

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 183 of 1992

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New Delhi this the 8th day of July, 1996

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri A.K. Srivastava
S/o Shri Lalit Mohan Srivastava,
R/o 1/2981, Ram Nagar Extension,
Loni Road,
Shahdara,
Delhi-110 032.

..Applicant

By Advocate Shri S.K. Sawhney

Versus

Union of India through

1. General Manager,
Northern Railway,
New Delhi.
2. Assistant Commercial Supdt. (Coaching),
Northern Railway,
New Delhi.

..Respondents

By Shri Rajeev Bansal, proxy counsel for
Shri B.K. Aggarwal, Counsel

ORDER (ORAL)

Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

Both counsel have been heard.

2. Shri S.K. Sawhney, the learned counsel for the applicant has assailed the punishment order dated 17.5.1991 (Annexure A-1) on the following grounds, namely:-

(i) That the disciplinary authority has referred to certain extraneous documents which have not been included in the charge-sheet

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to which, therefore, he could not file a proper reply;

(ii) That it has been passed in contravention of provisions of Rule 11 (1)(c) of the Railway Servants (Discipline and Appeal) Rules, 1968 inasmuch as, the applicant's representation submitted on 18.7.1989 (Annexure A-3) had not been taken into consideration by the disciplinary authority;

(iii) That an appeal submitted by the applicant to the DTS (Catering) dated 25.6.1991 although acknowledged by the subordinate authority, has not yet been disposed of.

3. In the circumstances, the learned counsel submits that the disciplinary authority's order dated 17.5.1991 should be quashed and set aside.

4. Shri Rajeev Bansal, proxy counsel for respondents has been heard. We have also perused the reply. Shri Bansal submits that the respondents have categorically denied that the applicant has submitted the appeal dated 25.6.1991. He further submits that as mentioned in para 2 of the impugned order dated 17.5.1991, the appeal, if any, should have been addressed to the DCS/CHG (Coaching) whereas the appeal said to have been submitted by the applicant is to DTS (Catering), DRM Office. He has also submitted that the disciplinary authority's order has been passed after consideration of the facts and representation made by the applicant

3 and is in accordance with the rules.

(12)

5. We have carefully considered the arguments of both the learned counsel for the parties and pleadings on the record.

6. The applicant has not taken the plea in his appeal dated 25.6.1991 addressed to DTS (Catering) that the impugned order passed by the disciplinary authority has taken into account any extraneous documents or matter. Further it is noticed that the appeal itself has not been made to the competent authority, i.e., the DCS (Coaching) but has been made to DTS (Catering). The learned counsel for the applicant has fairly admitted that the DTS (Catering) is not the competent appellate authority in this case. We, therefore, find that the applicant has not filed proper appeal to the competent appellate authority under the statutory rules.

7. We have also considered the order passed by the disciplinary authority. The impugned order has been passed after the competent authority has considered the applicant's defence statement. Besides, the respondents have categorically averred that no appeal has been filed by the applicant dated 25.6.1991. It is settled law that this Tribunal/Court is not to sit as a court of appeal against the orders passed by the competent disciplinary authority unless the same is shown to be totally arbitrary, perverse or otherwise against the law/rules and illegal. No such grounds have been

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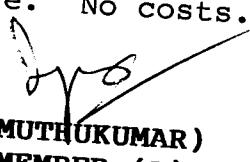
(13)

shown to our satisfaction by the applicant in this case. As mentioned above, the applicant has also failed to avail of the opportunity which was open to him to file a proper appeal under the rules and take the above grounds, which was offered to him. He cannot do so at this stage.

8. In the circumstances of the case, we do not find any ground justifying any interference in the order passed by the disciplinary authority dated 17.5.1991 and thus application is liable to be dismissed.

9. However, before parting with this case, we would only like to make an observation that the impugned order imposes the penalty of withdrawing of increment in the grade of Rs.975-1500 due on 1.10.1992 for a period of 2 years without specifying whether this is inclusive or exclusive of postponement of his future increments. In the circumstances, it is clarified that this order cannot be taken prejudicially against the applicant so as to postpone any future increment but has the effect of withholding of his increments for a period of 2 years without any cumulative effect.

10. The O.A. is dismissed subject to the above. No costs.


(K. MUTHUKUMAR)
MEMBER (A)


(LAKSHMI SWAMINATHAN)
MEMBER (J)