

22/1

RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 151 of 1987

R.S. Ojha	Plaintiff-Applicant.
Versus		
Union of India & others	Defendant-Respondents.

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

(Delivered by Hon. Ajay Johri, A.M.)

Suit No. 152 of 1985 has been received on transfer from the court of Munsif Sadar, Pratapgarh under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The plaintiff, R.S. Ojha, was at the relevant time working as Guard Grade 'A' with his Headquarters at Pratapgarh. He was served with a memorandum on 5.6.1981 alleging that he had denied to work a combined load consisting of three different trains. The plaintiff had submitted his reply but the same was overlooked and order imposing a punishment of withholding of increments for a period of three years was passed on 4.7.1981. The order was to be effected from 1.3.1982. The plaintiff has challenged this order on the grounds that the basis of the charges were not informed to the plaintiff and, therefore, there was material irregularity in the orders passed by the disciplinary authority. On his appeal against the punishment made on 3.8.1981 the plaintiff was communicated an order dated 2.2.1983 that his appeal has already been considered and that the orders have been communicated, On 25.3.1983, the plaintiff was advised that his appeal has already been considered and the punishment of withholding increments was reduced from three years to two years.

According to him the non-supply of the documents indicating the basis of the charges, the non-speaking clauses of the decision even by the appellate authority have violated natural justice. The plaintiff had thereafter moved a review petition on 23.2.1983 followed by one on 16.4.1983. He received a reply dated 8.12.1983 conveying that the orders of the appellate authority will stand, which again, according to him, is a cryptic and non-speaking order. As a result of the punishment the plaintiff's increments were withheld from March, 1982 and the deduction continued upto November, 1984, i.e. even beyond the stipulated period of two years. Thus the plaintiff has been made to suffer a monetary loss of Rs.3,249.60 P., ^{of which} ~~whose~~ details are as follows :-

From 1.3.82 to 28.2.83 = Rs.182.90

From 1.3.83 to 28.2.84 = Rs.412.50

From 1.3.84 to 30.11.84 = Rs.530.20

The plaintiff has further added an amount of Rs.844/- in this amount and included a further amount of Rs.1,280/- as restructuring pay benefit allowed retrospectively from July, 1981. According to the plaintiff, he was appointed by the General Manager (GM) whereas the orders of withholding increments have been passed by the Divisional Operating Superintendent (DOS), who was not competent to pass that order. The plaintiff, therefore, has sought relief that a decree in his favour for the recovery of Rs.3,249.60 P. be passed and the plaintiff be awarded the interest at legally prescribed rates upon the amount withheld from the date of presentation of the suit. He has also claimed the costs of the suit.

3. In their reply the respondents have said that on 4.7.1981 DOS imposed a punishment on the plaintiff for withholding of increments temporarily for three years with effect from 1.3.1982. Since the plaintiff had already been promoted to the next grade on 1.6.1981, the punishment became effective from the date of next increment

which was 1.6.1982. On his appeal the punishment was reduced by the Senior DOS from three years to two years and thus after expiry of the punishment he was given the normal increment on 1.6.1984. According to the respondents DOS and the Senior DOS were fully competent to award the punishment ^{by & hear the appeal} in accordance with the provisions of the D.A. Rules and no principles of natural justice had been violated.

4. We have heard the plaintiff in person and Sri G.P. Agarwal for the respondents. The plaintiff submitted that in terms of para 134 of the Indian Railway Establishment Code, Volume I the General Manager, Chief Administrative Officer or lower authority to whom he may delegate the power are the authorities competent to make first appointments to non-gazetted posts in the Indian Railways. Further in terms of Appendix XXXII of the Indian Railway Establishment Code, Volume II under para 2020 the power to withhold increments can be exercised by any authority which has power to make a substantive appointment to the post which the railway servant holds. In terms of Rule 59(g) of the Discipline and Appeal Rules for Non-Gazetted Railway Servants published in 1952 in terms of para 1705 of the Indian Railway Establishment Code, Volume I the penalty of withholding of increments or promotion shall not be imposed by an authority lower than a Divisional Superintendent or the authority competent to make a substantive appointment to the post which the railway servant holds. Therefore, the imposition of the punishment by DOS was without jurisdiction as he could not have imposed the same punishment. He further submitted that no papers were supplied to him in regard to the charge and he was also not heard before the punishment was imposed and both the orders of the Disciplinary Authority and the Appellate Authority are non-speaking orders. Therefore, the punishment as imposed on his ^{as m} was illegal. Sri G.P. Agarwal,

learned counsel for the respondents, contended that in the reliefs sought, the plaintiff has not challenged the D.A. proceedings and he has only asked for a decree of the recovery of Rs.3,249.60 P. and interest. Therefore, he should not be allowed to raise the question of legality of the disciplinary proceedings at this stage. This objection was ^{or met} made by the plaintiff by referring to the pleadings that he had made in the plaint where he said he has brought out the question of legality of the charge-sheet and D.A. proceedings.

3/

5. The D.A. Rules on which the plaintiff has relied were enforced from 1.8.1961. These rules were re-made in the year 1968 and were published as Railway Servants Discipline and Appeal Rules, 1968. The revised rules came into force on 1.10.1968 and, therefore, the reliance placed by the plaintiff on the rules framed earlier to 1968 is erroneous. Rule 6 of the Railway Servants Discipline & Appeal Rules, 1968 gives the list of minor and major penalties which can be imposed on a Railway servant. Withholding of increments of pay for a specified period is one of the minor penalties. Rule 7 describes the Disciplinary authorities and lays down that without the provisions of sub-rule (1) which says that the President may impose any of the penalties, any of the penalties specified in Rule 6 may be imposed on a Railway servant by the authorities specified in Schedules I, II and III and that the disciplinary authority in cases of a Railway servant officiating in a higher post shall be determined with reference to the officiating post held by him at the time of taking action. Schedule II of the Railway Servants Discipline & Appeal Rules, 1968 is the schedule of the disciplinary powers and powers of suspension of different grades of Railway Officers/Senior Supervisors in respect of non-gazetted staff of Zonal Railways and Production Units. In respect of withholding of increments for all Group 'D' and Group 'C' staff except in the grade of Rs.550-750 (RS) and above Senior Scale Officers and Assistant Officers (junior scale) and Group 'B' holding independent charge are empowered to impose the punishment. DCS is a senior scale officer of the Operating Department and there-

23/5

-: 5 :-

DOS is a senior scale officer of the Operating Department and, therefore, in terms of Schedule II of these rules he was fully competent to impose the penalty of withholding of increments on the plaintiff, who was at the relevant time officiating in the grade of Rs.425-640 (RS). The contention of the plaintiff, therefore, that he could not have been issued a charge-sheet or imposed³a punishment by DOS in terms of the Discipline & Appeal Rules published in 1957 cannot be accepted as it is based on obsolete rules which have been recast³ in 1968 and which³ need to be the guide ~~are followed~~ for the purpose of deciding the plaint. The Railway Servants Discipline & Appeal Rules, 1968 have been made in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and, therefore, carry the force of a statute as far as their implementation is concerned. The plea taken by the plaintiff that D.A. Rules cannot override the provisions of the Indian Railway Establishment Code, Volumes I & II is also not based on correct appreciation of the facts. These rules have a statutory force and they have been framed after due and proper delegation of powers as is required under the relevant paras of the Indian Railway Establishment Codes.

3/
6. Withholding of increments is a minor penalty. Rule 11 lays down the procedure for imposition of a minor penalty. According to this procedure the railway servant has to be informed in writing of the proposal to take action against him and has to be given a reasonable opportunity of making such representation as he may wish to make against the proposal. Holding of an enquiry is only necessary where in the opinion of the disciplinary authority such an enquiry is considered necessary. On getting the reply to the proposal of imposition of penalty the disciplinary authority has to record a finding when it has also to take into ³consideration the record of the enquiry, if any, has been held and has to make the order imposing on the railway servant any such penalty. ~~It is, therefore, not essential that~~

~~a personal hearing should be granted or an enquiry should be necessa-~~
~~ry held.~~ In this case memorandum was issued to the plaintiff. He had replied to the memorandum and the disciplinary authority decided to impose a minor penalty after considering the explanation given by the plaintiff. We, therefore, do not find that there was anything illegal in the conduct of the disciplinary proceedings.

7. The punishment order, which is placed as paper no.10-Ga to the suit file cannot be said as to be an entirely non-speaking order. The disciplinary authority had considered the explanation of the plaintiff and not accepted the same. It has given the reason why a particular type of movement was required to be done and the plaintiff had disobeyed the orders of the Controller. As far as the appellate order is concerned, it reads as follows :-

"Though the appeal is not at all to the point and relevant, yet purely as an act of kindness, is reduced to WIT for two years."

The plaintiff had submitted his appeal and given detailed reasons how he has been implicated due to the prejudice of the ~~loyal~~ ³⁵ Controller on account of certain extraneous reasons whereby the whole case was mis-represented to the higher authorities and, therefore, he had prayed for a personal hearing before the appeal was decided. According to the plaintiff, no such hearing was given to him before the decision of the appeal and the imposition of the punishment even after its reduction for a period of 2 years has adversely affected his retirement benefits. Rule 22(2) of the Railway Servants Discipline & Appeal Rules, 1968 provides :-

"(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider -

(a) Whether the procedure laid down in these rules have been complied with, and if not, whether such con-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice"

43/7

-: 7 :-

(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; and pass orders -

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case."

8. Though the appellate order has reduced the punishment it was necessary that the appellate authority should have given an indication that it had considered the various aspects raised by the plaintiff in his appeal. Since this has not been done we ~~will like~~ ^{direct} the appellate authority to re-consider the appeal and give a reasoned and considered decision on the appeal submitted by the plaintiff and if the plaintiff requests for being heard in person by hearing him as well. The plaintiff should, if he so desires, put in an application that he will like to be heard and thereafter the appellate authority must take a de novo decision on the appeal within a period of two months from the date of receipt of these orders. If the plaintiff is exonerated by the appellate authority, he will stand to be compensated for consequential benefits that may arise as a result of decision of the appeal.

9. The application (Suit No.152 of 1985) is disposed of accordingly. Parties will bear their own costs.

अनुर जोशी

MEMBER (A).

[Signature]

VICE-CHAIRMAN.

Dated: March 25th, 1988.

PG.