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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 304 of 1986

Rajendra Prasad Saxena Applicant

Versus

Divisional Railway Manager,
Central Railway, Jhansi & another ... Respondents.

Hon'ble S. Zaheer Hasan, V.C.
Hon'ble Ajay Johri, A.M.

(Delivered by Hon. Ajay Johri, A.M.)

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This is an application under Section 19 of the Administrative Tribunals Act XIII of 1985. The applicant, Rajendra Prasad Saxena, has challenged the orders dated 17.1.1986 and 1.10.1985 passed by respondent no.2 and the Assistant Mechanical Engineer, Jhansi respectively and ~~recommending~~ ^{by issue of a decree awarding} him ~~with~~ ^{by} full back wages with due promotion as TXR and payment of difference of salaries, etc. on this account. The applicant having joined the Railways in November, 1956 had certain grievances in respect of deduction of his wages, non-promotion and he had accordingly put forth his grievances before the respondents through representations. According to the applicant instead of getting any relief against his grievances officer got prejudiced and he was given a charge-sheet on 8.10.84 for major punishment. This charge-sheet was withdrawn and another charge-sheet dated 16.3.1985 was issued to him. According to the applicant he denied all the charges and instead of dropping the charge-sheet an enquiry was ordered and the Enquiry Officer in a

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unjustified manner recorded the statement of the applicant. As a matter of fact the prosecution has to start with the case and only thereafter the role of defence should have ^{or come} into play. The applicant has alleged that the disciplinary authority did not care a bit about the very fact of gross violation of Rule 9 of D.A. Rules and the impugned order dated 1.10.1985 was passed. The applicant preferred an appeal on 22.11.1985 but the appellate authority reinstated him in the lowest grade at lowest stage of pay, i.e. as a Khalasi. According to the applicant he was due being promoted as a Train Examiner but his promotion did not materialise and he stood compulsorily retired. He has challenged the charge-sheet on the ground that the charges are unfounded, false and untenable as a complaint by a subordinate to higher authorities is not a misconduct or misbehaviour unless the complaint is proved to be false and malicious. The punishment order is also not a speaking order and the appellate authority has not applied its mind and not disclosed as to why the grounds taken in the appeal were rejected. Therefore, there has been mis-carriage of justice and hence the relief prayed for.

2. . The respondents' case is that no hasty action has been taken by the disciplinary authority and the charges against the applicant had been proved. Since no witnesses were mentioned in the charge-sheet there was no question of examination of any witness and the applicant also did not request for the examination of any person. Thus there was no violation of Rule 9. The applicant had accepted the charges in reply to question no.4 in his statement and, therefore, it cannot be said that he was not given reasonable opportunity to defend himself. According to the respondents the applicant was

not due any promotion to the post of Train Examiner. He was ordered to be promoted as Fitter Grade II in 1981 but he did not proceed on promotion and refused the same. He was again ordered to be promoted in 1983 and he again refused to go on promotion. In view of this the allegations that he was not given his due promotion is not correct.

3. In his rejoinder the applicant has ^{reiterated} ~~reported~~ that making a complaint cannot be dubbed as misconduct. He has also annexed a copy of letter issued by D.R.M.(P), Jhansi on 21.11.1985 in reply to Headquarters office letter of 18.10.1985 in which it has been mentioned that since the applicant has been retired compulsorily with effect from 1.10.1985 the question of considering his promotion as TXR will not be proper. According to the applicant, therefore, he was to be considered but he was stopped from the same by the impugned order.

4. ^{By heard} We have the learned counsel for the parties. The learned counsel for the applicant repeated the arguments given in the application and brought out the severity of the punishment for the alleged misconduct and prayed for the relief on the quantum of punishment and challenged the appellate order. The learned counsel for the respondent ^{dwelt} ~~dwelled~~ on the contents of the written reply to the application. Nothing ^{or else} ~~was~~ was pressed before us.

5. The applicant was issued a major penalty charge-sheet on 8.10.1984 but this was cancelled and a fresh charge-sheet dated 16.3.1985 was issued to him by A.M.E.(C&W). Annexure-I of the charge-sheet said "that the said Shri Rajendra Prasad Saxena while functioning as Fitter T.No.1307 C&W Jhansi is charged with serious misconduct . As per details given in

Annexure II of imputation of misconduct or misbehaviour appended below." The statement of imputation of misconduct in support of the articles of charge framed against the applicant says that "He made a false report that Rs.33/- were deducted from his wages for the period from 9.4.1984 to 17.4.1984. He has also reported that Carriage & Wagon Superintendent, Jhansi had chased him off from office when he reported regarding deduction of Rs.33/- which was incorrect". The imputation further go on to say that "the applicant complained against D.P.O. for the unreasonable harassment which was also found to be incorrect and full of mischievous act. He also made false report against Dealing Clerks, Head Clerk, Group Clerk and A.M.E. and these actions on his part tantamount to serious misconduct". In his statement which has been filed as Annexure 'VI' to the application in answer to question no.3 whether the charges are accepted by him, the applicant has replied "yes, ~~on the~~ I accept all the charges which have been levelled against me in S.F.5 dated 16.3.85." He repeated the reply in answer to question no.4 whether he was under any pressure to accept the charges, he replied that there was no pressure on him and he accepts the charges and that he did not want any enquiry. In the last he has said that he has nothing further to add. This statement was given by him on 6.9.1985 and has been annexed by him ³⁰ ~~him~~ in the application. It is, therefore, clear that during the enquiry the applicant had accepted the charges levelled against him and, therefore, his plea that he was not given adequate opportunity to examine witnesses or that the prosecution case was not started properly are only afterthoughts and cannot be accepted.

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According to Explanation (9)(a)(iii) of Rule 9 which lays down the procedure for imposing major penalties where all the articles of charge have been admitted by the railway servant, disciplinary authority shall record its findings on each charge after taking such further evidence as it may think fit. In the applicant's case he had very clearly admitted the charges and this cannot be a matter of dispute at this stage. Therefore, we do not find anything wrong with the punishment order.

38 6. In regard to the appellate order the appellate authority had to consider whether the procedure laid down in the rules had been complied with, whether the findings are warranted by the evidence on record, and whether the penalty or the enhanced penalty imposed is inadequate or severe and pass an order confirming, enhancing, reducing or setting aside the penalty. The appellate order which is placed as Annexure 'IX' to the application says that the appellate authority had examined all the aspects of the case carefully and found that the appeal is not based on facts and the decision of the disciplinary authority is well considered and correct. However, looking into the family circumstances the impugned punishment ~~was~~ reduced and the applicant ^{ordered to be} ~~is being~~ appointed as a Khalasi at Rs.196/- as a new entrant. This appellate order is not only in contravention of the rules laid down on the 'Consideration of Appeals' (Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968), but is also not a correct order as the reduction of punishment of compulsory retirement, if it results in a person being given a fresh appointment in the lowest grade when

he was working at the time of punishment two grades above, is not a reduction in punishment. It was a case of considering him for being freshly appointed as a result of his appeal. The order, therefore, is contradictory and is liable to be quashed.

7. In Satyavir Singh and others v. Union of India and others (1986 (1) S.L.J. 1 S.C.) their Lordships of the Hon'ble Supreme Court had observed as follows :

"Where a civil servant has been dismissed or removed from service or reduced in rank by applying clause (a) of the second proviso to Article 311(2) or an analogous service rule and he invokes the court's power of judicial review, if the court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or was not warranted by the facts and circumstances of the case or the requirements of the particular government service to which the concerned civil servant belonged, the court will strike down the impugned order. In such a case, it is, however, not necessary that the court should always order reinstatement. The court can instead substitute a penalty which in its opinion would be just and proper in the circumstances of the case."

8. We find that the applicant's case is a fit case to fall within these observations, therefore, instead of remanding the case for reconsideration of the appellate order, ^{we are} applying the directives contained in the judgment quoted above. We are of opinion that under the facts and circumstances of the case the penalty imposed is grossly excessive and the appellate order is not in keeping with the requirements of

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Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968. We, therefore, substitute a lesser penalty which in our opinion would meet the ~~ends of justice~~ ^{circumstances adequately}. The appellate order was passed on 17.1.1986. The applicant was compulsorily retired by an order dated 1.10.1985. We set aside the order of fresh appointment given on 17.1.1986 and direct that, for the misconduct which has been admitted by the applicant, a punishment of reduction by one stage temporarily would meet ^{with} the ends of justice. This order will run from the date the appellate order was passed. The period between compulsory retirement and 17.1.1986 will be treated as dies non except for retirement benefits and for the period 17.1.1986 onwards the plaintiff will be entitled to full pay and allowances as admissible after imposition of the penalty. The original application is accordingly disposed of. Parties will bear their own costs.

VICE-CHAIRMAN.

शुभर जौहरी
MEMBER (A).

Dated: September 7th, 1987.

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