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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...

Registration O.A. No. 559 of 1987

Bal Mukund Rawat ... ... Applicant.

Versus

Additional Divisional Railway Manager
and three others ... ... Respondents.

Hon'ble Mr. Justice K.Nath, V.C.

This application under Section 19 of the Administrative Tribunals Act, 1985 is for quashing the order of punishment dt. 10.01.1986 (Annexure- A4) enhanced by the appellate order dt. 25.09.1986 (Annexure-A6), the latter being confirmed by order dt. 9.3.1987 (Annexure-A8).

2. The applicant was working as monthly rated casual labour, driver of Trolley. The I.O.W. respondent no. 4 under whom he worked, issued a minor penalty charge-sheet dated 24.12.1985 (Annexure-A 1) on the ground that on 17.12.1985 the applicant had refused to work on his Trolley and had hurled abuses in the presence of the Assistant Engineer, respondent no. 3.

3. The applicant submitted a reply (Annexure- A 2) dated 2.1.1986 that there was no question of refusing to work, because job of driving any vehicle hardly required any physical labour, and that the charge-sheet did not mention the name of the person whom he had abused or misbehaved.

4. The respondent no. 3, Assistant Engineer, on the consideration of the applicant's reply (Annexure-A 2) passed the punishment order dated 10.1.1986 (Annexure-A 4), recorded that he did not find applicant's representation

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to be satisfactory, therefore, held him guilty of the charge of refusing to do work and of misbehaviour with superiors. The respondent no.3 imposed the punishment of stopage of one increment at the stage of Rs. 278/- due on 3.2.1986 for the period of one year without cumulative effect.

5. The applicant preferred an appeal to the Senior D.E.N. who dismissed the appeal of the applicant by order dated 29.5.1986 (Annexure- A 6) and also enhanced the punishment of stopage of increments for 3 years without cumulative effect. A further appeal by the applicant to the A.D.R.M. was rejected by order dated 9.3.1987 (Annexure- A 8).

6. Sri V.K. Goel has appeared on behalf of the respondents. Respondents have not filed counter affidavit. Sri S.P.Chakrawarti appeared on behalf of the applicant. I have heared the learned counsel of both the parties and have gone through the records.

7. The first point raised by the learned counsel for the applicant is that the proceeding of enquiry and punishment was concluded by respondent nos. 3 & 4 who themselves were involved in the matter and,therefore, were disqualified to take the decision on the charges. The incident, according to the applicant, occurred in the manner stated in para 6.3 and 6.4 of the original applica-tion. It is stated that hot exchange of conversation took place between the respondent no. 3 and respondent no. 4 in the matter of the use of vehicle which the applicant was expected to drive. It is stated that the

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applicant was under the direct supervision and control of the I.O.W. and, therefore, he had to obey the orders of the I.O.W., although, those orders were contrary to the orders of the respondent no. 3, the Assistant Engineer under whose sub-ordination the respondent no. 4 worked. The contention is that the applicant was the victim of the controversy between the respondent nos. 3 & 4 and, therefore, he was made a scapegoat out of the affairs. The question concerns propriety rather than legality. The competence of respondent no. 4 to make the charge-sheet and of respondent no. 3 to impose the punishment is not in doubt, so far as the powers which vest in them are concerned. The point raised is that since the matter was the disobedience of the orders of the respondent no. 3, he should not have passed the punishment order. I do not think that in a petty matter like,this, the competent disciplinary authority should be disqualified simply because it is his own order which had been dis-obeyed. The important fact is that the dis-obedience of the orders of the respondent no.3 in order to obey the orders of the respondent no.4 is conceeded in para 6.4 of the O.A. That being so, there is nothing illegal for the respondent no.3 in passing orders in the enquiry. It is worth mentioning that in his reply (Annexure-A2) to the charge-sheet, the applicant had not take the stand which is set up in para 6.3 and 6.4 of the O.A.; the stand taken is that the job of driving any vehicle hardly required any physical labour and, therefore, there was no question of his refusing to work. This plainly conflicts with the statement in para 6.4 that the applicant had to obey the orders of the immediate superior rather than of the superior to the superior.

8. The next point raised is that a full dress enquiry should have been instituted and the mere holding of minor

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penalty proceeding was not justified. . The counsel for the applicant seems to re-ly upon some decision of the Kerla High Court, set out in para 9.7 of the O.A. A=part from the fact that the decision is not before me, the material feature is that the punishment of withholding only one increment for one year was given and,therefore, having regard to the provisions of Rule-11 (i) (b) and Rule-11(2) of the Railway Servants (Discipline & Appeal) Rules, 1968, the authorities were not bound to hold a regular enquiry. Rule-11(1) (b) says that a full dress enquiry may be held in every case in which the disciplinary authority is of the opinion that such enquiry is necessary. There is nothing to do so that the disciplinary authority framed a opinion that in the present case a full dress enquiry should be conducted. Further Rules-11 (2) requires a full dress enquiry to be held in cases of punishment of withholding increments only if such withholding would affect adversly the amount of pension or special contribution to Provident Fund or where increments are withheld for a period exceeding 3 years or for any period with cumulative effect. The punishment awarded in this case does not fall into any of these categories and, therefore, there was no mandatory requirements for the department to held a regular enquiry as for a major penalty.

9. The third point raised by the learned counsel for the applicant is that the punishment order does not contain reasons for the finding of guilt. The counsel for the respondent pointed out that in the minor penalty matter, rule-11 (1) (a) only requires the delinquent Railway Servant to be informed in writing of the proposal

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to take action against him and of the imputation of mis-conduct and misbehaviour with a reasonable opportunity of making representation . Further under Clause-C of Rule-11(i) that the disciplinary authority is entitled to consider the representation, if any, submitted by the delinquent Railway Servant and thereafter, under Claus-D of that sub-rule recorded, 'a finding on each imputation of mis-conduct or mis-behaviour'. The learned counsel laid emphasise on the word 'Finding' in Claus-D and says that so long as findings are recorded, absence of reason may not vitiate the findings. In this connection, reference is made to Annexure-A3, a circular issued by the D.R.M. to all officers of the Jhansi Division in which it is stated that in cases of minor penalty, reasons recorded by the disciplinary authority while passing the final orders have to be communi-cated to the employee. This signifies that if reasons are recorded, they must be communicated along with the orders. Normally, it is expected that findings should be supported by the reasons because reasons are the material through which the findings are arrived at, but in petty cases like this, if the material exists which should support the findings, the mere omission to record the reasons would not vitiate the findings.

10. I think that in these circumstances, the respondents failure to record reasons for the findings , should not be enough to vitiate the findings.

11. The last point urged by the learned counsel for the applicant is that the enhancement of punishment contained in appellate order dt. 25.9.1986 (Annexure- A 6)

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is invalid because opportunity to show cause against the proposed enhancement was not given. There is substance in this contention. There is nothing to show in Annexure-A 6 that an opportunity was given to the applicant to show cause against the proposal to increase the punishment from stoppage of increment of one year only, to 3 years. As already mentioned, no counter has been filed; even the record has not been produced. I am satisfied, therefore, that the appellate order (Annexure-A 6) dated 25.9.1986 as also further appellate order (Annexure- A 8) dated 9.3.1987, confirming Annexure- A 6 can not be sustained. The application is partly allowed, and while the impunged orders dt. 25.9.1986 (Annexure-A 6) and 9.3.1987 (Annexure- A 8) are quashed, the initial punishment order dated 10.1.1986 (Annexure- A 4) is sustained.

12. It is directed that the respondents shall refund so much of the amount of increments to the applicant which may have been recovered from him under orders (Annexures- A6 & A 7). The respondents shall proceed as if orders (Annexures - A6 & A 7) were never passed. Parties shall bear their costs.

25/7/91
Vice-Chairman

Dated: 25.7.1991

(n.u.)