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Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.1833 of 1987(W.P.No.6655 of 1985)

Dori Lal

...

Petitioners

Vs.

Union of India and two others ...

Respondents.

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

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

In this writ petition under Article 226 of the Constitution of India received on transfer from the High Court of Judicature at Allahabad u/s.29 of the Administrative Tribunals Act XIII of 1985 the Petitioner has prayed that the order dated 30.10.1982 passed by the Divisional Traffic Superintendent, Northern Railway Tundla- Respondent no.2 stopping his promotion for 5 years by way of punishment and the order dated 3.4.1985 passed by the Divisional Railway Manager, Northern Railway, Allahabad- Respondent no.3 dismissing his appeal be set aside and the Respondents be directed to promote him to the higher grade of Shuntman.

2. The facts of this case are that the Petitioner had joined the Northern Railway in 1972 as a Porter and in 1976 he was promoted as Shuntman Gr.'A'. On 22.11.1981 a report was lodged against the Petitioner and two other railway employees at the Police Station, GRP Tundla by the Station Superintendent (for short SS) that the Petitioner was in the habit of usually absenting from duty and he had reported this fact to the Respondent no.2 on that day. On account of that displeasure, the Petitioner along with his 3 companions armed with dandas entered his house at about 8.15 p.m. and gave a beating to him. Two of them were apprehended by the neighbours and handed over to the Police. The GRP prosecuted the Petitioner and two of his

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companions u/ss. 323/452 IPC and the Petitioner was also served with a charge sheet for this alleged misconduct by the Respondent no.2 and was placed under suspension.

3. It appears that the Petitioner and his companions settled the matter amicably with the SS and he and other prosecution witnesses became hostile and the Petitioner was acquitted of the charges ^{in the} of criminal case by the trial Court on 15.7.83. Even in the disciplinary proceedings conducted against the Petitioner only the SS was quoted as a witness and even there, he did not fully support his complaint against the Petitioner. The inquiry officer vide his report dated 20.9.1982, copy annexure 7, held that the Petitioner was guilty of absenting from duty from 9.11.81 to 11.11.1981 but the other two charges of giving the beating to the SS after entering into his house ~~was~~ were not found established. The disciplinary authority Respondent no.2, however, did not agree with the report of the inquiry officer and while disagreeing with him, observed in the impugned order dated 30.10.1982, copy annexure-8 that 'the inquiry officer failed to establish the charges, which he was aware, were correct and therefore, the Petitioner could not be exonerated from the said charges.' The Petitioner was accordingly awarded the punishment of stoppage of promotion for 5 years. In the departmental appeal preferred by the Petitioner to the Respondent no.3 he was given two notices of enhancement of penalty but later on ^{he} decided not to enhance the punishment ^{and} refused ^{to} interfere with the punishment awarded to the Petitioner by the Respondent no.2.

4. Aggrieved by the said orders, the Petitioner filed this writ petition with the allegation that before the inquiry officer, he had made a request to stay the disci-

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plinary proceedings till the criminal case pending against him was decided but the inquiry officer wrongly refused to stay the proceedings and the disciplinary proceedings were thus held ex parte and he has been denied the proper opportunity of defending himself and the inquiry held against him was in violation of rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as the DA Rules) and the impugned orders were passed by the Respondent nos. 2 and 3 mechanically without proper application of mind.

5. The Respondents have contested the case and in the counter affidavit filed on their behalf, it has been stated that the inquiry officer had afforded adequate opportunity to the Petitioner to defend himself but the Petitioner did not cooperate with him and deliberately absented despite sufficient opportunities afforded to him and the inquiry was held against the Petitioner according to law and the inquiry officer was not bound to stay the proceeding till the decision of the criminal case. It was further stated that the Petitioner has been rightly punished for the serious misconduct committed by him and there is no merit in his case.

6. After going through the record in the light of the submissions made before us, we find that the two impugned orders passed by the Respondent nos. 2 and 3 are cryptic and not in accordance with law. It has already been pointed out above that the inquiry officer did not find the Petitioner guilty of the main misconduct of giving beating to the SS Tunda by trespassing into his house in the night and he was merely found guilty of unlawful absence from duty for 3 days. On receiving the report of the inquiry officer the disciplinary authority could disagree with the finding of the inquiry officer as provided in Sub-rule (3) of Rule 10 of the DA Rules but for that purpose it was incumbent on his part to record reasons for such disagreement and he was also required to record his own finding

on such charge if the evidence on record was sufficient for the purpose. Instead of adopting the legal course open to the Respondent no.2, he used his own knowledge for holding him guilty and observed that 'he was personally aware the Petitioner along with four persons were unruly in the control office on 20.11.1981 at 10 p.m. and were handed over to the Civil Police Tundla. Action was taken against other staff as they were casual staff and DAR enquiry was initiated against the Petitioner. The inquiry failed to establish charge which he was aware was correct. Therefore, the Petitioner cannot be exonerated from the above charges and he is being awarded ~~with~~ the punishment of stoppage of future promotions for 5 years.' In this way, the Respondent no. 2 by importing his own personal knowledge about the subsequent conduct of the Petitioner had awarded punishment to him. He neither discussed any evidence on record nor recorded a finding based on evidence and merely on the basis of his own knowledge he found the Petitioner guilty, which was not permissible under Rule 10 of the DA Rules. It further appears that initially the Respondent no.3 in hot haste tried to award enhanced punishment to the Petitioner but ultimately he refused to interfere with the punishment order with the observation that the acquittal of the Petitioner by Court was due to lack of evidence and it could be no bar for departmental action and the punishment awarded to the Petitioner may stand. In this way, the appellate authority too did not keep in mind the provisions of R.22 of the DA Rules under which the appeal of the Petitioner should have been considered by him. In view of the peculiar features of this case, it was necessary for the appellate authority to see whether the procedure laid down in the rules was complied with, whether the findings of the disciplinary authority were warranted by the evidence on record and whether the penalty was adequate.

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In our opinion, the disciplinary authority did not care to examine the appeal of the Petitioner on the first two points and as such, ^{the} two orders, annexures 8 and 14, challenged by the Petitioner cannot be sustained in law.

7. The petition is accordingly allowed and the impugned orders dated 30.10.1982 and 18.7.1984 conveyed through letter dated 3.4.1985 are hereby quashed with liberty to the Respondents to proceed against the Petitioner afresh from the stage of Rule 10 of the Railway Servants (Discipline and Appeal) Rules, 1968. There will be no orders as to costs.

[Signature]

MEMBER (J)

Dated: July 4, 1989
kkb

[Signature]

MEMBER (A)