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Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.1609 of 1986 (Original Suit No.1074 of 1982)

Edward Massey Applicant

Vs.

Union of India and another Respondents.

Hon. Ajay Johri, AM
Hon. G.S. Sharma, JM

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

This transferred application is an original suit and has been received u/s.29 of the Administrative Tribunals Act XIII of 1985 from the Court of XVIII Addl. Munsif Agra.

2. The applicant Edward Massey (hereinafter referred to as the plaintiff) had joined railway service as YKC in 1944. After getting promotions as Fireman, Shunter and Driver 'C' he was promoted as Driver 'B' in 1981. On 25.9.81 when the plaintiff was posted at Agra Cant. and the engine no.7068 was under his charge, the same was allegedly left unattended in motion as a result of which it ~~was~~ went out of control and ran with excessive speed breaking the Locoshed End and went in the residential area breaking the boundary wall and caused the death of a lady. In the fact finding inquiry made by the railway administration, the plaintiff was found responsible for this accident and he was accordingly served with charge sheet dated 25.9.1981 for major penalty. The plaintiff attended the proceedings of the disciplinary inquiry against him on few dates and on his withdrawing from the proceedings, the same were concluded ex parte and the report of the inquiry officer having been accepted by the disciplinary authority, the plaintiff was awarded the punishment of compulsory retirement from service on 2.6.1982.

The appeal preferred by him did not bear any fruit. He accordingly filed the present suit on 27.11.1982 for a declaration that the impugned order dated 2.6.1982 is null and void and he continues to be in service till his reaching the age of superannuation. During the pendency of the suit by way of an amendment he sought an alternative relief that in case relief sought by him is not granted to him, he may be granted a decree for compensation for the pay and allowances by which he has been deprived on account of this ~~case, penalty~~.

3. The plaintiff has challenged the validity of the impugned punishment order on the ground that he was not afforded adequate opportunity to defend himself. The Defence Assistants appointed by him did not serve him on account of pressure of the authorities and he was not given an opportunity to bring a Defence Assistant from out side the Division and the authorities were already prejudiced against him and he was found guilty on the basis of inadmissible evidence.

4. The suit has been contested on behalf of the defendants and in the written statement filed on their behalf by the Addl. Divisional Railway Manager Central Railway Jhansi, it has been stated that the plaintiff was afforded ample opportunity by the inquiry officer but he intentionally with a view to prolong the inquiry wanted to get time without any reasonable and sufficient cause. The allegations of the plaintiff to the contrary are incorrect. The disciplinary authority had passed the impugned order after due application of mind in accordance with law and the impugned order is not hit by Art.311(2) of the Constitution. The inquiry officer had acted in accordance with law and the principles of natural justice and the allegations made by the plaintiff are not correct. In fact, the plaintiff had left the engine in motion unmanned on account of which this accident had occurred. The plaintiff did not submit his statement of defence in the case against him and when he was examined by the inquiry officer to ^{state 1} set his case, he left the proceedings after replying to question no.7 and did not cooperate.

The plaintiff is, thus, himself responsible for the inquiry being concluded ex parte against him and he is not entitled to any relief.

5. By filing a supplementary affidavit, which is not otherwise permissible in original suits, the plaintiff had stated that despite his repeated requests, he was not given permission to bring his defence counsel from out station and the statements given by the witnesses to the Police under section 161 Cr.P.C. in a case under section 304-A I.P.C. against the plaintiff were wrongly relied upon by the inquiry officer and, in fact, the plaintiff was not responsible for the accident and it was not caused by his any fault and Kartar Singh and Prem Singh were actually on duty at that time.

6. In reply to the supplementary affidavit, the defendants filed their additional written statement stating that 19.3.1982 was fixed for holding the inquiry and the plaintiff was asked to submit his defence statement and nominate his defence counsel. On 19.3.82 the inquiry was adjourned as the plaintiff's defence counsel was reported to be ill. Again on the next date, the defence counsel of the plaintiff did not turn up. On the ~~fixed~~^{next} date 16.4.1982 the statement of the plaintiff was recorded and he had admitted therein that he had received all the relevant documents desired by him and he had requested for one more opportunity to bring his defence counsel and the inquiry was adjourned to 23.4.1982. On 23.4.1982 the case was adjourned on the request of the plaintiff and it was again adjourned on the ~~fixed~~^{next} date 10.5.82 as the plaintiff's defence counsel was reported to be sick. The defence counsel did not turn up even on the fixed date 18.5.82 and the case was adjourned to 19.5.82 on the request of the plaintiff. Even on that date when the defence counsel did not turn up 24.5.82 was fixed by the inquiry officer with the intimation that no further time was to be given. The inquiry was accordingly held on that date and the statements of the witnesses of the Department were recorded. The plaintiff

again requested for adjournment for bringing another defence counsel which was rightly refused by the inquiry officer. The plaintiff was simply avoiding the inquiry and had not given the names and addresses of any outside defence counsel nor had stated his any specific case in defence. The inquiry was, therefore, concluded ex parte in accordance with law after affording all facilities permissible under the Rules to the plaintiff. The inquiry officer had not considered the statements of any witness recorded under section 161 Cr.P.C and his allegations to the contrary are incorrect.

7. The established law is that the Court or Tribunal has not to act as an appellate Court ~~over~~ ^{over} ~~against~~ the orders passed by the administrative authorities in the proceedings under the Discipline and Appeal Rules and the limited scope in such cases is to see whether the inquiry was held in accordance with statutory rules and the principles of natural justice and the delinquent was afforded adequate opportunity to defend himself. There is no scope for the reappraisal of the evidence collected by the inquiry officer to come to its independent finding whether the evidence produced was sufficient or not to establish the guilt against the employee. It is on account of this fact that the Tribunal places much reliance on the orders of the appellate authority as an appellate authority is the judge of not only of law but also of facts and it can re-examine the entire case and can also reappraise the evidence on which reliance has been placed by the disciplinary authority. The plaintiff has alleged certain facts to show that he was not afforded an adequate opportunity to defend himself. In para 6 of the plaint he had alleged that he preferred an appeal on 16.6.1982 but no heed was paid to his hue and cry. The defendants have denied in para 6 of their written statement the fact of filing an appeal by the plaintiff. It is, thus, evident that if an appeal was filed at all, it was not considered as the same could not ^{be} ~~placed~~ before the appellate authority -the General Manager. The plaintiff has filed the copy of appeal

paper no. 27-C along with postal registration receipt as well as an acknowledgement due which read together go to show that an appeal was filed to the General Manager Central Railway Bombay through DRM Jhansi and it was received in the office of the DRM on 21.6.1982. For some reason or the other, either the same was not forwarded to the General Manager or it could otherwise not be placed before him for due consideration. As the plaintiff has raised certain technical issues regarding the accident, we feel the General Manager will be in a better position to judge the case of the plaintiff on merits and we, therefore, feel inclined to refer the matter to the General Manager for deciding the appeal of the plaintiff in accordance with the provisions of Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968.

8. The General Manager, Central Railway, Bombay is accordingly directed to decide the appeal dated 16.6.1982 of the plaintiff against the impugned order of his compulsory retirement in accordance with law after giving an opportunity of personal hearing to the plaintiff within a period of 4 months from the receipt of the copy of this order. The suit is disposed of accordingly without any order as to costs.

Sharma
MEMBER (J)

3/5/89
MEMBER(A)

Dated Feb 14, 1989
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