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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

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Registration (O.A.) No. 814 of 1987

Udai Bhan Singh	....	Applicant.
Versus		
The General Manager, N.E. Railway, Gorakhpur & another	....	Respondents.
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Hon'ble D.K. Agrawal, J.M.  
Hon'ble K. Obayya, A.M.

(Delivered by Hon. D.K. Agrawal, J.M.)

This application under Section 19 of the Administrative Tribunals Act, 1985 is directed against an order passed by the Divisional Railway Manager, North-Eastern Railway, Gorakhpur, dated 26/29.6.1987 rejecting the appeal and confirming the punishment of removal from service.

2. Briefly, the facts are that the applicant, viz. Udai Bhan Singh, while working as Fireman in Loco Shed, Gonda, was served with a charge-sheet of major penalty. As a result of enquiry he was found guilty. The disciplinary authority agreeing with the report of the Enquiry Officer (EO) inflicted punishment of removal from service, vide order dated 23.3.1983. The delinquent employee preferred an appeal, which was decided vide order dated 8.7.1983. The appellate authority, while disposing of the appeal within the meaning of Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968, observed as follows :-

"In view of the apology tendered by Sri Udai Bhan Singh at page 131, I have decided to show some leniency towards him.

He may be re-employed as a cleaner in MLN Loco Shed and his pay fixed at the minimum of the scale."

Not satisfied with the order of the appellate authority, the delinquent employee filed Suit No. 1706 of 1983 in the court of Munsif,

*DK Agrawal*



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Gorakhpur, which was transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985 and registered as T.A. No. 356 of 1986; decided on 17.12.1986. The Tribunal found that the enquiry was conducted in accordance with the rules and principles of natural justice. However, it was held that the appellate authority had not passed an order in accordance with the provisions of Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968 (or short called as 'DA Rules' only). Therefore, the appellate order was set aside. The appellate authority was directed to either confirm or set aside the order of penalty or pass an order of reduction in rank, as it so likes. Thereafter, the appellate authority passed the impugned order dated 26/29.6.1987.

3. We have heard the learned counsel for the parties and perused the record. Four grounds have been set up in the claim petition -

- (a) The order is not in accordance with the provisions of law.
- (b) No reasons have been advanced.
- (c) No reasons have been given as to why the applicant is not fit to be retained in service.
- (d) The order is mala fide.

On a perusal of the impugned order we find that the order is in accordance with the provisions of Rule 22(2) of DA Rules. The reasons have been given, inasmuch as the appellate authority considered that the charge against the applicant was serious and that it did not deserve any leniency. We do not find any material to hold that the order was either mala fide. Read with the order of the appellate authority passed earlier on 8.7.1983, it is clear that the applicant had offered apology for his misconduct. Thus the finding recorded by the EO was impliedly accepted by the delinquent employee.

4. In the circumstances, we do not find any legal lacuna in the order passed by the appellate authority. We may further

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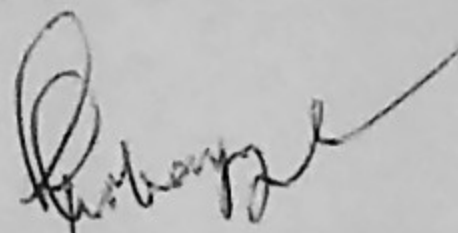
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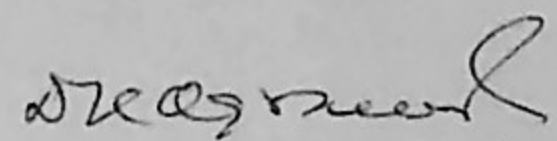
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add that once the misconduct of the delinquent employee has been proved, the measure of punishment rests solely with the disciplinary authority or the appellate authority. The Tribunal has no jurisdiction to interfere with the quantum of punishment. In our opinion the scope of the case, after remand, was limited. The appellate authority was required only either to modify the order or to confirm the order of punishment inflicted by the disciplinary authority. The Tribunal had already recorded a finding that the enquiry was in order. If so, the only question was whether the appellate order was framed in accordance with Rule 22(2) of DA Rules. Thus, we do not find any scope for interference with the impugned order.

5. In the result the application is dismissed without any order as to costs.

  
MEMBER (A).

  
21.12.90  
MEMBER (J).

Dated: December 21<sup>st</sup>, 1990

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