

Registration O.A.No. 37 of 1987

vs.

Respondents.

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

2. The relevant facts of this case in brief are that the applicant had joined the Railway service in 1949 and on 2.11.1985, he was posted as Station Superintendent at the Railway Station Sirathu in Allahabad Division of the Northern Railway. On that day, Sri R.L.Tewari, Traffic Inspector (for short TI) Fatehpur, who was deputed by the respondent no.1 to make a fact finding enquiry against the applicant in respect of one complaint of R.A.Singh, ASM and one other complaint, went to Sirathu and asked the applicant to show certain record and give his statement in connection with the said complaints. The case of the applicant is that R.A.Singh was got transferred by the applicant from Sirathu to non-commercial post of cabin at

12/2

7

Juhu and R.L.Tewari had made two other enquiries against him in the past and he being prejudiced against him, he did not expect justice from him and as such, he refused to cooperate with Sri Tewari and gave in writing to him that unless another inquiry officer is appointed, he will not allow the inspection of the record nor will give his statement. R.L.Tewari accordingly went back without making any inquiry and reported the matter to the respondent no.1 and also produced before him the note/objection given to him by the applicant. The applicant was accordingly served with charge sheet dated 18.11.1985 for the non-cooperation, as stated above.

3. In his statement of defence submitted by the applicant, it was stated by him that R.A.Singh ASM was transferred from Sirathu on his report as he had no knowledge of the commercial work and on account of his revengeful nature, he had concocted a false case against the applicant with mala fide intention. R.L.Tewari was tipped with heavy amount by R.A.Singh for getting his transfer cancelled and the integrity of R.A.Singh is more doubtful and he was also prejudiced against the applicant. R.L.Tewari is on inimical terms with the applicant as he did not cooperate with him in his over-time business and in the interest of natural justice, the inquiry be got conducted by some other official.

4. At a later stage of the inquiry, the applicant changed his stand and it was asserted by him that he had refused to cooperate with R.L.Tewari because

he had reached Sirathu without any prior information and had not shown his authority letter or any other document to convince him that he had come to make an inquiry against him and in this way, he had committed no wrong or misconduct. In the disciplinary proceedings, the applicant was found guilty of both the charges, i.e., his refusal to attend the enquiry and not making available the records for the inspection of the inquiry officer and by way of punishment he was accordingly reduced from the grade of Rs.550-750 ~~per month~~¹ to the lowest grade of Rs. 330-560 and was reverted as ASM at the initial pay of Rs.330 per month. The appeal preferred by him was rejected as the respondent no.2 did not find any ground for interference.

5. Despite sufficient opportunity, the respondents did not file any reply in this case.

A copy of the reply is shown to have been served on the learned counsel for the applicant and a rejoinder was filed on behalf of the applicant but the respondents thereafter neither appeared before the Tribunal nor filed any reply or its copy despite bringing this fact to the personal notice of the DRM Allahabad. In this way, we are unable to consider the defence of the respondents.

6. We have very carefully examined the material on record in the light of the submissions made on behalf of the applicant by his learned counsel orally and in writing. It was vehemently contended before us that the applicant was not informed of his intended visit by the inquiry officer R.L.Tewari in advance and as he was not in good terms with him and he had not shown any letter or authority in writing authorising him to make the inquiry and as he was a man of traffic

side he was not supposed to make an inquiry of the commercial side and as such, he committed no error by not extending his cooperation to him in the inquiry. It was also contended that the inquiry officer R.L.Tewari was working in a lower grade of Rs.550-750 and the applicant was in the grade of Rs.700-900 and as such, Sri Tewari was not expected to make an inquiry against him. It has also been contended that the punishment awarded to the applicant is highly unproportionate and he having rendered meritorious service of long 37 years was reduced at the lowest level only 4 days before his retirement falling on 30.6.86 and he has been deprived of his due pension and other retirement benefits on account of this punishment.

7. It is noteworthy to point out that the applicant did not challenge the validity or correctness of the appellate order ^{on any specific grounds} in his petition and the only allegation made in sub-para (T) of para 6 is that the applicant had submitted an appeal to the ADRM which appears to have been dismissed on 28.11.1986 as appears from the letter received from the office of the DRM. He has said nothing about the manner in which this appeal was disposed of by the appellate authority.

8. So far as the factum of the guilt of applicant is concerned, we are of the view that this Tribunal has not to reappraise the evidence on the basis of which the applicant was found guilty of the two charges levelled against him

13/5

10

and the only scope permissible in such cases is to see whether there was any evidence before the inquiry officer to come to the conclusion arrived at by him. The own documents of the applicant, we feel, speak volumes about his guilt. He admits that on 2.11.1985 when R.L.Tewari went ^{to} Sirathu for a fact finding inquiry, he had handed over his written objection to him. Annexure 2 is the copy of the said objection filed by the applicant himself. Though this document has not been correctly typed and there are several typographical errors in it to render it unintelligible, it can be broadly inferred from it that he refused to cooperate in the inquiry because the inquiry officer deals with all the staff of the section and justice could not be expected through him. The applicant had, therefore, requested that some commercial Inspector be deputed to hold the inquiry on commercial points before whom he will place all the records. This objection is conspicuously silent on the point that inquiry officer R.L.Tewari had no authority to make the inquiry or he had reached Sirathu without any prior intimation. Thus, only two grounds raised by the applicant on the relevant date and time were ^{that} the TI was dealing with all the staff of the Section and was not expected to do justice in the case and some commercial inspector be deputed to make the inquiry in respect of the points relating to commercial side.

8. The other important document is the statement of defence of the applicant, copy

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16

11

annexure 4-B, in which it was further stated by him that R.L.Tewari TI was not a man of integrity and he was heavily tipped by the complainant R.A.Singh. It was also stated by him that R.L.Tewari was on inimical terms with him and in the interest of natural justice the inquiry be got conducted through somebody else. Thus, in this statement as well, the applicant did not raise the two technical objections taken by him afterwards, perhaps, under legal advice to the effect that R.L.Tewari had not disclosed or shown any authority to make the inquiry against him and he had reached there without any prior intimation. We are not reappraising the evidence but by citing these two documents of the applicant himself, we have made out satisfaction that the finding of guilt recorded by the inquiry officer against the applicant is based on some evidence/admission and the same is not perverse. The Tribunal has, therefore, no jurisdiction to interfere with the said findings.

9. Regarding the punishment we, however, find ourselves unable to agree with the approach of the departmental authorities. Some of the main points which could arise for consideration for awarding the punishment to the applicant may be enumerated below :-

(1) whether there was really any technical difficulty for a person of traffic side to inquire into the allegations in respect of the points of commercial side and a proper and correct inquiry was not expected from a TI into the points raised in the complaint against the applicant despite his being an upright and independent person?

(2) whether TI R.L.Tewari was on inimical terms with the applicant and was not expected to be fair in the inquiry against the applicant?

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7

(3) whether R.L.Tewari TI was the man of the complainant R.A.Singh or he was a man without integrity or whether there were complaints against his integrity on account of which a just and fair inquiry was not expected from him?

(4) whether R.L.Tewari entrusted with the fact finding inquiry was working in a grade lower than the grade of the applicant and on that ground was not expected to be deputed to make inquiry against the applicant under the specific rules, practice or norms of the Department followed in such matters?

(5) whether the refusal of the applicant to cooperate with R.L.Tewari TI in the fact finding inquiry was bonafide due to any of the reasons stated above?

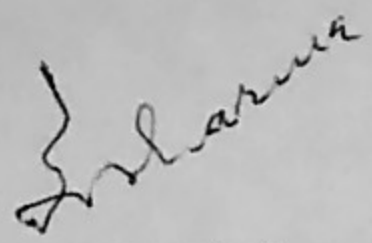
(6) whether the non-cooperation at the time of fact finding inquiry was made by the applicant with a mala fide intention to gain time so as to bring the official record in order and to think about his defence coolly after due thinking and consideration, and

(7) whether the allegations made in the complaint (s) against the applicant were of serious nature and on their being established, the applicant could be awarded any severe punishment including the one awarded to him in the present inquiry ?

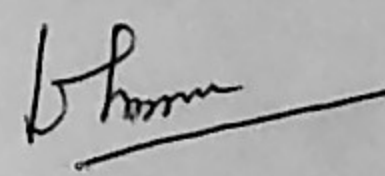
10. We are of the view that in case the refusal or non-cooperation of the applicant before R.L.Tewari on 2.11.1985 was bonafide, we have no doubt in our mind about the fact that the punishment awarded to him is highly excessive. Even in the regular inquiries as well as before the Courts of law, the parties express their dissatisfaction and ^{make} request for a change of the inquiry officer and the Court. On the other hand, if the applicant had adopted this attitude with some malafide intention, still it has to be seen whether the punishment awarded to him at the fag end of his career is reasonable

and not unproportionate or harsh. The established law is that the Tribunal should ordinarily not interfere even in the matters of punishment and as in the present case the question of punishment depends upon certain other facts, which perhaps escaped the notice of the respondent nos. 1 and 2, we have, therefore, no other option but to refer the matter to the appellate authority for doing the needful now.

11. The petition is accordingly allowed in part and the order dated 28.11.1986 passed by the respondent no.2 in appeal is hereby set aside and the respondent no.2. is directed to decide the appeal of the applicant afresh after giving him an opportunity of personal hearing keeping in view the observations made in the body of this judgment within a period of 4 months from the date of the receipt of this order. We further direct that the parties shall bear their own costs.


MEMBER(J)

Dated: 13.2. 1989
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MEMBER(A)