

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 16 OF 2001(U)

ALLAHABAD, THIS THE 29th DAY OF JULY 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)
HON'BLE MR. D. R. TIWARI, MEMBER (A)

Moti Ram aged about 50 years,
son of Shri Pooran, resident of
Railway Hospital Road,
T-81-A, Laksar,
District-Hardwar.

.....Applicant

(By Advocate : Shri A.K. Srivastava)

V E R S U S

1. Union of India through General Manager,
Northern Railways, Baroda House, New Delhi .
2. Additional Divisional Manager,
Northern Railways, Moradabad Division,
Moradabad.
3. Divisional Mechanical Engineer, CNW,
Moradabad.

.....Respondents

(By Advocate : Shri A.K. Gaur)

O R D E R

By Hon'ble Mrs. Meera Chhibber, J.M.

By this O.A. applicant has challenged the order dated 29.03.1993 whereby the disciplinary authority had initially given punishment of ~~the~~ reduction ⁱⁿ the pay-scale for a period of 2 years. He has further challenged the order dated 02.03.2001 whereby the appellate authority has passed the order of compulsory retirement against the applicant.

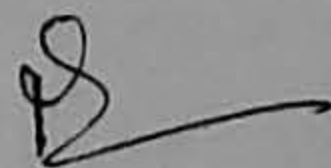
2. The brief facts as stated by the applicant are that

he was initially appointed as Khalasi on 03.01.1972 in Northern Railways. Subsequently he was promoted as semi skilled Fitter w.e.f. 22.09.1981 and Fitter Grade-III in the year 1982 and as Fitter Grade-II in the year 1989. On 10.10.1989 the employees posted at Laskar raised agitation to press their demands for bonus etc. on the festival of Dashhara and Durgapuja, which annoyed the authorities, therefore, he was given a chargesheet dated 16.10.1989 on allegation that :

“यह कि कथित श्री कोती राम के विरुद्ध दिनांक 10-10-89 को लगभग 9 बजे प्रायः से लक्कर स्टेशन प्लेटफार्म नं० 1 व 2 पर के० व वै० कोसिल का बैनर लेकर नारेजाबी करना तथा प्लेटफार्म पर गैर कानूनी सभा करना व रेलगाड़ियों को बलपूर्वक रोकना, छतिग्रस्त करना आदि आरोप आरोपित किये जाते हैं। ऐसा करके इन्होंने रेलवे सेवा आचार संहिता 1966 के नियम 3.1 के उप धारा [1A] [1AA] के प्रावधानों का स्पष्ट उल्लंघन किया है।”

He denied the charges, therefore, an inquiry was held against him.

3. It is submitted by the applicant that in the inquiry he was not given defence helper nor he was allowed to produce his defence witness, inspite of that the inquiry officer gave his report holding the applicant to be guilty of the charges (Pg.16). The disciplinary authority gave him punishment vide order dated 29.03.1993 by reducing him in the pay-scale of Rs.1200-950/- for a period of 2 years (Pg.17). Being aggrieved he filed appeal to the next authorities, who passed on 05.10.93 the order and gave him punishment of compulsory retirement after giving show cause notice to the applicant vide letter dt. 12.08.1993 (Pg.83). Applicant had challenged these orders by filing O.A. No. 1648/93 which was decided on 07.11.2000 (Pg.91) whereby the order dated 05.10.1993 was quashed on the ground that it was cryptic and appellate authority had not dealt with the points raised by the applicant. Accordingly, the matter was sent back to the appellate authority by observing that the appeal



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of the applicant shall become alive to its original number and shall be considered and decided by a reasoned order within 3 months after hearing the applicant and in the light of the observations made above. Thereafter, appellate authority passed the order dated 02.03.2001 (pg.20) whereby the punishment of compulsory retirement was again given to the applicant and it was held that compulsory retirement shall be given immediate effect, since applicant had not worked from 05.10.1993 till 07.11.2000, he shall not be entitled to any pay and allowances on the principle of no work no pay. Period from 07.11.2000 till 2.3.2001 shall be treated as deemed to be under suspension.

4. It is also submitted by the applicant that other persons who were also involved in the same agitation, were given lesser punishment while applicant had been given the punishment of compulsory retirement for which there is no justification as he cannot be discriminated against, simply because he denied the charges while others had accepted the charges levelled against them. He next contended that once the compulsory retirement order dated 05.10.1993 was quashed by this Tribunal, applicant ought to have been taken on strength of the Railways and then only could have been put under deemed suspension but he was not taken on the strength at all nor he has been paid any subsistence allowance during this period. Therefore, the order dated 02.03.2001 is not valid in law. He further submitted that the punishment given to the applicant is too excessive, therefore, this is a fit case which should be remitted back to the authorities for reconsideration on the question of quantum of punishment. Applicant further submitted that since he had not been given the defence helper nor his defence witnesses were called, therefore, entire inquiry gets vitiated and the orders passed thereon are also liable to be quashed and set aside on this ground alone.

5. Respondents on the other hand have opposed this O.A

They have submitted that inquiry was conducted in accordance with law as defence helper was very much provided to the applicant, which is evident from applicant's own letter dated 28.08.1993 (Pg.89 of the O.A) wherein he had demanded a personal interview with the appellate authority along with his defence helper Shri R.S. Shukla C.I.T. Dehradun. As far as the defence witnesses are concerned, they have stated that his defence witnesses were very much examined (Para 2.10) as inquiry officer has specifically dealt with it in para 2.10. They have, thus, submitted that there was no irregularity in the enquiry and since applicant had been found guilty of the charge alleged against him, the authorities have rightly passed the order which according to them were commensurate with the misconduct.

6. They have explained that it is very much within the power of appellate authority to enhance the punishment if it so thinks as it is permissible under Rule 22 of the Railway Servant (Disciplinary Appeals) Rules 1968. As far as the quantum of punishment is concerned, counsel for the respondents submitted that Hon'ble Supreme Court has repeatedly held that once the charge is proved against the delinquent, then what punishment should be give should be left to the authorities concerned as they alone know what are the orders to be passed in given circumstances. They have, thus, submitted that the O.A. may be dismissed.

7. We have heard both the counsel and perused the pleadings as well.

8. It is seen that inquiry officer has given a detailed report wherein he has considered all the statement given by various prosecution witnesses as well as defence witnesses



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produced by the applicant. From the perusal of the inquiry officer's report, it is also clear that applicant was attending the enquiry along with defence helper Shri R.S. Shukla which further gets fortified from his own letter dated 28.08.93 at Pg.89 . Therefore, the contention of applicant that he was not provided with the defence helper is rejected. It is also seen from the inquiry report ^{that B} ~~is~~ defence witnesses were also duly examined and considered by the inquiry officer. Moreover, applicant has not shown in the D.A. anywhere the names of any defence witnesses, who was requested to be summoned by ^{him before B} the inquiry officer but he refused to call them. Therefore, we find no force in this contention. The same is ^{is concerned} accordingly, rejected. As far as enhancing the punishment \angle Rule 22 of the Railway Servant (Disciplinary & Appeal) Rules 1968 ~~for~~ ~~for~~ ready reference reads as under:-

22. Consideration of appeal:

"(1).....

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule-6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider

(a)

(b) whether the findings of the disciplinary authority are warranted by the evidence on record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders-

(i) confirming, enhancing or setting aside the penalty or;

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case: "

It is thus, clear that the appellate authority was very much within his power to enhance the punishment as per Rules.

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and admittedly before enhancing the punishment applicant was given show cause notice also vide letter dated 12.8.1993 (Page-83) as is required under the proviso to rule 22 therefore it is clear that orders passed by appellate authority were as per the rules but there is one aspect which according to us has not been considered by the appellate authority even though it was taken by the applicant in his appeal. Applicant had categorically stated in the appeal that K.N. Pandey H.F.-I Branch Secretary of C&L Council and Mohamad Yusuf HSF-I who were on duty and were responsible for putting banners and agitation have been awarded lesser punishment viz WIT for four months and six months respectively whereas applicant has been given more severe punishment of compulsory retirement.

9. This aspect has not been dealt with by the appellate authority as he has simply stated that Sh. Suraj Bhan has been punished separately and his punishment is not concerned with applicant.

10. We have perused the findings of Enquiry Officer carefully and find that a ~~joint~~ enquiry was conducted against 04 persons viz. Sh. K.N. Pandey H&F Grade-I, Sh. Mohamad Yusuf HSF Grade-I, Shri Ganpat Singh Fitter and Sh. Moti Ram HSF Grade-II. It has also been recorded in para 4.3. by the Inquiry Officer that all the accused have been charged with same allegations.

11. From the conclusion it is seen that Enquiry Officer had given following report for all the 04 delinquents as



.....7.

mentioned above :-

1. K.N.Pandey - He not only watched the agitation as a viewer but he participated also directly or indirectly therefore his charge is partially proved.
2. Mohammad Yusuf - He took the lead role in agitation. He also talked to the AME and C&W for stopping the strike. His role cannot be ruled out. He is near retirement and apologised also for any mistake.
3. Moti Ram - Even though he was not on duty but he took part in agitation. He tried to delay the proceedings but still could not prove his innocence is found guilty.
4. Ganpat Singh - It has been proved that not only he was present on platform during the agitation and was watching the entire episode but participated in it also. It was further recorded that there is also evidence of inciting the agitation against him. He tried to delay the enquiry but yet the charges against him are fully proved.

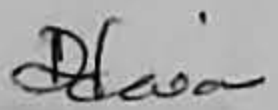
12. Perusal of above clearly shows that out of 04 persons, 02 persons viz. Sh. Mohd. Yusuf and Shri Ganpat Singh were found actually involved in the agitation and had taken lead role whereas applicant was only proved to have participated in the agitation. In the circumstances naturally applicant could not have been given the punishment of compulsory retirement while giving lessor punishment to K.N. Pandey and Mohd. Yusuf. After all if all the 04 persons were charged with same allegations and the role played by applicant was lessor than the others, he at best could have been given the same punishment but there is absolutely no justification in giving lessor punishment

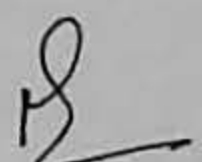


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to others and a comparatively much higher punishment to applicant. We are, therefore, satisfied that applicant has been discriminated against and the punishment of compulsory retirement in these circumstances is not sustainable. Accordingly, the order dated 02.03.2001 is quashed and set aside. Since the charge against applicant is proved, the order dated 29.09.1993 is maintained and not set aside. The matter is remitted back to the appellate authority to apply his mind on this aspect and after discussing the punishment which has been given to the other persons involved in the agitation pass appropriate orders in accordance with law within a period of 6 weeks from the date of receipt of a copy of this order. Till such time the orders are finally passed by appellate authority, ~~authority~~ applicant shall be put under deemed suspension and paid subsistence allowance for the period under deemed suspension.

13. In view of the above discussion, O.A. is partly allowed. No order as to costs.


Member (A)


Member (J)-

shukla/-