

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

OA No. 618 /92

Date of decision 10.2.1997

(b)

Shri Birdi Chand Petitioner

Shri K.N.R. Pillay Advocate for the
petitioner

Vs.

VOI & Ors Respondents

Sh.O.P.Kshatriya Advocate for the respondents

CORAM

Hon'ble Smt.Lakshmi Swaminathan ,Member (J)
Hon'ble Shri K.Muthukumar, Member (A)

(1) To be referred to the Reporter or not ? *Y*
(2) To be circulated to all Benches of the *X*
Tribunal.

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA.No. 618 of 1992

Dated New Delhi, this 10th day of February, 1997.

(A)

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

Birdi Chand
S/o Shri Suraj Bhan,
R/o 6618/1 Solanki Niwas
Nabi Karim
NEW DELHI 110 055. ... Applicant

By advocate: Shri K. N. R. Pillay

versus

Union of India, through
1. The General Manager
Northern Railway
NEW DELHI 110 001.

2. Addl. Divisional Railway
Manager II, DRM Office
Northern Railway
State Entry Road
NEW DELHI 110 001. ... Respondents

By Advocate: Shri O. P. Kshatriya

ORDER (ORAL)
Mrs Lakshmi Swaminathan, M(J)

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging the validity of the penalty order dated 18.11.91 passed against him by the respondents whereby his pay was reduced from Rs.1640 to Rs.1560 for a period of two years with cumulative effect.

2. We have seen the pleadings and heard the learned counsel for both parties at length.

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(2)

3. The main ground taken by the learned counsel for the applicant is that the penalty order dated 18.11.91 passed by the Senior Divisional Personnel Officer, Delhi Division, Northern Railway, is bad in law because he has not followed the provisions of Rule 10 (3) of the Railway Servants (Discipline & Appeal) Rules, 1968 which provides as follows:-

(9)

"The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any articles of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record, is sufficient for the purpose."

3. The learned counsel submits that while the Enquiry Officer in his report dated 29.10.90 had come to the conclusion that the applicant cannot be held guilty of the charges levelled against him, the disciplinary authority has disagreed with him but had not given any reasons for the same. According to him the Disciplinary authority has, in fact, come to his own conclusions not based on the evidence before the Enquiry Officer. The appeal filed by the applicant against the impugned disciplinary authority's order has also been dismissed by the appellate authority by order dated 20.1.92. Shri Pillay learned counsel, relies on a judgement of this Tribunal in Om Prakash and Anr. Vs UOI(ATR

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1997 CAT, PB P.764) and the judgement of the Supreme Court in Narayan Misra Vs State of Orissa (1969 SLR Vol.3 p.657. (9)

4. The respondents have, on the other hand, submitted that the impugned penalty order had been passed in accordance with the rules and that the disciplinary authority had not, in fact, disagreed with the findings as alleged by the applicant. The learned counsel for the respondents has also submitted that the judgement in Om Prakash's case (supra) is not applicable in the facts of this case.

5. We have carefully considered the above contentions of the learned counsel for both the parties and the cases referred to above. On a careful perusal of the order passed by the disciplinary authority dated 18.11.91 and the Enquiry Officer's report dated 29.10.90, particularly the findings and conclusions, it is evident that the disciplinary authority has, in fact, not disagreed with the Enquiry Officer's findings. In the last paragraph of the Enquiry Officer's report, he has stated as follows:-

"Thus the documentary evidences as well as circumstances itself comes to the rescue of C.O. Birdi Chand Hd. Clerk/P-2 DRM Office, New Delhi which

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have diluted the gravity of charges levelled against C.O. to the maximum.

However, responsibility for not exerting check to the column No.11(a) and (b) goes to the C.O., which could also be one of the remedial measures averting the cause of event occurred."

(10)

6. The disciplinary authority has begun his order by stating that he has carefully gone through the inquiry report and the representation made by the applicant and has come to the conclusion to impose the penalty of reducing the pay of the applicant with cumulative effect. In this order he has stated, inter alia, that the applicant should have ensured that column No.11(a) and (b) of the Attestation Form were duly filled up. In the OA, the applicant has stated that the Attestation Form was marked to him, based on a certificate of the Station Superintendent who was a Group 'A' Gazetted officer of Senior Scale and he processed the case for Mangal Prasad's appointment without conducting further enquiries from the casual labourer. In the Attestation Form itself we note that paragraphs 11(a) and (b) have not been either properly filled ^{up} or have been left blank, which ought to have been checked by the applicant. The disciplinary authority, referring to these lacunae in the Attestation Form, has come to the conclusion that the applicant should not have accepted the incomplete form as the information was not furnished properly. We are unable to agree with the submissions made by the learned counsel for the applicant that the

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disciplinary authority has, in fact, disagreed with the findings and conclusions of the Enquiry Officer, as he had also come to a similar conclusion, as seen from the portion of his report referred to above referred to above. In this view of the matter, the provisions of Rule 10 (3) of the Railway Servants (Discipline & Appeal) Rules, 1968 are not applicable, and so also the judgments in Om Prakash's case, and Narayan Misra's case (Supra). This submission of the learned counsel for the applicant is, therefore, rejected.

6. A further submission made by the learned counsel for the applicant was that in any case the conclusions of the Enquiry Officer do not support the charge. We are again unable to agree with this submission, as clearly both the Enquiry Officer and the disciplinary authority have come to the conclusion that the charged officer is guilty after careful assessment of the evidence and other materials placed before them. The disciplinary authority had, in his order, concluded that the applicant had not only acted carelessly but also helped the candidate to get regularisation despite the fact that he was discharged from service. It is not denied that this fact could have been verified by the applicant, seeing the aforesaid blank/incomplete columns 11 (a) and (b) of the attestation forms. It is settled position of law that this Tribunal cannot sit as a Court of appeal against the orders

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(6)

passed by the competent authorities so as to reassess or reappraise the evidence or to come to its own findings unless the findings are shown to be patently perverse, arbitrary or mala fide. Since none of these grounds have been argued in this case, we find no justification to interfere with the penalty order.

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8. In the circumstances of the case, the application fails and is dismissed. No order as to costs.


(K. Muthukumar)
Member(A)


(Mrs. Lakshmi Swaminathan)
Member(J)

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