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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH?ALLAHABAD

Original Application No: 1403 of 1988

Bhajju Singh Applicant.

Versus

Union of India & Ors. Respondents.

Hon'ble Mr. S.Das Gupta, Member-A

Hon'ble Mr. T.L.Verma, Member-J

(BY Hon'ble Mr. T.L.Verma, J.M.)

This application under Section 19 of the Administrative Tribunals Act has been filed for setting aside order dated 29.1.1988 (Annexure-1) imposing punishment of stoppage of increment for a period of two years without cumulative effect.

2. The facts giving rise to the present application shortly stated are that the applicant Bhajju Singh was posted as Conductor under the control of Divisional Superintendent Northern Railway Moradabad in October, 1986. He was served with a memo along with chargesheet under Rule 11 of the Railway Servants (Discipline & Appeal Rules) on the allegation that as per the duty assigned to him as Conductor in 157 UP on the night in between 12/13.10.1986 from Lucknow to Moradabad, he was required to supervise reserved coach Numbers S6, S7 & S8 and take necessary steps for deputing adequate number of TTEs to manage those coaches and that he did not depute any TTE to look after the above reserved coaches. The disciplinary authority found the charge framed against the applicant as proved ^{and} accordingly ordered that his

one increment be withheld for a period of 2 years without any cumulative effect. He preferred an appeal against the order imposing/penalty. The appeal however, had not been disposed of at the time of filing of this application. The applicant has assailed the impugned order ~~on the interalia~~ on the ground that the disciplinary authority did not consider the representation dated 19.1.1988 filed by the applicant and passed the punishment order in arbitrary manner and that the provisions of Rule 11 sub Rule (2) of the Railway Servants (D&A) Rules 1968 have not been complied with.

3. The respondents have resisted the claim of the applicant and have averred that neither any provision of the DAR Rules nor principles of natural justice have been violated in holding the inquiry against the applicant and that the application in the present form is not maintainable.

4. We have heard the rival contentions and perused the record. For proper appreciation of the arguments advanced by the learned counsel for the applicant, a brief reference to the facts leading to the initiation of departmental proceeding against the applicant are necessary. A complaint was received from a passenger who was travelling by 157 ~~MP~~ from Varanasi to Delhi in Coach No. 12055 with family on Berth No. 51, 61 & 62 ~~reserved in express~~. He complained that there was no Conductor to manage the said coach as a result, the coach was overcrowded as an ordinary coach and that at Moradabad, one TTE came who, after

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collecting Rs. 5 from the unauthorised persons, got down. On receipt of the above complaint a Fact finding Inquiry was held in which, it was found that on the night in between 12/13.10.1986, the petitioner worked as Conductor in 157 UP from Lucknow to Delhi and as per his duty, he was to supervise the reserved coaches No. S6, S7 & S8 and that he did not depute any TTE to manage the said coaches despite instructions that in the event of shortage of staff, a TTE can be deputed to manage more than one coach. Chargesheet (Annexure-2) was accordingly, served on him. He was called upon to submit his written statement of defence. The disciplinary authority on a consideration of the representation filed, came to the conclusion that the applicant had failed in his duty inasmuch as he did not depute any TTE to manage the said coaches.

5. Since the memo along with chargesheet was served on the applicant for minor penalty, regular inquiry as envisaged for imposing major penalty was not necessary. The only charge framed against the applicant was that he had not deputed TTEs to manage reserved coach Nos. S6, S7 & S8. Deputation of the TTEs for managing reserved coaches are issued in writing. It is presumed that the disciplinary authority ~~imp~~ must have examined the relevant records before arriving at the conclusion that the applicant was guilty of the charge framed against him. The copy of the Written Statement of defence submitted by the applicant on chargesheet being served upon him is Annexure-3 to the application. From the perusal

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of written statement of defence, it appears that he has made only a vague statement that one Shri Gurdeep Singh, TTE, had been deputed for supervising the reserved coaches under Reference. Vague suggestions have been made in the penultimate para of the explanation that Gurdeep Singh refused to attend the coach. Copy of the memo of the appeal filed against the punishment is Annexure-4 to the application. From Memo of the appeal, it is clear that the applicant had at one stage admitted that the coach was running unmanned and ~~xxx~~ seems to have subsequently retracted the statement and asserted that the coach had been allotted to Shri Gurdeep Singh. It would thus appear that both the statements of the applicant were before the disciplinary authority. The disciplinary authority cannot be said to have arrived at the conclusion that the applicant, ~~xxx~~ by omitting to depute some TTE for managing unreserved coaches S6, S7 & S8 has committed dereliction of duty without support of the material on the record. There is, therefore, no reason to interfere with the punishment awarded against the applicant in the departmental proceeding.

H 6. Coming to the argument that mandatory ~~rule of 10~~ ~~provisions~~ of the provisions of Rule 11 sub Rule 2 of ~~have not been complied with,~~ DAR Rules, it may be stated that according to this Rule, the disciplinary authority after considering the written statement of defence may, if it is proposed to withhold increment of pay for a period exceeding 3 years or to

withhold of increment of pay with cumulative effect for any period or if the penalty of withholding the increment is likely to affect adversely the amount of pension or special contribution to the Provident Fund payable to the Railway servant, an inquiry shall invariably ^{be} held in the manner as laid down in sub Rule 6 to 25 of Rule 9 before making any order imposing on the Railway servant any penalty. It is apparent from the impugned order that the increment of the applicant has been ordered to be withheld for a period of 2 years without cumulative effect. This will neither adversely affect the amount of pension nor special contribution to the Provident Fund. Thus, case of the applicant is not covered by the provisions of Rule 11 sub Rule 2 of the DAR Rules, as may have necessitated ~~of~~ holding of regular inquiry. There is thus, no substance in the argument of the learned counsel for the applicants that there has been noncompliance of the mandatory provisions of the DAR Rules in conducting the departmental proceeding.

7. The applicant has filed this case against the order passed by the disciplinary authority whereby his next increment was withheld for a period of 2 years without cumulative effect. He had filed appeal against the said order before the appellate authority. The said appeal was pending at the time, this original application was filed. The appeal has since been decided by order dated 2.8.1988 and the penalty imposed has been moderated to stoppage of increment for 6 months. The final order passed in the departmental proceeding thus is that of the appellate authority passed on 2nd of August, 1988. The applicant has admitted

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in his Rejoinder that the appeal has been decided.
In the normal course, the ~~applicant~~ should have amended
his relief and impugned the order passed by the appellate
authority. This, not, having been done, we are of the
view that, we cannot interfere with the order passed
by the appellate authority. In any view of the matter,
this application even otherwise has no merit as may
warrant interference by the Tribunal.

8. On a consideration of the facts and circumstan-
ces of the case discussed above, we find that there is
no merit in this application and the same is accordingly
dismissed. There will be no order as to cost.

Sharma
Member-J 28.7.94.

W.R.
Member-A

Allahabad Dated:

/jw/