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(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD.

Original Application No. 563 of 1988.

Ashok Kumar Pandey Applicant.

Versus.

Union of India & others Respondants.

Coram:

Hon'ble Mr. A.K. Sinha, Member (J).,

Hon'ble Mr. V.K. Seth, Member (A).

J U D G M E N T

(By Hon'ble Mr. A.K. Sinha, Member (Judicial)).

The applicant herein, who is a Enquiry and Reservation clerk at Allahabad, was issued charge sheet as per Annexure A-2 alleging that he had committed the following acts of misconduct.

- " 1. He dealt with a party of 80 persons from inside the reservation office unauthorisedly, because he was not supposed to handle the money transaction being not on counter duty. Obviously he dealt with the party for some monetary consideration.
2. He prepared BPT No.780297/98 for Rs.4284/- and Rs.969/-respectively (Total amount Rs.5253/-) without realising the full amount from the party which is most irregular.
3. He connived with Shri Sesh Mani, RC/Allahabad and took away Rs.50/-from his Govt.Cash to avoid his Govt.Cash being excess and thereafter concocted a story to cover up his mischievous action thereby attempted to misguide the Vigilance team with intention to cover up the illegal money of Shri Sesh Mani, RC/Allahabad."

49 The alleged misconduct on the part of the applicant was said to have occurred on 9.4.85 while on duty as such.

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2. The applicant gave his reply denying the charges levelled against him on 1.6.85 as per Annexure A-3. An Enquiry Officer was appointed, who held the inquiry and submitted his report, holding that the charges nos.1 & 3 were not proved but only charge no.2 was proved against the applicant vide Annexure A-11. Copy of the said report was duly served on the applicant. The Disciplinary Authority, while considering the enquiry report, agreed with the findings of the enquiry officer, and held that the applicant by his acts of omission and commission failed to maintain absolute integrity, displayed lack of devotion to duty and acted in a manner which is unbecoming of a Railway servant and he thereby contravened Rule No.31(i)(ii)(iii) of the Railway Service(Conduct) Rules, 1966, and imposed penalty of withholding of increment ^{with effect of postponing of future increment} for a period of two years. (vide Annexure A-12). The applicant challenged the said order by way of Appeal as per Annexure A-13 and the Appellate Authority while agreeing with the Disciplinary Authority held that there was no ground for reconsidering the case and, as such, rejected the appeal vide Annexure A-14 dt.4.11.87. It is in this background that the applicant has come up with this original application under Section 19 of the Administrative Tribunals Act, 1985 in which he has sought the following reliefs:

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- " (a) Declare that the order dated 4.11.87 (Annex.A-14) passed by the Senior Divisional Commercial Superintendent, Northern Railway, Allahabad and the order dated 16.4.87 (Annex.A-12) passed by the Divisional Commercial Superintendent, N. Rly. Allahabad, are illegal, bad, void, unjustified and arbitrary and not binding on the applicant;
 - (b) Issue direction to the respondents not to give effect to the said order and grant to the applicant all the privileges, pay, promotions and other benefits from due date treating as if the said orders had not been passed and also direct the respondents to pay the amount withheld or deducted under the aforesaid orders.

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The above two reliefs claimed by the applicant are the main reliefs and the rest are general and for costs.

3. The main thrust of argument for the applicant is that the B.P.T. (Blank Paper Ticket) was handed over to the party concerned only after realising the full amount and as such there was no default on the part of the applicant in discharge of his duty and further there was no breach of any rule by the applicant. It was submitted that the preparation of BPT in the circumstances of the facts of the case was neither misconduct nor any dereliction of duty nor did it reflect upon the integrity of the applicant. It was further submitted that the impugned orders punishing the applicant and dismissing the appeal of the applicant do not disclose any reasons for so doing and the orders are not speaking order and, as such, they are fit to be quashed.

4. The respondents have appeared on notices and filed their written statement/counter affidavit and on amongst other grounds, they have denied the allegations of the applicant and stated inter-alia that the entire disciplinary proceedings conducted against the applicant was in accordance with law and principle of natural justice and the applicant was given fair and reasonable opportunity to place his defence and examine his witnesses. It was further submitted that at the appellate stage also the applicant was given personal hearing on 3.8.87 and after considering the facts and circumstances, the Appellate Authority passed speaking order and as such it cannot be said that the order was bad in law. On all these grounds, it has been sought to be urged that the application has got no merit and fit to be dismissed.

5. The applicant has also filed his rejoinder on 6.12.89 which we have perused and which in pith and substance reiterates his submissions which are contained in his

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his original application.

7. We have heard the learned counsels of the parties and their pleadings together with the relevant documents annexed and given our anxious considerations to the submissions. We are of the view that the disciplinary proceedings conducted against the applicant in respects of the charges was conducted in accordance with the rules and the enquiry officer had given full and fair opportunity to the applicant to place his defence and as a matter of fact even the defence witnesses were examined and their evidence too were considered by the enquiry officer who arrived at the findings of facts on the charges and submitted his report to the disciplinary authority who on consideration of the findings of facts awarded minor punishment to the applicant for his misconduct by stoppage of increment for two years with effect of postponing future increments. In appeal preferred by the applicant, the appellate authority gave personal hearing to the applicant and after considering the the enire facts and circumstances agreeing with the disciplinary authority rejected the appeal vide Annexure A-14 dt. 18.5.87.

8. Where, however, there is no defect or any patent illegality or irregularity shown in respect of the departmental enquiry held against the applicant who was given full and fair opportunity to defend his case and where the enquiry officer, on consideration of the evidence adduced by the parties, came to certain findings, which were arrived at on proper appreciation of the facts and circumstances, of the case, and where the disciplinary authority on consideration of the report of the enquiry officer, a copy of which along with the copy of the day to day proceedings was already served/given to the applicant by the enquiry officer, while agreeing with the findings of the enquiry

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enquiry officer, imposed minor penalty, on the applicant, of withholding his increment for two years with effect of postponing the future increments and that on appeal preferred against the said penalty, the appellate authority, while considering the facts and circumstances and giving personal hearing to the applicant, dismissed the appeal on merit, and, therefore, in such circumstances, we are of the view that this Tribunal cannot go into the merit of the disciplinary proceedings and reevaluate or appreciate the evidence adduced by the parties before the enquiry officer/disciplinary authority or the appellate authority. In that view of the matter, we do not find any infirmity or illegality or any irregularity in the departmental proceedings conducted against the applicant.

9. The learned counsel for the applicant submitted that the order of the original and appellate authority are not speaking orders. So far the order of the disciplinary authority imposing minor penalty of withholding his increments for two years with effect of postponing future increment is concerned, as the said authority had agreed with the findings of the enquiry officer, he was not required to elaborately repeat the very reasons given in the report of the enquiry officer. So far the appellate order is concerned, on perusal of the same, we find that apart from giving personal hearing to the applicant, the appellate authority considered the facts and circumstances and passed a speaking order imposing in confirmation the punishment imposed by the disciplinary authority against the applicant. That being the position, the question of examining the merit does not arise.

10. One thing, however, we feel it necessary to mention that the enquiry officer had found and recorded in

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clear and unequivocal term that 'the BPT was made over to the party only after collection of full amount. But the charged officer (the applicant) had prepared the BPT without realising full amount before hand which was not correct'. And on that misconduct, the penalty was imposed on the applicant. We feel, in the facts and circumstances of the case, that the quantum of punishment, though it is for minor offence, ^{is a little harsh on him} is not commensurate with the gravity of the omission or commission on the part of the applicant. In that view of the matter, the penalty imposed on the applicant by the impugned order contained in the appellate authority's order (Annexure 14) is hereby set aside and the case is remitted back to him for reconsideration of the quantum of punishment after giving personal hearing to the applicant and this process should be completed within a period of three months from the receipt of the copy of this order.

11. With this observation, this application is disposed of. There will be no orders as to costs.

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Member (A).

Allahabad:
Dated, September 7, 1993.

Member (J).
7-9-1993.