

(32) (4)

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

ORIGINAL APPLICATION NO.380 of 1986

Lallan Prasad

... Applicant.

Versus

Union of India and others

... Respondents.

Hon'ble D.S.Misra-AM

Hon'ble G.S.Sharma-JM

(By Hon'ble D.S.Misra AM)

In this application under section 19 of the Administrative Tribubal Act XIII of 1985 the applicant has challenged the order of removal from service dt. 16.5.85 passed by Senior Divisional Mechanical Engineer(P) Jabalpur.

2. In his application, the applicant has alleged that he ~~was~~ is an old employee of the Central Railway and was appointed on 21.12.1972 as Fitter Khalasi under Head Quarter Satna; that due to enmity and to harass the applicant a false chargesheet dated 18.2.1985 was served on him (copy at annexure-1); that the applicant submitted his reply to the chargesheet on 13.3.1985 denying the allegations made in the chargesheet (copy at annexure-2); that Sri K.S.Bajpai Loco Inspector (D) Satna(respondent,4) was appointed as Inquiry Officer and a copy of the report submitted by him is available as Annexure-3; that without issuing any notice to show cause, the Senior Divisional Mechanical Engineer(P) Central Railway Jabalpur(respondent no.3) by his order dated 18.5.1985(copy annexure-4) removed the petitioner from service; that the applicant filed an appeal

[Signature]

83

-2-

on 22.6.1985 before the Divisional Railway Manager(respondent no.2) which is still pending; that respondent no.4 was not competent to conduct the inquiry; that the conduction of inquiry was highly prejudicial to the applicant and is not warranted in law; that the Inquiry Officer was biased; that the inquiry report submitted by respondent no.4 is wholly perverse as the Inquiry Officer has relied upon the statement of C & C COI, who was not even a prosecution witness or defence witness before the inquiry proceedings; that the punishing officer(respondent no.3) acted mechanically and without considering the evidence on record and passed the impugned order dated 16.5.1985 without applying his mind to the facts of the case. The applicant has prayed that the impugned order dated 16.5.1985 be quashed and he may be reinstated with full back wages, continuity of service, and other benefits.

3. In an application filed on behalf of the respondents, a preliminary objection was raised that the applicant was lastly posted at Satna, where the disciplinary inquiry was completed and the final order was passed at Jabalpur and the same was served on the applicant at Satna; that the cases of persons posted at Satna are heard at Jabalpur Bench and this Tribunal has no territorial jurisdiction to adjudicate in this matter. In the reply, filed on behalf of the respondents, the point of jurisdiction of this Tribunal was reiterated and the allegations made in the application were denied

Bh

It was further stated that it was not necessary to issue any showcause notice to the applicant before passing the order of removal as DAR proceedings do not lay down this procedure as clarified in Railway Board's letter dt. 29.11.1978 (copy annexure R-1); that the decision on the appeal filed by the applicant was intimated to him through Loco Foreman Satna under whom the applicant was working. The applicant had availed of a personal interview with the D.R.M. on 19.8.1985 and the appeal filed by him had been rejected; that the Inquiry Officer Mr. Bajpai was holding higher post than the applicant and was competent to conduct the inquiry and he conducted the inquiry fairly; that the inquiry was conducted without any bias after affording full opportunity to the applicant; that the applicant unauthorisedly entered into Chheoki Goods Driver's Running Room on 16.2.1985 at about 940 hours and assaulted Sri Chhote Lal Ranjeet Box Boy on duty with shoes inside the kitchen and left the Running Room immediately; that the defence set up by the applicant that he was in Civil Hospital on that day is absolutely an afterthought and *bt* incorrect.

4. The applicant filed a rejoinder affidavit, in which the points mentioned in his petition were reiterated and it was asserted that he has not been supplied with a copy of the decision of the appeal.

5. We have heard the arguments of the learned counsel for the parties. Before going into the merits of the case, it is necessary to dispose of the question of jurisdiction of this

(W) (2)

-4-

Tribunal to adjudicate on this application. This application was filed on 5.8.1986 and admitted on 11.8.1986. After the exchange of counter and rejoinder affidavits, the final proceedings of the case were taken up on 10.2.1987. By this time the Central Administrative Tribunals (Procedure) Rules 1987 had come into force w.e.f. 15th day of January, 1987. Rule 6 of these rules reads as follows:

6) Place of filing applications.-

The application shall ordinarily be filed by the applicant with the Registrar of the Bench within whose jurisdiction:-

- i) the applicant is posted for the time being, or
- ii) the cause of action has arisen, or
- iii) the respondent or any of the respondents against whom relief is sought, ordinarily resides:

Provided that the application may be filed with the Registrar of the Principal Bench and subject to Section 25 of the Act, such application may be transmitted to be heard and disposed of by the Bench which has jurisdiction over the matter."

According to sub-rule (ii) of this Rule, the application could be filed with the Registrar of the Bench within whose jurisdiction the cause of action has arisen. Learned counsel for the applicant contended that the cause of action had arisen at Railway Station Naini Junction located in the District of Allahabad and the Bench of the Tribunal at Allahabad has full jurisdiction to hear this application. This application was admitted earlier and the parties have already filed the required papers, we therefore, decided to consider the matter on merits.

BL

6. Learned counsel for the applicant first contended that Sri K.S.Bajpai Loco Foreman was not competent to function as Inquiry Officer to conduct inquiry against the applicant. Learned counsel for the respondents stated that Sri K.S. Bajpai Loco Foreman, was an authority superior than the applicant and was fully competent to hold inquiry into the conduct of the applicant, who was only a Group-D employee, whereas Sri Bajpai was a Loco Foreman holding independent charge of the Loco Workshop at Satna. We are of the opinion that the Loco Foreman being a superior authority to a Fitter Khalasi, the post held by the applicant, was fully competent to hold inquiry.

7. The second point raised by the learned counsel for the applicant was that no presenting Officer was appointed by the Disciplinary Authority and the Inquiry Officer himself cross-examined the defence witnesses as well as the prosecution witnesses and this was highly prejudicial to the case of the applicant. Learned counsel for the respondent stated that under Railway Servants (Discipline and Appeal) Rules 1968, it is not necessary for the disciplinary authority to appoint a presenting officer. Clause(c) of sub-rule(9) of Rule 9 states as follows:

(c) Where the disciplinary authority itself inquires into any article of charge or appoints a Board of Inquiry, or any other inquiring authority for holding an inquiry into such charge, it may, by an order in writing, appoint a railway or any other Government servant to be known as Presenting Officer to present on its behalf the case in support of the articles of charge."

It has been laid down in the Circular No. E(D and A) 70-RG 6-41 dated 20.10.1971 NRS5394 that;

"The disciplinary authority may, by an order in writing on Standard Form No.8(specimen in appendix II) nominate a railway servant or any other Government servant to be known as 'Presenting Officer' to present the case in support of the charges, before the inquiring authority. The nomination of a Presenting Officer in disciplinary inquiry is not obligatory but only discretionary with the disciplinary authority. In case where no presenting Officer is appointed the inquiring authority may itself examine and cross-examine the witnesses to find out the truth in the charges."

It can be seen from the above that the disciplinary authority is not obliged to appoint a presenting officer and it is entirely in the discretion of the disciplinary authority.

8. The third point taken by the learned counsel for the applicant was that the inquiry officer also conducted the cross-examination of the prosecution and defence witnesses. The Railway Board's letter No.E(D and A)70 RG 6-41 dated 20.10.1971 has clarified that "the inquiring authority is after all appointed to find out the truth in the charges against delinquent railway servant and the power of making examination, cross-examination etc. of witnesses is inherent in him. In view of this there is no objection for the inquiring authority to examine and cross-examine the witnesses in cases where no presenting officer is appointed to enable him to find out the truth in the charges against the delinquent railway servant".

Bh

We are of the opinion that the appointment of Sri Bajpai as Inquiry Officer and the examination as well as cross-examination of witnesses by him during the conduct of inquiry against the applicant was well within his powers and there is no illegality on this account.

9. Learned counsel for the applicant also challenged the findings of the Inquiry Officer as being perverse. We have gone through the file containing the record of the disciplinary inquiry against the applicant, which was filed by the respondents. A copy of the findings of the Inquiry Officer filed by the applicant is available as annexure-3 to the application. The Inquiry Officer has relied upon the evidence of Running Room Cook Sri Dhan Kishan, who was the only eye witness to the alleged assault by the applicant on Sri Chhotey Lal Ranjeet. In his defence, the applicant had taken the plea that on the alleged date and time of the occurrence, he was present in the Civil Hospital Satna undergoing treatment as an indoor patient. He had produced one certificate of Dr. M.P.Singh, Civil Hospital, Satna and Compounder Sri Rajendra Tiwari was produced by the applicant to prove the medical certificate. This witness had stated that the certificate produced by the applicant is not the proof that the patient was available at Satna all the time and that the certificate could have been obtained by somebody else on behalf of Lallan Pd. applicant. The Inquiry Officer did not place any reliance on the defence produced by the applicant. On going through the record of the disciplinary

18

proceedings, it is found that the applicant was allowed the assistance of an official, who was given full opportunity to cross-examine all the witnesses. In all, 4 witnesses were examined, by the Inquiry Officer and the Inquiry Officer submitted his findings to the disciplinary authority in which it is clearly stated that the allegations against the applicant were fully established. The disciplinary authority imposed the penalty of removal from service vide order dated 16.5.1985. We are of the opinion that there was no irregularity or illegality in the conduct of inquiry and the order of termination passed by the disciplinary authority did not suffer from any illegality.

10. The applicant has alleged that he did not receive any order on his appeal to DRM. However the respondents in their reply stated that the appeal has been rejected. A copy of the original order dated 2.8.1985 is available at page 92 of the record of disciplinary inquiry. It reads as follows:

" I have gone through this case carefully. This is a case of an act of indiscipline. Accordingly, the appeal is rejected. Although the applicant has not challenged the appellate order but with the rejection of the appeal, the order of Disciplinary Authority has merged in the appellate order. In the interest of justice, we consider it just to examine the validity of the appellate order."

11. Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968 lays down the procedure for consideration of appeal. Clause (2) of Rule 22 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) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

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

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

(i) confirming, enhancing, reducing, 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."

10. We have examined the appellate order in the light of the above rule and we are of the opinion that the order does not comply with any of the three ingredients mentioned above. Accordingly, we quash the order dated 2.8.85

[Signature]

~~10~~ (B)

-10-

passed by the D.R.M., Jabalpur and direct that he should reconsider the appeal of the applicant and pass suitable orders in the light of the above mentioned rule.

The application is accordingly disposed of without any order as to costs.

Bhima 18.3.87 Surarie 18/3/87
AM. J.M.

Dt. 18.3.1987.

JSingh.