

(7)

12

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.101 of 1986

Radhey Shyam Misra ..... Applicant

Versus

Union of India and Others .... Respondents

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

(By Hon.Ajay Johri, A.M.)

This is a petition under Section 19  
of the Administrative Tribunals Act XIII of 1985.

The petitioner Radhey Shyam Misra has challenged the  
order of punishment dated 28.8.84 reducing him to  
a lower time scale passed by the Divisional Mechanical  
Engineer. According to him he filed an appeal against  
the order of punishment on 28.8.84. The appeal is  
pending before the Addl. Divisional Railway Manager  
Dhanbad and has not been disposed of.

2. <sup>2</sup> <sup>3</sup> <sup>3</sup> <sup>case is that</sup>  
According to the petitioner, while working  
as Diesel Assistant ~~as~~ <sup>3</sup> when he arrived at Obra on  
18.3.83 to take a load he had severe stomach ache and  
reported sick. He did not refuse to perform duty. He  
was not given a sick memo therefore he went to a  
private doctor who took him on sick & advised him 15  
days rest. He was however suspended vide order of

6.5.83 w.e.f. 18.3.83. He was issued a chargesheet. An enquiry was held and a punishment of reduction to the grade of Fireman 'C' for 3 years with cumulative effect was imposed on him. He filed an appeal but the same has not been disposed of. According to the petitioner the Divisional Mechanical Engineer did not consider his reply and passed mechanical orders, he has also not considered his past service. He has, therefore, prayed that the order of the Divisional Mechanical Engineer be set aside, the ADRM be directed to decide his appeal, he may be allowed to function as Diesel Asstt. and any other orders deemed fit be passed.

3. The respondents case is that the petitioner was booked to work a load ex Obra. At Obra there was some delay in the formation of the load. On this the petitioner demanded that his engine be given the load immediately otherwise he would report sick. Ultimately he willfully and vindictively gave memo for issue of sick certificate which was not accepted in the background of his threat. He did not submit any medical certificate from the private doctor too. He was taken up for obstructive working. He was found guilty of misbehaviour and obstructive working and sickness was not proved correct. His appeal has been disposed of by the ADRM and orders have been conveyed on 10.10.1984.

⑨

28

- 3 -

4. In his rejoinder the petitioner has reiterated that his appeal dated 24.9.84 was still pending.

5. We have heard the learned counsel for respondents as well as the petitioner and his counsel. The petitioner's only argument was that his appeal has not been decided and a direction be issued to respondents to decide his appeal. The learned counsel for the respondents opposed the application on the short point that there were no legal grounds taken by the petitioner and his work and conduct are not justiciable. Nothing else was pressed before us.

6. We have perused the punishment order. It cannot be said to be a mechanical order. The appellate order has not been filed by the respondents, the plaintiff is maintaining that he has not received it. It has not been argued before us that the order of punishment has been malafide and therefore it is bad in law. The appraisal of the merits is the responsibility of the executive. It is only if the penalty imposed is arbitrary or grossly excessive or out of proportion to the offence committed or was not warranted by the circumstances of the case that the impugned order could be struck down. There are no such ingredients. No such plea has been taken before us.

(10)

- 4 -

7. The reliefs claimed are the quashing of punishment order, the issue of direction to the appellate authority to dispose of the appeal and that the petitioner be allowed to function as Diesel Asstt. No illegality has been challenged in the punishment order hence the prayer for quashing it has no merit. The appellate order is under dispute. The respondents say that it has been passed but the petitioner still claims that the appeal has not been disposed of. We direct that the respondents will give a copy of the appellate order to the petitioner. In this connection we will like to point out that the appellate authority has an onerous duty to perform in disposing of the appeal and if the order is not according to the rules and law on the subject the appellate authority will reconsider its own order and give a reasoned order after hearing the petitioner in terms of Rule 22 (2) of the Railway Discipline and Appeal Rules, 1968.

8. The petition is disposed of accordingly. Under the circumstances parties will bear their own costs.

*Y.C.*  
V.C.

*3/GR SKM*  
A.M.

Dated the 24<sup>A</sup> April, 1987

RKM