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Reserved

Central Administrative Tribunal, Allahabad.

Registration No. O.A.52 of 1986.

Sharafat Ali

....

Applicant

Vs.

Divisional Railway Manager
Northern Railway, Allahabad
and another

....

Respondents.

Hon. D.S.Misra, AM

Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

This application under section 19 of the Administrative Tribunals Act has been filed by the applicant against the order dated 22.1.1985 passed by the Senior Divisional Operating Superintendent-respondent no.2 in his capacity as disciplinary authority withholding 3 increments of the applicant with cumulative effect and the order dated 23.8.1985 passed by respondent no.1 dismissing his appeal against the said punishment.

2. The relevant facts of this case are that the applicant who had initially joined the railway service as a Pointsman in Allahabad division in 1956 was working as Switchman in the West Cabin of the Railway Station Subedarganj on 10.10.1983. According to him, he had to perform the duty of 8 hours from 1 p.m. ^{to} 9 p.m. on that day but as no relief was sent to him, he continued to work upto 2 a.m. on 11.10.83 and despite his efforts and requests, when the ASM

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on duty did not send any substitute and the applicant felt exhausted due to strenuous job and developed abdominal pain and gastric trouble, he left the Cabin at 2.08 hours under intimation to the ASM. The applicant was charge sheeted for leaving his duty in this way without a proper substitute and the disciplinary inquiry in this connection was held by a subordinate of respondent no.2, who wrongly found the applicant guilty of the misconduct and on his report, the respondent no.2 awarded the punishment of withholding his increment for 3 years with cumulative effect. The appeal preferred by him against the said order was dismissed by the respondent no.1 without passing a speaking order. The contention of the applicant is that in fact he was not guilty of any misconduct as he was not expected to remain on hard duty for an indefinite period despite his ill health and the inquiry was not held in accordance with law.

3. The respondents have contested the application and in the counter affidavit filed on their behalf, it was stated that normally the officials work in the Cabin in 3 shifts of 8 hrs. each but on account of some abnormal circumstances, according to roster, the applicant was on 12 hrs. duty from 1 p.m. on 10.10.1983. For some reason, the official who had to relieve the applicant according to roster did not report on duty in time and the applicant left the Cabin without informing

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the ASM on duty making a false note in the log book that he was ill. The applicant did not get himself examined by any medical officer of the Railway department who remained on duty for 24 hrs and in this way he committed gross misconduct and dereliction of duty and he was rightly found guilty of the same. The punishment awarded to him is quite reasonable though his services could be terminated on this serious charge. There was no illegality in the disciplinary proceedings and the appellate order was also passed in accordance with law.

4. The applicant did not file any rejoinder in this case. No party has filed the roster of duties and in this way, the allegation of the respondent that though the normal shift is of 8 hrs. due to abnormal circumstances, the applicant had to perform a duty of 12 hours according to roster on 10.10.1983 from 1p.m. ^{remains undisputed.} The applicant was thus supposed to be on duty upto 1 a.m. on 11.10.1983. It is an undisputed fact that no substitute according to roster reported on duty in the Cabin in which the applicant was working upto 1 a.m. on that day and the applicant left the Cabin at 2.08 a.m. after closing the same.

5. For the reasons best known to the applicant, he did not file the copy of the report of the disciplinary proceedings holding him guilty of the charges levelled against him. Annexure 'F' is the charge sheet of major punishment and shows that the applicant was charged of making a false report of sickness in relief diary and closing the

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cabin without taking the sick memo. It was further alleged that he made a false remark in the log book for relief at 1 a.m. on 11.10.1983 and recorded a false private telephone no.36 and another false no.94 at 2.08 a.m. for closing the cabin. It was also alleged that by closing the cabin by the applicant, two train nos. E/PNP and E/936 had to be detained and in this way, the applicant did not maintain the absolute dignity and devotion to duty and violated rule 3 of the Railway Servants Conduct Rules, 1966. The applicant has filed some medical certificates before us and on their basis it was argued on behalf of the applicant that the applicant was in fact ill and he was not supposed to remain on duty for more than 13 hours at a stretch and he made no false entry in the records of the cabin. We are, however, of the view that we are neither holding the inquiry afresh against the applicant in the matter nor are hearing an appeal against the orders passed in the disciplinary proceedings and we are not supposed to consider any evidence, which the applicant should have produced before the inquiring authority in the disciplinary proceedings in support of his defence. In a case of this nature, the Court or a Tribunal has a very limited scope and we have simply to see whether the charged official

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was given a fair opportunity of defending himself in the disciplinary proceedings in accordance with the provisions of rules and the principles of natural justice or not. The report of inquiry would have thrown a flash of light on this point. The applicant however, neither filed the report of the disciplinary proceedings nor summoned the record of the same to show that the inquiry held against him was not fair or he was not given the reasonable opportunity to prove his defence. It may also be pointed out that there is no allegation on behalf of the applicant to suggest any serious illegality or irregularity in holding the disciplinary proceedings against him. We are, therefore, unable to make use of the medical certificates filed by the applicant before us in the absence of any allegation that he had filed the same before the inquiring authority but they were either not entertained or were not given due consideration.

6. The applicant has further placed his reliance on Section 71-C of the Indian Railways Act and it has been pleaded by him in his application that the ASM neither sent a relief nor an authorisation slip after the expiry of the duty hours of the applicant and as such, the applicant committed no wrong. In our opinion,

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Section 71-C has no application to the circumstances in which the applicant was placed. This section simply lays down the total duty hours in a week. The applicant is, therefore, unable to take any advantage of this fact.

7. In this way, the applicant has not been able to establish that the disciplinary proceedings held against him were not fair or they were not held in accordance with the rules and as such, we are unable to extend any assistance to the applicant in this connection. The order of punishment, annexure 'G', shows that the disciplinary authority agreed with the view taken by the inquiring authority in his report about the guilt of the applicant and as such, no irregularity was committed even in awarding the punishment. We, however, do not feel satisfied with the approach of the appellate authority- respondent no.1 in deciding the appeal. According to annexure 'H', the following order was passed by the appellate authority in rejecting the appeal of the applicant and some other persons :-

" Personal hearing given. The cases have been reviewed. The punishment in balance two cases Shri Sharafat Ali and Shri Pandey SW Man, the order should stand."

According to Rule 22 of the Railway Servants (Discipline and Appeal) Rules 1968, in the case of an appeal against an order imposing any of the penalties specified under Rule 6, the appellate authority has

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to 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 .

8. The order passed by the respondent no.1 in this case as quoted above does not fulfil the requirements of rule 22 and we are of the view that a ^{or official} statutory authority has to act according to the rules and in case it appears from the orders passed by it that certain thing escaped its notice, it has to be presumed that the authority has not exercised its power in the manner it ought to have been exercised. Further, it has been contended on behalf of the applicant that the punishment awarded to him is too severe. He had to retire only after a few years and by the time he retires, he will have to suffer ^a the loss of Rs.3456 as his salary and a recurring loss of Rs.18 per month in his pension and non-recurring loss of about ^{Rs}800 in gratuity and encashment. Without expressing any

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opinion on the point whether the punishment awarded to the applicant is severe or not, we will like to remit the matter to the respondent no.1 again to decide the appeal of the applicant afresh in accordance with the provisions of rule 22 of Railway Servant (Discipline and Appeal) Rules 1968. In case the punishment is severe, the applicant may make his submission at that time. We, otherwise, do not ^{find} ~~see~~ any ground to interfere in the matter.

9. The case is disposed of accordingly and the parties are directed to bear their own costs.

[Signature]
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Member (A)

[Signature]
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Member (J)

Dated 10.11.1986
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