

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.401 of 2001

this the 8th day of May, 2003

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

Dinesh Razak S/o Ramji Razak,
Head Clerk, Diesel Shed,
North Eastern Railway,
Izzatnagar, District Bareilly.

....Applicant.

(By Advocate : Shri V. Rathore)

VERSUS

1. North Eastern Railway, through Divisional Railway Manager, Izzatnagar, District Bareilly.

2. Senior Divisional Mechanical Engineer (Diesel), Izzatnagar.

3. Assistant Mechanical Engineer (Diesel), Izzatnagar.

4. Union of India through General Manager, N.E. Railway, Gorakhpur.

.... Respondents.

(By Advocate : Shri S.K. Anwar)

O R D E R

By this O.A., applicant has challenged the orders dated 11.4.2000, 8.5.2000 and 18/20.9.2000 passed by the respondents seeking quashing and setting aside of the same and exoneration of the applicant from the said charges.

2. It is submitted by the applicant that/he was working as Head Clerk in Diesel Shed, North Eastern Railway, Izzatnagar, Bareilly, he was given a show-cause notice dated 15.11.99 (Annexure A-2), which was replied to by him vide letter dated 17.11.1999 (Annexure A-3). But not being satisfied with the reply, applicant was served with a chargesheet dated 7.1.2000. The applicant filed his reply on 16.1.2000 denying the allegations levelled against him (Annexure A-5). Yet, the respondent no.3 vide his letter dated 11.4.2000 passed an order imposing penalty of stoppage of 5 sets of passes of the

applicant (Annexure A-6). Being aggrieved, applicant filed an appeal before the Senior Divisional Mechanical Engineer on the ground that the grounds taken by him, had not been considered, but the said appeal was also rejected vide order dated 8.5.2000 (Annexure A-7). Against the said order, the applicant gave a representation to the DRM on 24.5.2000 requesting therein to see whether the leave of Sri Kathariya was sanctioned by the competent authority or not. To his utter surprise, he was served with a show-cause notice dated 31.7.2000 by the respondent no.1 asking him as to why his punishment should not be enhanced (Annexure A-8). The applicant gave his reply on 29.8.2000, but vide order dated 18/20.9.2000 the respondent no.1 substituted the initial punishment by enhancing the same and stopped two increments for a period of three years (Annexure A-10). The applicant has challenged this order in the present O.A. on the ground that the orders passed are punitive, illegal and without jurisdiction and in any case the Revisionary authority could not have played the role of the appellate authority, nor could have enhanced the punishment.

3. The respondents have stated in the Counter affidavit that the applicant has not been able to point-out any irregularity in the orders passed by the respondents and relied on rule 25 of Railway Servants (Discipline & Appeal) which Rules 1968, for ready reference reads as under :

"(1) Notwithstanding anything contained in these rules :

(i) the President; or

(ii) the Railway Board; or

(iii) The General Manager of Railway Administration or an authority of that status in the case of a Railway servant under his or its control; or

(iv) -----.

(v) -----

(a) confirm, modify or set-aside the order, or

(b) confirm, reduce, enhance, or set-aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or



pass such other order as it may deem fit;
provided that -

(a) no order imposing or enhancing any penalty shall be made by any revising authority unless the Railway servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed;"

They have, thus, submitted that the Revisionary authority has very much power to enhance the punishment.

The only requirement ^{is of} _^ that show-cause notice should have been given, which was duly issued in the instant case, therefore, there is no merit in the O.A. and the same is liable to be dismissed.

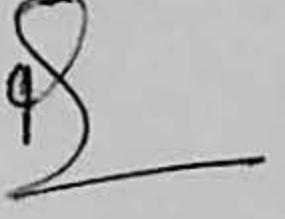
4. I have heard both the counsel and perused the pleadings as well.

5. The counsel for the applicant has relied on AIR 2001 SC 386 to substantiate that the revisionary authority could not have enhanced the penalty. This contention has to be rejected outright because rule 25 ^{gives B} _^ specific ~~gives~~ power to the revisionary authority to enhance the penalty after giving a show-cause notice. It is not the case of the applicant that the revisionary authority who had passed the order, was ^{such} not competent to pass _{order} ^B. As far as this contention of the learned counsel for the applicant that the revisionary authority could not have replaced the order of the disciplinary authority, confirmed by the appellate authority, his submission is absolutely mis-placed. The Hon'ble Supreme Court has held that the revisionary authority could not have interfered with the findings arrived at by the lower authority. In the instant case the revisionary authority did not interfere with the findings as all the three authorities had come to the same conclusion that the charges against the applicant were proved.

^Bdifference ^B
The only ~~defence~~ was that the revisionary authority was of the opinion that the applicant ~~should~~ have been given better punishment than what was awarded by the disciplinary authority. The applicant's counsel has mainly contended that the leave for 20 days was entered by him so far as Sri Kothariya was

B

as ⁸
concerned ~~and~~ the same was sanctioned by the competent
authority ~~and~~ ^{but} the authorities concerned never looked on
the said application, whereas the respondents have specifically
stated in their counter affidavit that the leave was never
sanctioned by the competent authority and since the
applicant was circulating the ^{rumor} that the employee would
be entitled ^{to} 20 days leave and had also himself applied for
~~therefore in contemplation has to be rejected.~~ ⁸
the same, it is well settled by now that the court cannot
appreciate the evidence in ~~one~~ disciplinary matters and can ~~not~~
interfere with, only if, there is any procedural irregularity
of the findings arrived at are absolutely perverse. In the
instant case, I have seen that the three authorities have
applied their mind to the facts and have come to the
conclusion that the charges against the applicant were proved
and once the charges were proved what punishment would be
appropriate, is to be decided by the authorities concerned and
the court cannot interfere or dictate the punishment to be
awarded to the employee. The applicant's counsel has not been
able to point out any procedural irregularity in this case,
therefore, I do not find any good ground to interfere in
this case. The O.A. is accordingly dismissed with no order
as to costs.


MEMBER (J)

GIRISH/-