legal position in the case of disciplinary proceeding is that the scope of judicial review is very limited. After having gone through the order passed by the disciplinary authority which has been affirmed by the appellate authority as well as the revisional authority, we find that there has been application of mind by the authorities and decision to punish the applicant with due regard to the established misconduct on his part has been taken into account. It is settled principle of law that Courts and Tribunals are not to act as an appellate authority to re-appreciate and re-appraise the evidence and substitute its findings to arrive at its own conclusion. This firm legal position flows from various decisions of the apex court, namely, B.C. Chaturvedi vs. Union of India, JT 1995 (8) SC 65, State of Tamil Nadu vs. T.V. Venugopal, 1994 (6) SCC 302, State of Tamil Nadu vs. S. Subramanian, AIR 1996 S.C. 1232 and Syed Rahimuddin vs. Director General, CSIR, 2001 (2) SCSLJ 132. In the backdrop of the law laid down in the aforesaid decisions, we find that the charges were proved in an enquiry held in accordance with the rules prescribed. We are not inclined to interfere with the order of punishment.

[Signature]

9. In view of the facts and circumstances and the discussion made above, the O.A. fails on merit and is accordingly dismissed. There is no justification to interfere with the impugned orders. No order as to costs.


(D.R. Tiwari)
Member(A)


(M.A. Khan)
Vice Chairman(J)

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