

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

D.A. NO.: 899 of 1970
T.A. NO.:

DATE OF DECISION: 31/5/95

Suresh Kumar ----- PETITIONER(S)

----- Sri S.N. Srivastava ----- ADVOCATE FOR THE
PETITIONER

VERSUS

----- VO and others ----- RESPONDENT (S)

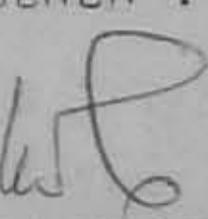
----- Sri A.K. Chaur ----- ADVOCATE OF THE
RESPONDENTS

COURT

The Hon'ble Mr. Justice B.C. Saksena, VC

The Hon'ble Mr. S. Das Gupta, AM

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether to be circulated to all other Bench ?


SIGNATURE

FINISH

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

O.A. No. 899 of 1990

Dated: 31 May, 1995

Hon. Mr. Justice B.C. Saksena, V.C.
Hon. Mr. S. Das Gupta, Member (A)

Suresh Kumar son of Sri Parmanand,
Enquiry-cum-Reservation Clerk,
Northern Railway, Railway Station,
Varanasi Cantt. APPLICANT.

(By Advocate Sri S.N. Srivastava)

Versus

1. Union of India.
2. Railway Board, Rail Bhavan, New Delhi, through the Chairman.
3. The G.M. Northern Railway, Baroda House, New Delhi.
4. D.R.M. N. Rly, Hazratganj, Lucknow Respondents.

(By Advocate Sri A.K. Gaur)

O R D E R

(By Hon. Mr. S. Das Gupta, Member (A))

The applicant was initially appointed as 'Coaching Clerk' in the year 1977. On 23.5.1983, when he was working on a reservation counter, a trap was laid on the suspicion that he was demanding illegal gratification for reservation of ~~berth~~ ^{berth} ~~box~~ on Dadar Exp. or Mahanagri Exp. It is alleged that certain sum of money which was handed over to him as illegal gratification was recovered from him and, therefore, he was suspended on 24.5.1983

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The suspension was subsequently revoked on 7.7.1983 and later charge-sheet dated 18/22.11.1983 was served on him. An inquiry was conducted and the inquiry officer came to the conclusion that the charges levelled against the applicant were not established. Thereupon, the disciplinary authority ~~dropped~~ ^{dropped} the matter. However, on 26.10.1988, the G.M. Northern Railway (respondent no. 3) served a notice on the applicant to show cause why the penalty of removal from service should not be imposed on him. The applicant submitted reply to the show cause notice and thereafter by the order dated 4.10.1989(Annexure- 1) the applicant was removed from service. The applicant submitted an appeal to the Chairman, Railway Board and the same was rejected by the Member, Railway Board whose order in this regard was communicated to the applicant by the D.R.M. by his letter dated 28.6.1990 (Annexure- 1 B). The applicant, thereafter, filed an O.A. under Section 19 of the Administrative Tribunals Act seeking the relief of quashing of the impugned order dated 4.10.1989 and also the appellate order communicated by the letter dated 28.6.1990 and to reinstate the applicant in service with full wages and other benefits.

2. The applicant's case is that he has been falsely implicated in this case as a result of some dispute ^{with} ~~that~~ one Rajesh Kumar Gautam and that

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one Sunil Kumar in collusion with the aforesaid ^{wanted} person implicated the applicant falsely. It is stated that the said Sunil Kumar wanted to get reservation in the Kashi Dadar Exp. for 25.7.1983. He handed over reservation form along with money to the applicant. The applicant on checking that there was no seat on that train tried to return the money. However, as a result of a ^{pre-planned} conspiracy hatched by the said Rajesh Kumar Gautam stated to be a political leader, the applicant was falsely implicated in a case of receiving illegal gratification. The applicant has further contended that the main witness in this case i.e. Sunil Kumar was not examined as he never appeared before the inquiry officer and, therefore, the inquiry officer's findings were not justified. The disciplinary authority had rightly ^bdroped the proceedings against him and the respondent no. 3 had no jurisdiction in passing the revisional order as the proceedings were initiated beyond the period of limitation. It is also the case of the applicant that the respondent no. 3 ^{did} not consider the statement of ^asingle witness examined during the inquiry; that he failed to notice that the main witness could not be produced despite all efforts and that he ^{do} not record any reason in support of his conclusion that a penalty of removal from service ^{Narrated} was wanted in this case. Moreover, he has not disclosed recorded any reasons for disagreement with the inquiry officer. The appellate order also has been challenged on the ground of lack of application of mind.

3. The respondents have filed a counter affidavit in which it is submitted that during the trap laid by the C.B.I. an amount of Rs. 130 out of Rs. 150 tendered by the ~~Decoy~~ Passenger, Sri Sunil Kumar, was accepted by the applicant as illegal gratification and the same was recovered from him. He was taken in police custody and, therefore, ~~is~~ placed under suspension. The applicant made a representation stating that he was never in police custody but was taken to the hospital and while under treatment, ~~he~~ was released on bail. After considering the circumstances of the case, the disciplinary authority revoked his suspension. It has been stated that the case against the applicant does not fall merely on the ground that the complainant could not attend the inquiry. The respondent no. 3 was competent to review the entire matter and after considering the reply of the applicant to the show cause notice, passed ~~the~~ speaking order removing him from service.

He has recorded the reasons why he considered the imposition of penalty of removal to be appropriate in this case. It is stated that the respondent no. 3 was fully competent to review the entire matter and imposed the penalty on him. ^{As} regards the appellate order, it is stated that the same was passed after considering all the facts.

4. The applicant has filed a rejoinder affidavit reiterating the contentions made in the original affidavit.

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5. We have heard the learned counsel for the parties and have carefully gone through the pleadings of the case.

6. We have seen from the records that the inquiry officer after considering the evidence on record came to the conclusion that the charges against the applicant were not established and thereupon the disciplinary authority dropped the proceedings. The G.M. Northern Railway, who is the respondent no. 3, ^{Revisional} however, invoked his powers under Rule-25 of the Railway Servant(Discipline & Appeal) Rules, 1968(D& AR for ~~@@@~~ short) and issued a notice to the applicant to show cause why the penalty of removal shall not be imposed. The relevant provisions of Section 25 reads as follows;

25. Revision (1) Notwithstanding anything contained in these rules;

(i) the President, or

(ii) the Railway Board, or

(iii) the General Manager of a Zonal Railway or an authority of that status in any other Railway unit or Administration , in the case of a Railway Servant under his or its control, or

(iv) The appellate authority not below the rank of a Deputy Head of the Department or a Divisional Superintendent in cases where no appeal has been preferred, or

(v) any other authority not below the rank of a Deputy Head of Department or a Divisional superintendent, in the case of a Railway servant serving under its control .

May at any time, either on his or its own motion or otherwise, call for the records of any inquiry and revise any order made under

② these rules or under the rules repealed by rule 29 and may, after consultation with the commission where such consultation is necessary;

(a) confirm, modify or set aside the order; or
(b) confirm, reduce, enhance or set aside the penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit;

provided that—

(a) no order imposing or enhancing any penalty shall be made by any revising authority unless the Railway Servant has been given reasonable opportunity of making a representation against the penalty proposed;

(b) where it is proposed to impose any of the penalties specified in clauses (v) to (ix) (both inclusive) of Rule-6 or to ~~add~~ enhance the penalty imposed by the order under revision, to any of the penalties specified in these clauses, subject to the provisions of Rule 14, where no enquiry in the matter laid down in Rule- 9, has already been held no such order shall be passed except after consultation is necessary and unless such inquiry has been held, and

(c) subject to the provisions of Rule- 14, the revising authority shall—

(i) where the enhanced penalty which the revising authority proposes to impose, is the one specified in clause (iv) of Rule 6 and f.

within the scope of the provisions contained in sub- rule (2) of Rule 11 ; and

(ii) where an inquiry in the manner laid down in Rule 9, has not already been held in the case.

Itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry, pass such orders as it may deem fit;

7. It is clear from the above that the G.M. Northern Railway was fully competent under these Rules to revise the order passed by the disciplinary authority. The inquiry was already held in this case and, therefore, no further inquiry was required. The applicant was to be given a reasonable opportunity of making a representation against the penalty proposed. This condition was fulfilled by issuance of the notice.

Also, since the revisional authority in this case was acting in the role of disciplinary authority, it was incumbent on him to indicate the reasons for disagreement with the findings of the inquiry officer.

We have found from a perusal of a notice dated 26.10.1988 (Annexure- A E) that he has given detailed reasons for his disagreement ^{with} ~~to~~ the inquiry officer and for coming to the conclusion that the charge against the applicant had been established. The statutory requirements in this regard have thus, been fulfilled.

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8. As regards the validity of the conclusion reached by the respondent no. 3, it is settled principle of law that the courts/ tribunals do not act as an appellate authority. The findings of the disciplinary authority (revisional authority in this case) cannot normally be interfered with by a reappraisal of evidence unless such conclusion is either based on no evidence or is a perverse conclusion on the face of the records. We have found from the reasons recorded in the show cause notice dated 26.10.1988 that the conclusion reached by the respondent no.3 is neither perverse nor is based on no evidence. We, therefore, see no reason but to reassess the evidence as it virtually sits in appeal from his orders.

9. The learned Counsel for the applicant sought reliance on the case of Union of India Vs. M.L. Kapoor and others, AIR 1974 SC 87. The following observations made by the Hon'ble Supreme Court in para 28 of the judgment were quoted below;

"Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable."

The principle quoted above only requires that the order should reveal rational nexus between the facts considered and the conclusions reached. As we have pointed out in the foregoing paragraphs, the order of the G.M. amply reveals nexus between the facts considered and the conclusions reached. We have not been able to find any perversity in such conclusions.

10. The learned counsel for the applicant has sought reliance also on the following cases;

- (i) Harmander Singh Vs. The G.M., Northern Railway, 1973, S.L.J. 569.
- (ii) Himangshu Km. Acharjya Vs. Union of India and others, (1992) 19 ATC, 438.
- (iii) Rabi Banerjee Vs. Union of India & others, (1987) 2 ATC, 744
- (iv) V.K.S. Sagaran Vs. Union of India, (1987) 3 ATC, 770
- (v) Ram Chander Vs. Union of India and others, AIR 1986 SC 1173.

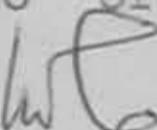
11. We have perused the decisions in these cases and none of these cases quoted above come to any assistance to the applicant as we have not accepted basic premise of his pleadings that the revisional order does not reveal application of mind to the facts and circumstances on which certain conclusions had been reached.

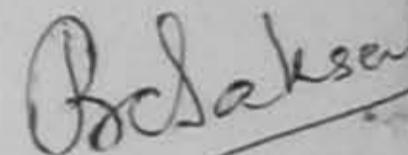
12. ^{As} regards the plea ~~not~~ raised by the applicant that the respondent no. 3 could not have exercised

revisional powers as the proceedings had become barred. We have seen that where the revisional authority is a G.M. of a Zonal Railway, no limitation of time is imposed on his power to revise any order. This plea also has no force.

13. We have also carefully perused the appellate order which was communicated to the applicant letter dated 28.6.1990. We have seen that this is a speaking order indicating the reasons why the appeal was being rejected. There is no evidence of lack of application of mind on the part of the appellate authority.

14. In the result, we find that the application lacks merits and the same is hereby dismissed. There will be no order as to costs.


Member (A)


Vice-Chairman.

(n.u.)