IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

New Delhi

(14)

O.A.No 3038 of 1992

T.A. No.

Date of Decision 22.5.95

Shri K.G. Khanna ..... Applicant

Shri B.S. Mainee ..... Advocate for the Applicant

Versus

U.O.I. & Others ..... Respondent

Shri R.L. Dhawan ..... Advocate for the Respondent(s)

1. Whether Reporters of local papers may be allowed to see the judgement? No

2. To be referred to the Reporter or not? yes

3. Whether their Lordships wish to see the fair copy of the Judgement? yes

4. Whether it needs to be circulated to other Benches of the Tribunal? No

(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 3038 of 1992

New Delhi this the 22nd day of May, 1995

Mr. J.P. Sharma, Member(J)
Mr. K. Muthukumar, Member(A)

Shri K.G. Khanna
Assistant Works Manager,
Signal Workshop,
Northern Railway,
Ghaziabad. .Applicant

By Advocate Shri B.S. Mainee

Versus

1. Union of India through the
Secretary,
Ministry of Railways,
Railway Board,
Rail Bhavan,
New Delhi.

2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

3. The Chief Signal & Telecommunication
Engineer,
Northern Railway,
Baroda House,
New Delhi. .Respondents

By Advocate Shri R.L. Dhawan

ORDER

Mr. K. Muthukumar, Member (A)

The applicant, an Assistant Signal and Telecommunication Engineer at Ludhiana Railway Station was served with a memo of charge-sheet for his alleged misconduct of misappropriation of Government money to the tune of Rs.1123/- by clandestinely and fraudulently utilising the amount of cash memo and also for misplacing the cash imprest register. An inquiry was conducted into the charges and the Enquiry Officer in his report exonerated the applicant of the charges. However, the disciplinary authority by his order dated 9.11.1992 disagreed with the findings of the enquiry officer and

for the reasons stated therein thought fit to impose a penalty of "reduction by one step in the existing scale of pay of the applicant till his date of retirement, i.e., 30.11.1992". The applicant, however, did not prefer any appeal against this order and has moved this application under Section 19 of the Administrative Tribunals Act, 1985 against the order of the disciplinary authority and has prayed that the disciplinary proceedings against the applicant be quashed and also the impugned order of punishment imposed by the disciplinary authority should also be quashed mainly on the ground that the reason for disagreement with the findings of the Enquiry Officer have not been communicated to the applicant by the disciplinary authority. The applicant has also further prayed that the Tribunal may direct the respondents to consider the applicant for promotion in the senior scale.

2. The respondents have resisted the averments made in the application and have denied the contention of the applicant that the disciplinary authority has passed the order without assigning the reasons for its disagreement with the findings of the enquiry officer. Respondents contend that the disciplinary authority has very clearly given his reasons for disagreement with the findings of the Enquiry Officer. They have also denied that the enquiry has been unduly delayed as alleged by the applicant. The respondents also further contend that the provisions of Discipline & Appeal Rules, 1968 have fully been observed after awarding the applicant all reasonable opportunity of defence. In the light of this, the respondents maintain that the applicant has no case.

3. The learned counsel for the applicant chiefly relied on the decision contained in **Narain Mishra 1969 (3) SLR page 657** and also the decision in **S.C. Mighlani Vs. Union of India, JT 1991(2) page 518** and also **A.N. Saxena Vs. Chief Commissioner, ATR 1988(Vol.1) page 326.** The main contention of the learned counsel for the applicant is that while recording the reasons for disagreement, if any, the applicant was not called upon to take notice of the reasons for disagreement and offer necessary explanation thereon. In Narain Mishra's case (Supra), the question that was considered was whether the disciplinary authority who had made use of the charges against the delinquent of which he was acquitted could impose penalty without warning him that he was going to use them and it was held that it was against the principles of natural justice as the applicant in that case should have been given an adequate opportunity. The learned counsel for the respondents raised a point about requirement of Section 20 of the Administrative Tribunals Act, 1985 under which the applicant will have to first exhaust the departmental remedies available to him. In rebutting this contention, the learned counsel for the applicant relied on the decision in **A.N. Saxena and S.C. Behl Vs. Chief Commissioner, Income-tax ATR 1988(1) CAT 326,** to buttress the point that merely because the applicant had not made an appeal and exhausted his statutory remedy available to him the application cannot be dismissed. We, however, find that the application has been admitted and, therefore, this question is not relevant at this stage.

4. We have heard the learned counsel for the parties and have perused the records. We find that the disciplinary authority

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observed as follows in respect of the charges:-

> "...As regards, allegation that you misappropriated Rs.720/- while dealing with cash memos received by you from S.Is for making payments from the cash imprest, though the Inquiry Officer has exonerated you, but the fact remains that these vouchers had alterations and that these vouchers had passed through your hands. You had not objected to the alterations. Consequently, there is a preponderance of probability that such alterations were made by you with the purpose of misappropriating the funds.
>
> For the charge No.2 also, the inquiry officer has exonerated you. I, however, observe from your statement that you had received the file, but had returned it on the same day. You being the custodian of the office, you should have taken such action to have the papers located when these were asked for".

We find that the disciplinary authority while disagreeing with the findings of the Inquiry Officer has drawn his own conclusions on the charges. It is open to the disciplinary authority to arrive at its own conclusions and the Enquiry Officer's findings are not binding on the disciplinary authority. We are fortified in our opinion in the light of the apex courts decision in **State Bank of India, Bhopal Vs. S.S. Koshal, 1995 Supp.(2) SCC 468.** Rule 11(4) and 11(5) of the Railway Servants (Discipline & Appeal) Rules, 1968 provides that the discplinary authority, having regard to its findings on all or on any article of charge is of opinion that any other penalties specified under clauses (1) to (5) of Rule 6 make an order imposing such a penalty. Clause (1) to (4) of Rule 6 deals with minor penalties which includes reduction to a lower stage in the time scale of pay for a period not exceeding 3 years without cumulative effect and not adversely affecting the pension. It is pertinent to point out here that in the case of the applicant, the discplinary authority has imposed the punishment of reduction by one step in the scale of pay till the date of retirement of applicant on 30.11.92 and the said order was passed on 09.11.1992. Rule 11(5) of the aforesaid rules provide that if the

disciplinary authority is of the opinion that any penalties specified in clauses (5) to (11) of Rule 6 which are major penalties is to be imposed, it shall make an order imposing such penalty and it shall not be necessary to give the Railway servant any opportunity of making representation on the penalty proposed to be imposed. The Lordships of the Apex Court in SBI's case (Supra) observed as follows:-

> " So fr as the second ground is concerned, we are unable to see any substance in it. No such fresh opportunity is contemplated by the regulation nor can such a requirement be deduced from the principles of natural justice. It may be remembered that the Enquiry Officer's report is not binding upon the disciplinary authority and that it is open to the disciplinary authority to come to its own conclusion on the charges. It is not in the nature of an appeal from the Enquiry Officer to the disciplinary authority. It is one and the same proceeding. It is open to a disciplinary authority to hold the inquiry himself. It is equally oepn to him to appoint an Enquiry Officer to conduct the inquiry and place the entire record before him with or without his findings. But in either case, the final decision is to be taken by him on the basis of the material adduced. This also appears to be the view taken by one of us (B.P. Jeevan Reddy, J.) as a Judge of the Andhra Pradesh High Court in Mahendra Kumar v. Union of India. The second contention accordingly stands rejected".

5. In Narain Mishra's case (Supra), the disciplinary authority differed from the findings of the Enquiry Officer and imposed the punishment of dismissal from service and on the basis of the representation made to the Government, the order of dismissal was modified into the one of discharge from service. The question that was considered was grant of adequate opportunity to the official before imposing the penalty. It was held that the disciplinary authority should have provided an opportunity to the delinquent official when he used the same charge of which he was acquitted by the Enquiry Officer and this was held to be against the principles of fair play and natural justice, under Article 311 of the Constitution as it stood then, prior to the 1976 Amendment by which the second opportunity of making

representation at the stage of imposing penalty was dispensed with and affording of such an opportunity was, therefore, not provided. The relevant rules under the Railway Servants (Discipline & Appeal) Rules, 1968 quoted above, also do not provide for such second opportunity of representation against the order of penalty proposed to be imposed. For the same reason, the learned counsel for the applicant relies on the Tribunal's judgement in **S.C. Mighlani Vs. U.O.I., ATJ 1991(2) page 518.** Narain Mishra's case is related to the imposition of penalty of discharge from service. This was prior to the 42nd Amendment of 1976, amending the provisions of Articles 311(2) dispensing with the second opportunity of representation at the stage of imposing the penalty of dismissal or removal from service/reduction in rank. It should, however, be mentioned in this context that in the case of the applicant who has been imposed a minor penalty of reduction by one stage within a period of 3 years under the Railway Servants (Discipline & Appeal) Rules, 1968, Article 311 is not attracated and, therefore, reliance on Narain Mishra's case (Supra) is not of much assistance to the applicant.

6. In regard to the departmental proceedings, there has been no allegation of any denial of opportunity or natural justice from the enquiry or there has been no allegation of bias except that the proceedings had been prolonged unjustifiably. We are conscious of the fact that in departmental proceedings, the Tribunal or the courts do not sit as a court of appeal and do not normally impose on themselves the task of reappraising the evidence. All that the Tribunal should look into is whether the disciplinary proceedings have been conducted in a fair manner and whether the decision making process has been

vitiated in any manner. We are fortified in our opinion by the Apex Court's decision in Upendra Singh Vs. Union of India, JT 1994 (7) page 658. On a perusal of the material available on record, we find that the disciplinary proceedings have not been vitiated in any manner.

7. In the conspectus of the above discussion, we find that the application is devoid of merit and is dismissed leaving the parties to bear their own costs.

(K. MUTHUKUMAR)
MEMBER(A)

(J.P. SHARMA)
MEMBER (J)

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