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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 15th day of July 1997.

ORIGINAL APPLICATION NO. 1010 OF 1996.

CORAM : Hon'ble Dr. R.K. Saxena, J.M.

Hon'ble Mr. D.S. Baweja, A.M.

Dinesh Kumar Srivastava, S/o Shri Maheshwar prasad Srivastava, R/o 90/57 Dhumanganj, Allahabad.

..... Applicant.

(By Advocate Shri B.N. Singh)

Versus

1. Union of India through Divisional Railway Manager, Northern Railway, Allahabad Division, Allahabad.

2. Senior Divisional Operating Manager, Northern Railway, Allahabad.

3. Divisional Operating Superintendent, Allahabad Division, Allahabad.

.... Respondents.

(By Advocate Shri P. Mathur)

ORDER

By Hon'ble Mr. D.S. Baweja, A.M.

1. The applicant has prayed for quashing the orders dated 27.9.1995, 6.12.1995 and 19.7.1996 passed by the disciplinary, appellate and revision authority respectively.

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2. The applicant while working as Assistant Station Master, Northern Railway at Panki, Allahabad Division was issued chargesheet dated 11.3.1992 for minor penalty. The applicant submitted reply to the same vide his letter dated 3.4.1992. The disciplinary authority vide order dated 27.9.1995 imposed penalty of stoppage of increment for a period of 3 years without postponing future increments and in addition recovery of 30% of embezzled coaching earnings of Rs 85431.00 which comes to Rs 25629.30. The applicant made an appeal against this order and the same was rejected vide order dated 6.12.1995. The revision application filed thereafter was disposed of as per order dated 10.7.1996 modifying the punishment to withholding of increment for a period of six months but maintaining the recovery of Rs 25629.30. Being aggrieved, the present application has been filed on 17.9.1996 praying for quashing of the impugned orders.

3. The impugned orders have been assailed on the following grounds :-

(i) The charges are vague and not sustainable in law.

(ii) The applicant was not responsible for supervising the earnings of goods and coaching and as per the laid down instructions, it was the duty of the Chief Goods Supervisor.

(iii) The copy of the alleged report of the enquiry committee not furnished.

(iv) Imposing punishment of recovery of Rs 25629.30 could not be a minor penalty.

(v) No regular inquiry was conducted affording opportunity to the applicant of being heard before imposing punishment.

(vi) The alleged incident was of 1988 for which the chargesheet was issued only on 1992 and punishment imposed in 1995 at very belated stage.

(vii) The impugned orders are misconceived and non speaking orders.

4. The respondents in the counter reply have submitted that a confronted fact finding inquiry was conducted by a Committee of three Officers and the applicant was found responsible for the embezzlement and accordingly he was issued chargesheet for minor penalty. The disciplinary authority passed the order after considering the reply of the applicant to the chargesheet. The appeal was rejected by the applicant after due application of mind. After careful consideration of the revision appeal, the concerned authority modified the punishment. It is further contended that Assistant Station Master in addition to duties for operation of the trains, is also responsible for the commercial work done at the station as per the duty list laid down (CA-1). The respondents in view of the averments made in the counter reply contend that the application is devoid of merits and it deserves to be quashed.

5. The applicant has filed rejoinder reply controverting the submissions of the respondents and reiterating the grounds taken in the original application.

6. We heard Shri Lal Mani Singh proxy to Shri B.N. Singh counsel for the applicant and Shri P. Mathur counsel for the respondents. During the hearing the learned counsel of the applicant pleaded that facts of the case are similar to that of O.A. no. 1364/95 "B.N. Tiwari Vs. U.O.I" which is decided on 5.6.1997 by the same Bench.

7. We have carefully considered the material on the record and the arguments advanced during the hearing.

8. As per order dated 17.10.1996, an interim stay was granted against recovery till the next date. The stay was extended from time to time and continued till the pronouncement of the judgement.

9. The grounds assailing the impugned orders have been detailed in para 3 above. We will consider them one by one to identify whether any of the grounds vitiate the impugned orders. The first ground is that penalty of recovery of Rs 25629.30 alleged to have been embezzled is not a minor penalty. Refering to Rule 6(iii) of Railway Servants (Disciplinary and Appeal) Rules 1968, we find that such a recovery is listed as a minor penalty and in view of the provision in the rules, this plea is not tenable. The

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second ground is that the copy of the inquiry report of the Committee of Officers has not been furnished. On perusal of the chargesheet, we note that no reference has been made to this report in framing the charges. The preliminary inquiry before framing the charges is a fact finding inquiry conducted by the department to satisfy itself that there exists a prima facie case of misconduct and negligence. Furnishing of such a report to the deliquent employee becomes imperative only if the statements recorded during this inquiry are relied upon or facts based on such a report are referred to in the chargesheet. This is not the situation in the present case and in view of this, we do not find any infirmity in non supply of the report. The third ground is that no regular inquiry was conducted before imposing punishment. The respondents have countered this asserting that the chargesheet was issued for minor penalty and as per rules conducting of the inquiry was not called for. Referring to Rule 11 of Railway Servants (Discipline and Appeal) Rules, we note that Rule 11(1)(b) lays down that in case of minor punishment, the holding of the oral inquiry is at the discretion of the disciplinary authority after considering the representation made by the deliquent employee against the chargesheet. In view of these provisions in the rules, we agree with the stand of the respondents. Further it is also noted that no such request had been made by the applicant. This ground of the applicant is, therefore, not sustainable. The fourth ground is that the chargesheet has been issued in 1992 for an incident alleged to have taken

in 1992 for an

~~xxxxx~~ place in 1988 and the punishment has been imposed only in 1995. The applicant has just made a statement about delay without elaborating as to how prejudice has been caused to him. The delay in itself cannot make the punishment order illegal until and unless a case is made out that it has caused prejudice to the applicant in defending has case. This is not the case of the applicant and we, therefore, are unable to see any merit in this contention.

10. After examining the peripheral issues above, we now come to the core grounds assailing the impugned orders. The first ground is that the charges are vague. We have carefully gone through the chargesheet. The applicant has asserted that the while working as Assistant Station Master he was not responsible for remittance of the station earnings. On the other hand the respondents have refuted this stating that in addition to the duties connected with train operation, Assistant Station Master is required to lookafter the commercial work also. To support this contention, the respondents have brought on record the duty list at CA-1. On going through the duty list at CA-1, we note that Chief Yard Master is responsible for remittance of the earnings and it is no where mentioned in the duty list of the Assistant Station Master. He is required to assist the Chief Yard Master only when required further from the statement of the charge, do not gather any reference to the applicant's responsibility for remittance of the station earnings. The charge

only indicates that the applicant failed to keep C.R. Note Book in safe custody and properly hand over the charge of the same to his reliever. In view of these observations the stand of the respondents is not tenable. The vagueness of the charges viz-a-viz the penalty imposed becomes quite obvious if we look at the order of the disciplinary authority. The order of the disciplinary authority states that in addition to penalty of withholding increment for 3 years, recovery of 30% of the total embezzlement of Rs 855431.00 which comes to Rs 25629.30 will also be made. Now referring to the charges, we find that there is no reference to the embezzlement of the cash by the applicant, the total amount involved, who are the other employees held responsible and the role played by the applicant. The charge only refers to his negligence for not keeping the C.A. Note Book in safe custody. From the order of the disciplinary authority we get the impression that there were some details with him which influenced him in passing the order without referring to the statement of charges and the defence submitted by the applicant. The respondents have averred that the matter was impugned by in Committee of three Officers and the applicant was found responsible for the embezzlement. However, no details of the enquiry report have been disclosed in the framing of the charge on listing it as one of the relied upon documents. It appears that the statement of the charge is framed based on the conclusions of the Inquiry Committee without

disclosing the details and presuming that the applicant was aware of the occurance and the findings of the Inquiry Committee. The punishment can be imposed for the specific charges and not on the basis of the implied charges which perhaps are in the mind of the disciplinary authority. In consideration of these facts, we have hesitation to hold that the charge in chargesheet in the context of the punishment imposed does not have any Co-relation and is vague and not sustainable in law.

11. Coming to the order of the disciplinary authority, we find that this is a cryptic order and does not show the application of mind. It simply says that the defence is not accepted. It does not show that issues raised in the defence were considered. The disciplinary authority is expected to record reasons for its findings as the order being appealabe must be a speaking order. It is all the more imperative in case of minor penalty where no inquiry is held and only opportunity to the deliquent employee to defend himself is through the representation against the chargesheet. As brought out earlier, the penalty of recovery of the alleged embezzlement of cash is not Co-related with the charge. This itself shows that the disciplinary authority has not applied his mind on the defence of the applicant. In the light of these observations, the order of the disciplinary authority cannot be held legally sustainable.

12. The order of the appellate authority also suffers from the same vice as brought out above in respect of the disciplinary authroirity. No doubt,

the appellate authority may not embark upon the detailed inquiry and write a judgement like decision of Court. None the less,it must appear that the contentions raised in the appeal were considered and it must explicitly record the reasons. It is one of the rules of Natural Justice. Further we find that Rule 22 (2) of the Discipline and Appeal Rules clearly lays down the manner in which the appeal is to be dealt with by the appellate authority. A mere look at the appellate order will reveal that order has been passed without considering the points laid down in Rule 22(2) and also does not show the application of mind. It is a non speaking order and does not show the reasons rejecting the points made by the applicant. In fact the order gives an impression that what weighed with the appellate authority was the available facts on record and not the points made in the appeal. Here also perhaps the contents of the inquiry report of the Committee of the Officers influenced the consideration of the appeal. The appellate order also in view of these considerations is not sustainable.

13. Lastly we look at the order of the revision authority. The revision authority has stated that no new facts have been brought on the appeal and the other points raised have been given due consideration. As we have brought out earlier, the appellate order has not considered any of the points raised in the appeal. This shows that revision authority perhaps did not see the appellate order and presumed that all the issues raised have been considered in the appeal. Merely stating that all aspects have been considered

does not make the order a speaking order without recording the reasons for not accepting the contentions of the deliquent employee. We are of the view that the revision authority has passed the order in a mechanical way. If the punishment was modified, then the considerations for the same should have been elaborated stating as to how far he holds the applicant responsible. Keeping these facts in focus, we cannot help but to hold that the order of revision authority does not show the application of mind.

14. The learned counsel of the applicant brought to our notice the judgement dated 5.6.1997 in O.A no. 1364 of 1995 in case of "Bhoosan Mohan Tiwari Vs. U.O.I" by the same Bench wherein similar facts and grounds for assailing the impugned orders have been raised. We have gone through this judgement and agree with the contention of the applicant. In the light of the deliberations above, we come to the same conclusions as in O.A. no. 1364/1995 that the charge is vague and the orders of the disciplinary, appellate and revision authority are non speaking and legally not sustainable.

15. In the light of the above, we find merit in the application and order dated 19.7.1996 of the revision authority in which the order dated 6.12.1995 of the appellate authority and order dated 27.9.1995 of the disciplinary authority merge is quashed. No order as to costs.

MEMBER (A) MEMBER (J)

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