

(43/1)

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
Registration T.A. No.734 of 1986
(O.S. No.483 of 1981)

Vivian Reeves Plaintiff

Versus

Union of India & Another Defendants

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

(By Hon.S.Zaheer Hasan, V.C.)

Suit No. 483 of 1981 has been transferred from the Court of Munsif (I) Jhansi under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The plaintiff Vivian Reeves filed the suit for declaration that the order of his removal dated 23.8.76 / 29.9.76 is illegal and should be struck down. His case is that he was working as Gangman at Mathura. He was under medical treatment between 28.5.75 and 30.5.75. He was active worker of National Railway Mazdoor Union and the rival Union was opposed to his Union. The rival Union used to pressurize the plaintiff without any success. ^{happened to be} Shri B.N.Tiwari and S.P.Pathak / Chairman and Vice Chairman of the Central Railway Mazdoor Sangh at Mathura Branch respectively. These two persons hatched a conspiracy against the plaintiff and got him suspended on 2.6.75 with the allegation that

43/2

- 2 -

he assaulted PWI S.P.Pathak. On 25.6.75 a chargesheet was submitted to which the plaintiff replied denying the charges. Shri S.P.Pathak got his own President appointed as Enquiry Officer who had his pre-conceived mind and was pre-determined to remove the plaintiff from service. When Shri B.N.Tiwari was appointed as Enquiry Officer the plaintiff moved an application for change of Enquiry Officer. His prayer was rejected. The Enquiry Officer wrongly conducted ex parte enquiry behind the back of the plaintiff. The plaintiff was punished without show cause notice and an appeal was preferred to the Divisional Engineer on 31.11.1975 and the plaintiff was reinstated. Thereafter due to pressure a show cause notice was issued to the plaintiff as to why he should not be removed. No de novo enquiry was made. The plaintiff gave a reply to the show cause notice and he was removed from service vide letter dated 23.8.76 /29.9.76. His appeal was rejected and thereafter he filed the present Suit.

3. The defence version is that the plaintiff reported for duty on 29.5.75 as per attendance marked by the Mate and it is incorrect that he was on medical leave upto 30.5.75. On 28.5.75 the plaintiff was deputed to screen siding by S.P.Pathak PWI but the plaintiff refused to carry out the order and misbehaved him. So S.P.Pathak

A3/3

- 3 -

reported the matter to the Officer-in-Charge. Since he assaulted S.P.Pathak, PWI on 29.5.75 at 7 A.M. while on duty so the plaintiff was suspended on 2.6.75 and a chargesheet was submitted on 25.6.75. The plaintiff filed a reply to the chargesheet denying the charges and requested for an enquiry to be conducted by an impartial officer. On 18.7.75 B.N.Tiwari, PWI was nominated as Enquiry Officer. All the averments made against the Enquiry Officer are false and baseless. Shri B.N.Tiwari was the Chairman of Central Railway Mazdoor Sangh Line Branch at Palwal, whose jurisdiction was upto Kosi Kalan only whereas the incident had taken place at Mathura. Before the chargesheet an independent senior officer conducted the enquiry and found the allegation to be proved. Shri B.N.Tiwari was enjoying a very good reputation. So the request for change of Enquiry Officer was rejected. The plaintiff and his defence counsel refused to give any statement to the Enquiry Officer and did not participate in the proceedings. The Enquiry Officer had informed the plaintiff about the date fixed but he refused to participate in the proceedings. So the Enquiry Officer was compelled to record the statement of the witnesses and he passed a correct order which is not illegal.

4. It was contended that the plaintiff was not permitted to cross-examine the witnesses and in this connection he moved an application on 5.10.76

12/5

- 4 -

to permit him to cross-examine the witnesses. The order of punishment is dated 29.9.76 and so there was no sense in seeking permission to cross-examine the witnesses after the punishment order was passed. It appears that the plaintiff and his helper appeared before the Enquiry Officer and refused to participate in the proceedings on the ground that they have no faith in the Enquiry Officer. There is no good evidence to show that the Enquiry Officer had any bias. The the plaintiff has not shown anything to suggest that the Enquiry Officer had any bias. So the prayer for change of Enquiry Officer was rightly rejected. Since the plaintiff was not participating in the proceedings so there was no sense in giving any chance to give defence evidence after the prosecution evidence was over. So to our mind, the plaintiff was himself to be blamed for not participating in the departmental proceedings and the Enquiry Officer was compelled to record the evidence and to give his findings. The findings of the Enquiry Officer are supported by evidence and they cannot be condemned as perverse. The prosecution case does not suffer from any infirmity or probability. Normally a Govt. servant does not falsely allege that he has been sacked in order to avoid insult and volley of questions. Several witnesses have stated that the plaintiff

M

42/5

- 5 -

has assaulted PWI on the aforesaid date and time. So the case has been clearly made out against the plaintiff. A show cause notice was given to which the plaintiff replied and thereafter the final order of punishment was passed. The plaintiff has refused to participate in the proceedings. There was unrebutted testimony of several witnesses. So it cannot be said that the appellate authority or disciplinary authority did not apply his mind while passing the impugned order of rejecting the appeal.

5. However at the fag end the case of the plaintiff was thrown at our mercy with the contention that the punishment awarded was excessive and unreasonable. It was also stated that the plaintiff if reinstated will not claim any salary from the date of his removal upto the date of reinstatement and he was willing to join the post which he was holding at the time of his removal and draw pay in the same scale which he was drawing at the time of his removal. It was also stated that the period between the order of dismissal and reinstatement may be regularized according to rules. There is nothing to suggest that the plaintiff had a bad record in the past. He had put in about 9 years of service on the date of occurrence. It was a case of assault and it does not appear that it was made without any provocation or any rhyme or reason. The punishment should be commensurated with gravity of

AS/b

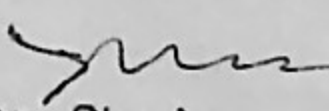
- 6 -

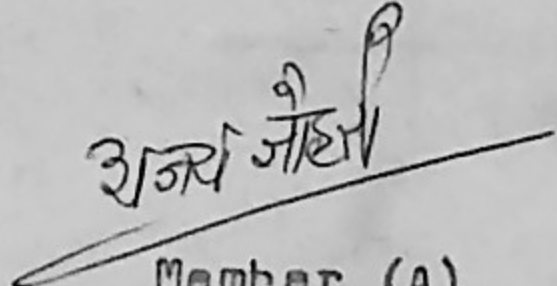
misconduct. If the punishment is grossly disproportionate to the charge, the court can itself reduce punishment. (I S.C.C. 120. Husaini Vs. Chief Justice).

6. In view of all the above we uphold the findings that the charges have been proved but for the punishment of removal we substitute the following punishment :-

" The plaintiff shall be reinstated and after reinstatement he will draw salary in the scale which he was drawing at the time of his removal. He will not get any salary etc. from the date of removal till the date of reinstatement. The aforesaid period will be regularized by the authority concerned according to rules. "

Parties to bear their own costs.


Vice Chairman


Member (A)

Dated the 27 Oct., 1987

RKM