

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

....

O.A. No. 1212 Of 1987

Dated: 11 August, 1995.

Hon. Mr. S Das Gupta, Member(A)

Hon. Mr. T.L. Verma, Member(J)

S.C. Mishra, son of Sri L.P. Mishra
Assistant Station Master At Fatehpur,
under Station Superintendent, Northern
Railway, Fatehpur. APPLICANT.

(By Advocate Sri R.P. Srivastava & Sri
P.K. Kashyap)

VERSUS

1. Senior Divisional Operating Superintendent,
Northern Railway, Allahabad.
2. A.D.R.M., Northern Railway,
Allahabad.
3. Sr. D.P.O. Northern Railway,
Allahabad. RESPONDENTS.

(By Advocate Sri D.C. Saxena)

O R D E R

(By Hon. Mr. S. Das Gupta, Member(A))

The applicant has challenged the order dated 10.2.1987 by which the disciplinary authority had imposed on the applicant a penalty of reduction ^{by} ~~of~~ two stages with cumulative effect and the order dated 26.10.1987 by which the applicant's appeal was dismissed and in this application filed under Section 19 of the Administrative Tribunals Act, 1985 he has prayed for the relief of quashing of the said orders and promotion to the grade of Rs. 425-640 w.e.f. 17.9.1985 when his juniors were so promoted with all consequential benefits.

wle

AP 13
AFB

.2.

2. Briefly, stated facts in this case are that the applicant was posted as Assistant Station Master of Birohi station of the Northern Railway. ^{Now} He served with a charge-memo dated 2.4.1985 (Annexure-A 4) ~~for~~ which it was alleged that he had sold Second Class Ordinary Ticket No. 10181 to 10188 for Chunab station out of series and fraudulently misappropriated the amount collected. After receipt of his reply to the charge-sheet, the disciplinary authority appointed one Sri S.K. Lal C.M.I. as the inquiry officer. The inquiry officer vide his report dated 10.9.1986 found the charge levelled against the applicant as partly established. There upon, the disciplinary authority passed the aforesaid impugned order dated 10.2.1987 imposing the penalty of reduction in two stages.

3. The applicant filed an appeal against this order and the same was rejected by the impugned order dated 26.10.1987.

4. The applicant's case is that the findings of the inquiry officer is erroneous on the face of the evidence in the inquiry. It is also his case that the inquiry officer delayed the inquiry and thus the disciplinary proceedings were not finalised within 202 days as per direction of the Railway board. The applicant has also alleged that the entire proceedings were initiated on the basis of the complaint from Sri

W.L.

B.P. Srivastava, the then Station Master, Birohi station who himself was selling tickets out of series and misappropriating the amount against which the applicant and another colleague of his sent representation. It is stated that this had annoyed Sri B.P. Srivastava who out of vengeance had managed to implicate the applicant in the alleged selling of tickets out of series and misappropriated the amount although he was totally innocent. He has further alleged that the inquiry officer Sri S.K. Lal is ~~in~~ a relation of Sri V.P. Srivastava and, therefore, the inquiry officer was biased against the applicant. He has stated that the applicant had requested the disciplinary authority to change the inquiry officer but his request was rejected. The applicant had also requested the inquiry officer not to proceed with the inquiry as he was not conducting the inquiry impartially but the inquiry officer rejected the request and conducted the inquiry. As regards his supersession by juniors, the applicant has stated that since the inquiry and the conclusion of the disciplinary proceedings were delayed, his juniors were meanwhile considered for promotion to the higher grade and were so promoted while his case was ignored.

5. The respondents have filed their counter affidavit in which it has been stated that the representation stated to have been sent by the applicant and his colleague against Sri B.P. Srivastava ~~were never~~ ^{whatever} received in the office of the Senior Divisional Operating Superintendent. It has also been stated that it was not known to the respondents that Sri B.P. Srivastava is relative to

Sri S.K. Lal and in any case such allegation has no relevance. The application for change of the inquiry officer was submitted six months after the commencement of inquiry and thus the application which was highly belated was rejected. It has been averred that the charge against the applicant was proved in the inquiry; therefore, the imposition of the penalty was fully justified. It has been further stated that appellate authority had carefully considered the applicant's appeal in terms of Rule-22 of the (Discipline & Appeal) Rules, 1968 and rightly rejected the appeal.

6. The applicant has filed rejoinder affidavit in which the contentions made in the O.A. have been reiterated.

7. The applicant has challenged the inquiry proceedings on the ground that the inquiry officer was biased and, therefore, he should have been changed. We have given careful consideration to this aspect. There is nothing on record to show that the inquiry officer was in any way related to the Station Master Sri B.P. Srivastava who had allegedly engineered the charges against the applicant. Moreover, the request was made several months after the inquiry officer had ^{Communicated} to the applicant the advice to appear before the inquiry with his defence assistance. In view of this, the rejection of the

W.L.

CJ 16

request by the disciplinary authority does not appear to be capricious or arbitrary. The next challenge to the inquiry officer's findings is on the ground that findings are not based on the evidence on record. It is settled position of law that the courts/Tribunals are not sitting in appeal over the actions taken by ~~the~~ disciplinary authority and, therefore, ~~should~~ ^{are} not required to ~~reappraise~~ ^{reappraise} the evidence on record and to come to a finding different ^{to} ~~from~~ the findings of the inquiry officer. However, in extreme cases where the findings are wholly perverse on the face of the record, or is based on no evidence, the Courts/Tribunals can and should interfere in the matter and reassess the evidence. We have gone through the inquiry proceedings, a copy of which was made available to us. We could not find any perversity in the findings nor did it appear to us that the findings were based on no evidence. We are, therefore, not called upon to reassess the evidence.

8. The applicant had alleged that certain documents which he had asked for, were not supplied to ^{him} ~~me~~. It is not the case of the applicant that the documents relied upon in the charge memo were not supplied to ^{him} ~~me~~ or atleast not shown to ^{him} ~~me~~ at the time of inquiry. If he required any additional document, it would be necessary to show why such documents were

Wle

relevant to his defence. There is nothing on record to show how these documents were so relevant. In view of this, we are unable to accept the contention of the applicant that the failure to supply the documents was not asked for ~~initiated~~ the inquiry.

9. So far as the allegation regarding delay in conclusion of the proceedings is concerned, there is no doubt that the inquiry officer had taken considerable time and incompleting the same and did not ~~adhere~~ speak to the time schedule laid down by the Railway Board in their guidelines. However, such delay alone cannot be considered to have ~~initiated~~ the inquiry.

10. The order of the disciplinary authority dated 10.2.1987 indicates that the said authority have carefully considered the report of the inquiry officer and thereafter had imposed the penalty of reduction in pay. We find no infirmity in this order.

11. Coming however, to the appellate order, we find that the order is somewhat laconic. We quote the order contained in the letter dated 26.10.1987.

"I have studied the case at length. The suit of Sri S.C. Mishra is proved beyond doubt and his appeal is rejected."

12. It is clear from the appellate order that it ~~is~~ not a speaking order. The Rule-22(2) of the Railway Servant (D&A) Rules, 1968 casts a duty on the appellate authority to consider certain specific

wle ~

aspects while disposing of an appeal. If these aspects are not specifically considered and such consideration does not become apparent from ~~sathe~~ the appellate order, the said order gets vitiated. This was the view taken by the Supreme Court in the case of Ram Chandra Vs. Union of India, AIR, 1986 SC 1173

In view of this, the impugned appellate order cannot be sustained.

13. So far as the applicant's claim to promotion is concerned, we have noticed that at the time the juniors were promoted, the applicant was being proceeded against departmentally and, therefore, he could not have been promoted. Moreover, as the proceedings ended in the imposition of the penalty of reduction in pay, he could not have been considered for promotion during the currency of penalty. The question of his being promoted, w.e.f. the date on which his juniors were promoted does not, therefore, arise.

14. In view of the foregoing, the application is partly allowed. The impugned appellate order dated 10.2.1987 is set aside. The appellate authority shall reconsider the appeal in accordance with the provisions contained in Rule-22(2) of the Railway Servants (D&A) Rules, 1968 and thereafter pass~~ed~~ an appropriate order~~s~~ on the appeal within a period of

wle

.8.

3 months from the date of communication of this order. There will be no order as to costs.

J. Horne
MEMBER (J)

W.R.
MEMBER (A)

(N.U.)