

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
OA No. 905/92

(9)
New Delhi this the 8th day of April, 1997

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

Shri Girish Kumar
s/o Shri Jeeraj Singh
ex-Substitute Loco Cleaner
under Shed Man
Hardwar.
presently:
R/O Quarter No. 156
Gali No. 6, Laxmi Nagar,
Delhi.
(By Advocate Shri B.S. Mainee) ... Applicant

Vs.

Union of India : Through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager
Northern Railway,
Moradabad. ... Respondents
(By Advocate Shri O.P. Kshatriya)

ORDER (ORAL)

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

The grievance of the applicant in this case is against the penalty order dated 8.10.1991 which has been confirmed in appeal by the appellate authority's order dated 15.1.1992. It is mentioned only in the order of the appellate authority that the appeal is against the punishment of removal from service as the disciplinary authority's order dated 8.10.1991 itself does not specify the actual punishment or penalty that has been imposed on the applicant.

2. We have carefully perused the records and heard the learned counsel for both the parties.
3. One of the main grounds correctly taken by Shri Mainee, learned counsel for the applicant is that the applicant has not been given copy of the Enquiry Officer's report prior to the passing of the impugned penalty order passed by the disciplinary authority i.e. SME Moradabad.

P.B.

The respondents have filed a vague reply to this averment stating that the AME after applying his mind and accepting the findings of the Enquiry Officer in his report, passed the order of removal from service of the applicant by a speaking order. On perusal of the impugned order dated 8.10.1991, it is found that the copy of the Enquiry Officer's report was enclosed only with the punishment order. Since admittedly the impugned order was passed by the disciplinary authority after the judgement in **Union of India Vs. Mohd. Ramzan Khan**, 1991 (1) SCC 588 (See also **Managing Director ECIL Hyderabad Vs. B. Karunakar** JT 1993(6) SC 1), the Enquiry Officer's report ought to have been supplied to the applicant prior to the penalty being imposed ~~against~~^{on 18} him. We find that the appellate authority has also not considered the evidence or grounds taken by the applicant in his appeal.

4. The applicant has also taken another ground that the Enquiry Officer has relied on certain evidence and records at the back of the applicant i.e. without making these documents available to him and permitting him to cross examine the witnesses. Although these facts have been denied by the respondents in paragraphs 4.20 to 4.26 in a general way stating that the enquiry was conducted according to the statutory rules, they have not denied the specific allegations made by the applicant that the Enquiry Officer has relied upon certain letters written by the A.E. This denial, therefore, cannot be accepted on the specific points raised by the applicant.

(2)

11

5. The applicant has also alleged that the disciplinary authority and the appellate authority have passed the orders without application of mind. This allegation is also sustainable for the following reasons.

6. On perusal of the impugned disciplinary authority's order dated 8.10.1991, it is noted that that authority has not even cared to specify what is the actual penalty which was imposed on the applicant, namely, whether it is removal or dismissal from service. This has been stated only by the appellate authority in his order dated 15.1.1992 that the appeal against the punishment of removal from service has been rejected.

7. For the reasons given above, in the facts and circumstances of the case we quash and set aside the impugned disciplinary authority's order dated 8.10.1991 and the appellate authority's order dated 15.1.1992. The case is remitted to the disciplinary authority to proceed with the enquiry in accordance with the law/rules, including giving the applicant a personal hearing, if he so desires.

O.A. is disposed of as above. No order as to costs.


(K. Muthukumar)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

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