

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 19th day of Dec. ,2003

QUORUM : HON. MR. D. R. TIWARI, A.M.

O.A. No. 85 of 2001

Virendra Kumar Verma, Permanent Way Supervisor), aged about 41 years son of Sri U.L. Verma R/O Railway Qr.No.5-B, TTC Colony, Northern Railway, P.S. Sadar Bazar, Shahjahanpur.

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.....Applicant.

Counsel for applicant : Sri T.C. Sharma.

Versus

1. Union of India through the Secretary, Ministry of Railways, New Delhi.

2. Divisional Railway Manager, Northern Railway, Moradabad

3. Divisional Engineer, Northern Railway, Shahjahanpur.

4. D.E.N./SPN, Northern Railway, Shahjahanpur.

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.....Respondents.

Counsel for respondents : Sri P. Mathur.

O R D E R

BY HON.MR. D. R. TIWARI, A.M.

By this O.A. filed under section 19 of A.T. Act, 1985, applicant has prayed for quashing the order dated 11.7.1999 by which Respondent No.4 has imposed upon him the penalty of reduction to a lower stage in the same time scale (Rs.4500-7000) i.e. from the stage of Rs.5500/- to the stage of Rs.5250/-, for a period of three years without postponing future increments (Annexure-I). He has further prayed to quash the order dated 3.4.2000 (Ann. 2) of Respondent No.3 by which his representation has been rejected. He is also seeking quashment of the appellate order dated 9.6.2000 (Annexure 2A) by which the punishment of Disciplinary Authority has been confirmed.

2. The facts of the case, in ^enutshell, are that the applicant, at the relevant time, was working on the post of Permanent Way Mistry/Supervisor at Shahjahanpur.

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He was served with a charge sheet on 30.10.1998 alleging that derailment took place at 1850 hrs. on 13.8.98 due to jamming of the track on account of falling of Ballast from partially unloaded BOBS. It was alleged that the applicant who was in the loading side failed to show red signal and stop the forward movement of the train. As such he failed to absolute devotion to duty and he contravened Rule 3.01 (2)(ii) and (iii) of Railway Servant Conduct Rules 1960. As usual, the Enquiry Officer conducted the enquiry and submitted the findings to the Disciplinary Authority. The Disciplinary Authority was not in agreement with the findings recorded by the Enquiry Officer. Enquiry report and the note of disagreement was duly communicated to the applicant vide letter No.E-19/VK dated 15.6.99 enabling him to make a representation. The representation was duly considered by the Disciplinary Authority and the penalty of reduction of pay was imposed. The applicant filed an appeal to the Appellate Authority i.e. Divisional Superintending Engineer-II, Northern Railway, Moradabad. On the basis of the materials and the grounds put forth by the applicant in the memo of appeal, the punishment imposed by the Disciplinary Authority was confirmed by the Appellate Authority which was conveyed to the applicant vide No.CA-DSE/II/Appeal/VKV/2000 dated 9.6.2000.

3. The applicant has assailed the joint note dated 12.8.98 prepared by the Railway administration which had no validity in so far as the evidence in the case is concerned. Signatories of the joint note were not the eye witnesses to the incident of derailment. He further argued that the Enquiry Officer reached a categorical conclusion that rail running department was responsible for derailment as they failed to ensure the ballast were cleared from the Railway line and hence he was not responsible for the derailment. He further argued that all the signatories of the joint note had disclaimed and disowned

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their statement during the course of cross examination of enquiry proceedings. As such, joint note had become an invalid document which could not be relied upon for imposing punishment.

4. The respondents, on the other hand, have contested very strongly the contention of the applicant. They have stated that it is true that no eye witness was available to the incident and the applicant belongs to an operating branch, it was his primary duty to ensure clearance of track before movement of the train. It has been further submitted that the competent Disciplinary Authority was not in agreement with the finding recorded by the Enquiry Officer and as such reasons for disagreement were recorded in writing by the Disciplinary Authority and accordingly copy of the same was made available for submission of his representation on the same. It is also submitted that the Disciplinary Authority under the relevant rules has powers to disagreement with the report of the Enquiry Officer. Only legal requirement for the Disciplinary Authority in such case is that he should record his reasons for disagreement on the findings of the Enquiry Officer and before taking any decision, the charged officer has to be given opportunity to make representation. In this case all the procedures have been gone through. They have stated that the Disciplinary Authority has not only based his disagreement on the basis of joint note but keeping in view the other over all aspects of the matter and responsibility assigned to the applicant at the relevant time. The applicant was found responsible for the alleged dereliction of his duty as he was responsible for safety of the track of his jurisdiction.

5. I have heard counsel for the parties, perused the pleadings very carefully and given an anxious consideration. The only point which requires consideration, is the

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fact whether the technical Rules of Evidence Act are to be brought in disciplinary proceedings. It may be stated where the findings or conclusions are based on some evidence the authority entrusted with the power to hold enquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. The Hon'ble Supreme Court in the case of B.C. Chaturvedi Vs. Union of India (1996) SCC (L&S) 80 has observed as under :-

"Judicial review is not an appeal from decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that conclusion which the authority reaches is necessarily correct in the eye of the court. When an enquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the enquiry was held by a competent Officer or whether rules of natural justice were complied with..... Neither the technical Rules of Evidence Act nor of proof of fact or evidence is defined therein, apply to disciplinary proceedings."

6. In view of the legal position, explained above I do not find that the applicant has been prejudiced in any way.

7. In view of the facts mentioned above, the O.A. is bereft of any merit and there is no justification to interfere in the order of the competent authorities and accordingly the O.A. is dismissed with no order as to costs.

A.M.
A.M.

Asthana/