

Open Court.

Central Administrative Tribunal,
Allahabad Bench, Allahabad.

Dated: Allahabad, This The 2nd day of May 2000.

Coram: Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiq Uddin, J.M.

Original Application No. 1753 of 1992.

Yogendra Narain Dwivedi,
son of Sri Ram Phal Dwivedi,
resident of Mohalla Raedi,
Post and District Hamirpur.

. . . Applicant.

Counsel for the Applicant: Sri Shishir Kumar, Adv.

Versus

1. Union of India, through General Manager,
Central Railway, Bombay V.T.
2. Divisional Mechanical Engineer, Head Quarter
Divisional Office, Bhusawal,
3. Assistant Mechanical Engineer, Officer of the
Divisional Railway Manager, (Personnel Branch)
Bhusawal.

. . . Respondents.

Counsel for the respondents: Sri Prashant Mathur, Adv.

Order (Open Court)

(By Hon'ble Mr. Rafiq Uddin, Member (J.))

The applicant has filed this O.A. for quashing

Rn

-2-

the order dated 1.6.92 passed by Disciplinary Authority and also the order dated 6.10.92 passed by the Appellate Authority. By the order dated 1.06.92 the Disciplinary Authority has dismissed the applicant from service whereas vide order dated 6.10.92 the Appellate Authority has rejected his appeal and maintained the punishment order.

2. Brief facts of the case as disclosed in the O.A. are that the applicant was appointed as Class IV Employee in the Divisional Railway Manager's Office, Bhusawal. His selection was made on the basis of Sports Quota. The applicant while serving as Driver was served with a chargesheet dated 1.6.92 in which it was alleged that the applicant disobeyed the order of the Sports Officer and violated Rule 3(1)(ii)(iii) of the Railway Servant Conduct Rules 1966. It was alleged that the applicant was appointed in Sports Quota but he did not turn up on play ground for practice despite the orders of the Sports Secretary. The applicant also did not disclose or express any difficulty for not coming for practice on the play ground. A copy of the chargesheet is annexed as Annexure A-3. The applicant submitted his reply to the aforesaid chargesheet explaining his position regarding charges levelled against him which is annexed as Annexure A-4. One Sri Z.T. Lohar, Loco Inspector was appointed as Enquiry Officer by respondent No.3 who after completing the enquiry submitted his report on 4.10.90. The applicant however, received the impugned order on 1.6.92. The applicant has filed an appeal before

Rm

-3-

respondent No.2 against the impugned order on 13.7.92 which is Annexure A-7 which was rejected vide order dated 6.10.92.

3. The applicant has challenged the punishment order on the ground that he was not supplied with the documents relied upon by the Enquiry Officer. The impugned punishment order is non speaking and has been passed without application of mind. No show cause notice was issued by the respondents before passing the removal order. Copy of the report of the Enquiry Officer was not provided to the applicant by the Disciplinary authority. It is also alleged that the statement of the applicant was recorded prior to the statements of witnesses were recorded by the Disciplinary Authority.

4. The respondents have contested the application of the applicant by stating that since the appointment of the applicant was made under Sports Quota, he should have given due care for ground practice to play Hockey. But the applicant has not shown any initiative in sports right from the date of his appointment hence the matter was reported by the Sports Secretary to the authorities hence disciplinary action was taken against him and an enquiry was conducted. It is also claimed that the copy of the enquiry report was sent to the applicant on 25.10.90 and was asked to submit his defence within fifteen days which was also submitted by him hence they have denied that opportunity was not given to the applicant during disciplinary enquiry. It is also stated that the order of disciplinary authority as well as of

-4-

Appellate Authority were given to the applicant. It is also stated that it is not necessary to issue any show cause notice before awarding punishment to the applicant under D.A. Rules 1968. The necessity of giving second show cause notice to the applicant has also been denied.

5. We have heard Sri Shishir Kumar for the applicant and Sri Prashant Mathur for the respondents. We have also perused the pleadings on record.

6. It is admitted position in this case that the appointment of the applicant was made on the basis of Sports Quota. It is evident from the report of the Enquiry Officer that the applicant has been awarded punishment for his alleged not turning up on the play ground for practice and not participating any Hockey Tournament held in the division. The learned counsel for the applicant at the outset has contended since the applicant was working as Khalasi and was performing his duties of that post, ^{R_u} ~~he can not~~, his non turning in any Hockey Tournament does not amount ^{mis} ~~in~~ his conduct. Hence the impugned order is vitiated on this ground. On this point the learned counsel for the respondents has drawn out attention to the Master Circular dated 24.2.1983 regarding Probation/Confirmation/Termination of services of Sports persons. The relevant part of that Circular is extracted as under:-

" As the Sports persons are recruited mainly on the consideration of their achievements in Sports

R

it has to be ensured that the recruits deliver the goods and they not only keep up the performance of Railways in the field of Sports but also constantly endeavour to improve on it. With this end in view, the Ministry of Railways have decided that a two-year probation period may be prescribed for all persons recruited against the sports quota. On completion of the two year probation, the performance of the sports- persons will be reviewed at the Zonal Railway level by a committee consisting of the President and Honourary General Secretary of the Zonal Railways Sports Association and Captain/Coach of the particular discipline. If the performance of the persons recruited on Sports account is considered to be unsatisfactory, he/she will be given a show cause notice and if the reply is not considered satisfactory, his/her services will be terminated by notice observing the requisite procedure for such termination. For review of cases involving Sports persons recruited in intermediate grades, which recruitment is controlled by the Railway Sports Control Board, New Delhi, one nominee of the Railway Sports Control Board will be associated with the aforesaid committee.

In addition to the criteria followed for deciding confirmation of any temporary employee in regular employment, the continued retention and confirmation of an employee appointed against the Sports Quota will be subject to the performance as a Sports person also being satisfactory. "

We have also perused the contents of the appointment letter of the applicant (Annexure A.1) which reveals that his appointment on sports ground was subject to the terms and conditions stipulated from time to time. The Master Circular in question in our opinion is fully applicable on the service condition of the application. Therefore, it can not be argued that if it is proved that the applicant failed in keeping

up his performance in the field of Sports and did not endeavour to improve it, it ^{does not} amount ¹ to a breach of his service conditions and disciplinary actions ^{cannot be} taken against him for misconduct on this account. Therefore we do not find any force in the argument of the learned counsel for the applicant that if it is proved that the applicant did not turn up for sports practice on the play ground, his act does not amount to misconduct.

7. As regards the legality of departmental proceedings, we find that the same has been conducted properly by the Enquiry Officer. It is also worth mentioning that the scope of judicial review by the Tribunal regarding disciplinary authority is very limited because it does not act as an appellate authority. The Tribunal at the most can ascertain whether the disciplinary proceedings were properly and the employee was given full opportunity of defending himself. We find in the present case that the applicant participated in the disciplinary proceedings and was given opportunity to cross examine the witnesses examined during the disciplinary proceedings. The representation and the reply submitted by the applicant was duly considered by the disciplinary authority. It is not a case of no evidence because witnesses were examined and their evidence was assessed by the Enquiry Officer. We have also perused the original file of disciplinary proceedings and noticed that the Enquiry Officer has given reasons and grounds for his findings and conclusions. There is also no truth in the allegation that the applicant was not given any copy of the Enquiry report because applicant himself has admitted in the representation submitted before the disciplinary authority that he received copy of enquiry report. We therefore do not find any irregularity or infirmity

in the disciplinary proceedings and the same does not warrant interference by this Tribunal.

8. The learned counsel for the applicant has however drawn our attention to the order passed by the Appellate Authority and has urged that the same has been passed without considering the points raised by the applicant in his appeal. The Appellate Authority has not given his own reasons for conclusions ~~in order~~^{on} the findings and has not passed a speaking order. Therefore we are of the opinion that the order passed by the Appellate Authority is ~~without~~^{not} sustainable under law and requires reconsideration by the Appellate Authority.

9. The learned counsel for the applicant has also vehemently urged before us that the punishment is too harsh. On this point also we are of the opinion that the Tribunal can not judge adequacy or inadequacy or harshness of the punishment awarded to the applicant. It is only the Disciplinary and Appellate Authorities to consider this prayer of the applicant.

10. For the reasons stated above, we partly allow this O.A. and set aside the Appellate Order dated 6.10.92. The case is remanded back to the Appellate Authority for reconsideration in the light of the appeal preferred by the applicant and to pass a speaking order including the question of punishment awarded to the applicant after hearing him in person. The order will be passed within three months from the date of communication of this order. There shall be no order as to costs. *Rafiquddin*

Member (J.)

[Signature]
Member (A.)

Nafees.