

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ADDL. BENCH

ALLAHABAD

DATED: THIS THE 12th DAY OF April ~~March~~ 1996

O.A.NO. 871/92

Hon'ble Mr. S. Das Gupta. A.M.

Hon'ble Mr. T. L. Verma . J.M.

Har Sharan Prasad Patel s/o Hazari Lal Patel,
resident of Village Khamariya, P.O. Jukehi,
District Satna (M.P.), at present posted as
Diesel Mechanic Grade I, token no. 100,
Diesel Loco shed, Jhansi. - - - - - Applicant

C/A Shri V. K. Raman.

VERSUS

1. Union of India through Secretary Railways,
Rail Bhawan., New Delhi.

2. Divisional Mechanical Engineer (Diesel),
Central railway, Jhansi division, Jhansi.

3. Sri Sanjay Mohanty, Enquiry Officer posted
as Safety Officer, Jhansi division, Jhansi.

4. Sr. D. M. E., Central Railway, Jhansi.

(By Sri GP Agarwal, Advocate)

- - - - - Respondents

C/R Shri

(By: Hon. Mr. T.L. Verma, J.M.)

1. The applicant, in this application under section 19 of the Administrative Tribunal Act, seeks quashing of order dated 20.2.1992 passed by the Disciplinary authority, dismissing the applicant from service and order dated 24.7.1992 passed by the Appellate authority upholding the punishment of dismissal from service imposed by the Disciplinary authority.

2. The applicant was Diesel Mechanic at the relevant time. He was served with a charge sheet dated 10.7.1991, alleging that he had misbehaved with Sri Suresh Kumar, Sr.D.P.O. Jhansi and assaulted him on 9.7.1991 at 17.15 hours in the main hall of the Personal branch. The applicant denied the charges. The Enquiry Officer, who was appointed to hold the enquiry, after holding the enquiry, recorded a finding that the charge in respect of misbehaving with the Sr.D.P.O. has been proved, but the charge that the applicant assaulted Sri Suresh Kumar, the Sr.D.P.O. is not established, for want of evidence. The Disciplinary authority, agreeing with the findings of the Enquiry Officer, by his order dated 10.7.1991, imposed punishment of dismissal from service on the applicant. The Appellate authority upheld the punishment imposed by order dated 10.7.1991.

3. The case of the applicant in short is that the Sr.D.P.O., immediately after joining at Jhansi indulged in irregularities in matters of appointment and other labour problems, which enraged the workers, provoking them to resort to agitation against him. The applicant, in his capacity as Trade Union Leader,

had been meeting the said Sr.D.P.O. in connection with with the problems of the workers. It is stated that on 9.7.71 he had obtained appointment from the Sr.D.P.O. ~~in for~~ ^{also} ~~connection with~~ the problems of workers and ~~for~~ ^{also} submitting a Memorandum on behalf of the Union. He was given 5.00 p.m. as the time for the meeting. As he was on duty as Diesel Mechanic at that hour, he reached office of the Sr.D.P.O. at 5.15 p.m. accompanied by Sri Sukhdeo Srivastava, Vice-Chairman, Loco branch. The further case of the applicant is that one Sri P.L.Sharma, a retired Chargeman (LOCO) also arrived there at or about ~~some~~ time to meet the Sr.D.P.O. Besides Shri Sharma, some other persons were also sitting in the Chamber of Sr.D.P.O. from before. As the applicant wanted to discuss the problem with the Sr.D.P.O. in confidence, he requested the Sr.D.P.O. to permit them to talk after those present ~~would leave~~ in the chamber ~~leave~~. The Sr.D.P.O. thereupon directed the persons, present in the chamber, to go. The applicant ~~thereafter~~ ^{also}, requested the Sr.D.P.O. to put red light on, and simultaneously delivered the Memorandum of demands prepared by the Union to the Sr.D.P.O. The Sr.D.P.O., it is said, lost his temper, after going through the Memorandum of demands and misbehaved with the applicant. The applicant, it is stated protested against the language used by the Sr.D.P.O., whereupon the Sr.D.P.O. is alleged to have shouted ^{at} ~~on~~ the applicant and was about to assault him. ^{Realising} Sensing seriousness of the situation, the applicant came out of the chamber and proceeded straight to the police station, Nawabad for lodging report, of the alleged misbehaviour against the Sr.D.P.O. The Police Officer, ~~who~~ ^{stated} however, declined to record his report. He, therefore, sent the same (annexure 1) by post.

4. The Sr.D.P.O. lodged a report against ~~against him~~ the applicant in the police station. He also reported the matter to the D.R.M. on the basis of which disciplinary proceeding~~s~~ was started. The information ledged at the police station ^{as well as sent} to the D.R.M. are stated, to be wholly false and fabricated. It is further alleged that the findings recorded by the Enquiry Officer is perverse in as much as the same is not based on evidence. It is further alleged that the entire disciplinary proceedings is vitiated because the same has been held in contravention of the rules and principles of natural justice. The applicant, it is stated, was not given adequate opportunity to defend himself in as much as the copies of material documents were not supplied and the Sr.D.P.O., a vital witness, was examined after the disciplinary proceedings was over and his statement has been based for recording the evidence of guilt, though he was not cross examined.

5. The respondents have appeared and contested the case. In the C.A. filed on behalf of the respondents, it is stated that relevant documents as mentioned in the Memo of charge were supplied to the applicant. He was given full opportunity to cross-examine the witnesses examined in ^{course of the} ~~the court of~~ enquiry. Rules prescribed for holding enquiry have been complied with and that the finding~~s~~ of the Enquiry Officer is based on evidence.

6. We have heard the learned counsels for the parties and perused the records.

7. The charge, which has been held to have have been proved against the applicant is as follows :

8. " That Shri H.P.Patel, Diesel Mechanic misbehaved with the Sr. D.P.O. Sri Suresh Kumar, Jhansi in his room on 9.7.1991."

9. From the Memo of charge, it appears that initially only 7 persons were listed as witnesses. The Enquiry report, however, discloses that in addition to the 7 witnesses named in the charge Memo, Sri Suresh Kumar Sr.D.P.O. has also been examined. Of the witnesses so examined, Sri J.P.Saxena and Sri S.L.Mahar, it is seen from the record, ~~that they~~ were present in the chamber of Sr.D.P.O. at the time the applicant alongwith his companion entered into the chamber. Shri J.P.Saxena has been examined as P.W.2. The witness, in his statement before the Enquiry Officer, has supported the allegation that the applicant had misbehaved with the Sr.D.P.O. From the evidence of this witness, it would, further appear that ^{anticipating} ~~on sensing~~ some untoward event ~~may happen~~, he went to Mr. Siddam, O.S.(Personnel) and requested him to call the R.P.F.personnel. Shri Siddam has been examined as witness no.3. According to him, he called the R.P.F.Personnel from the Entrance gate of the D.R.M. office and that when he came with the R.P.F. personnel, to the office, he found the Sr.D.P.O. and other personnel branch staff standing in front of the chamber of Sr.D.P.O. Shri S.L.Mahar, who was present at the time when the applicant and his companions entered into the chamber of Sr.D.P.O., though has not given eye witness account of the incident, has stated that Shri J.P.Saxena told him that some unusual incident had taken place with the Sr.D.P.O. ~~outside~~ his chamber. The other

witnesses examined also, though not eye witness of the occurrence, have given evidence, which supports the statement made by Shri J. P. Saxena, who has given eye witness account of the incident.

10. Admittedly the statement of Shri Suresh Kumar, the Sr. Divisional Personnel Officer was recorded after the enquiry had been closed and defence statement had been filed. From the materials on records, and also averments made in para 15 of the O.A., it is clear that the applicant was given notice of the examination of Sri Suresh Kumar and was given opportunity to cross examine him. The allegation of the applicant that he was not given opportunity to cross examine the witness, therefore, is not valid. He, has, himself to be blamed for non cross examination of the witness. From what has been stated above, it is thus clear that the evidence on record, if believed was sufficient to support the conclusion arrived at by the Enquiry Officer. We, therefore, find no merit in the contention of the applicant that the conclusion arrived at by the Disciplinary authority is based on no evidence. We also find no merit in the arguments of the learned counsel for the applicant that the statement of Sri Suresh Kumar the then Divisional Personnel Officer, Jhansi which was not tested on the touch stone of cross examination should not have been relied upon.

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18. Assuming, however, for the sake of argument but not deciding that the applicant was not given opportunity to cross examine Sri Suresh Kumar and, for that reason statement of Shri Suresh Kumar ~~has~~ ^{then also} excluded from consideration, it does not help the applicant. As we have, already noticed above, statement of Sri J.P.Saxena, ~~who~~ ^{The statement of Sri Saxena} has given eye witness account of the incident of mis-behaviour of the applicant. ~~The evidence of Sri Saxena,~~ in conjunction with the statements of other witnesses, in our opinion is sufficient to hold that the findings of the Enquiry Officer is based on evidence.

19. In addition to the above, it may, also be relevant to refer to sub rule 18 of the Rule 9 of D.A.R rules 1968. This rule permits Presenting Officer to produce evidence not included in the list to be given to the railway servant or may itself call for new evidence or recall or reexamine any witness and in such case the railway servant shall be entitled to have, if he demands, a copy of the list of further evidence proposed to be produced and adjournment of the enquiry for 3 clear days before the production of such ~~eye~~ witness. The examination of Sri Suresh Kumar, Sr.D.P.O. after the close of the enquiry, in our opinion is not barred under the rules. All that the Enquiry Officer was required to ^{do} was to furnish of the list of further evidence if demanded so that ^{delinquent - officer} he may prepare for cross examination of fresh witnesses proposed to be examined. We have already seen above that the applicant was given notice of the examination of Sri Suresh Kumar and also opportunity to cross examine ^{him was given} ~~been~~ the applicant, as noticed above, had himself declined to cross examine him. We, therefore,

find no illegality having been committed by the Enquiry Officer in allowing the examination of Sri Suresh Kumar Sr.D.P.O. though his name ~~was~~ not mentioned in the list of witnesses furnished to the applicant.

14. It was next argued that the applicant was not furnished with the copies of the documents mentioned in the Memo of charge and was, thus, denied adequate opportunity to defend himself. The statement of the applicant recorded by the Disciplinary authority may be seen at page 68 of the brief, which forms part of the Enquiry Report. In answer ^{to} the question no.6 put by the Enquiry Officer, he has stated that " he inspected the document mentioned in annexure III and has also taken copy ~~thereof~~." In view of the above admission of the applicant, we find no substance in the contention of the learned counsel for the applicant that for want of material documents, the applicant could not defend himself properly.

15. Now coming to the argument that there are apparent contradictions in the statements of witnesses, which belie their trusworthiness, ^{as therefore} and should not have been relied upon for recording the findings of guilt against the applicant, it may be stated that the Tribunal in exercise of its review jurisdiction is not empowered to go into the evidence. It is the duty of Appellate Authority to analyse and reassess the evidence and record a finding as to whether the findings of guilt is supported by evidence or not. This Tribunal cannot reassess the evidence and arrive at a different conclusion in exercise of its review jurisdiction. We have already observed that there is evidence which the Enquiry Officer has accepted and which

reasonability supports the conclusion that the applicant is guilty of the charge of misbehaviour. Therefore, we cannot now review the matters.

16. The other ground on which the impugned order of punishment passed by the Disciplinary authority has been assailed is that the same is non-speaking. The order of the disciplinary authority may be seen at Annexure 8. We have perused the impugned order and we find that the Disciplinay authority has applied his mind and given reasons for agreeing with the findings of the Enquiry Officer. When the ^{Enquiry Officer} agrees with the findings recorded by the Enquiry Officer, he ^{is} not required to given detailed reasons for his agreement with the findings of the Enquiry Officer. The enquiry report merges with the final order passed by the Disciplinary authority. There is, therefore, no merit in this argument. The argument of the learned counsel for the applicant that the order passed by the Appellate authority is also non speaking, also ^{is} not acceptable. The order of Appellate Authority though precisely deals with the material points raised by the applicant in his appeal. This order, also, therefore, cannot be said to be non speaking and bad in law, ~~being contrary to the provisions of the 2000~~ the ~~2000~~ A.D.R.M.

16. The legality of the enquiry proceedings has also been assailed on the ground that the Enquiry Officer and the Disciplinary authorities were biased. The record reveals that after the applicant filed petition before the Enquiry Officer not to proceed in the matter as had no faith in his being fair, the matter was referred to the appropriate authority, The A.D.R.M,

who reviewed that aspect of the allegation ~~and~~ came to the conclusion that the Enquiry Officer was not biased and therefore the enquiry was allowed to be conducted by the same Enquiry Officer. There is no material before us as may even distantly suggest that the Enquiry Officer was in any manner biased against the applicant. To support the allegation of bias against the disciplinary authority also no material has been brought on the record to indicate that the Disciplinary authority had any grouse against the applicant. Therefore, there is no basis ~~for to support the~~ ~~such~~ allegation against the Disciplinary authority also.

17. And lastly it was argued that the Sr.D.P.O. is superior in status to the Divl. Safety Officer, the Enquiry Officer and as such was not competent to hold the enquiry in respect of the allegation of misbehaviour and assault on the Sr.D.P.O. It was submitted that the Divl. Safety Officer, being junior to Sr.D.P.O. could not have submitted report against his superior Officer. Therefore in the fitness of things an officer senior to Sr.D.P.O. should have been appointed as the Enquiry Officer. As this has not been done, enquiry is vitiated and the punishment imposed is honest. We are not persuaded by this argument for the reason that no rule prohibiting enquiry by an officer inferior in status to the complainant has been brought to our notice. The respondents have, in their counter affidavit, stated the D.S.O. holds ^{in any way} independent charge and is not subordinate to Sr. D.P.O., Therefore, the possibility of the Enquiry Officer being influenced by the superior status of the complainant is ruled out. The D.S.O. holds charge, which is independent

of the Sr.D.P.O. has not been controverted. We have, therefore no reasons not to accept the contention of the learned counsel for the respondent that he is in no way subordinate to the Sr.D.P.O. This being so, we find no substance in their argument also.

18. In addition to the above, the Enquiry Officer has clearly established fairness of the enquiry by submitting a report in which allegations made by the Sr.D.P.O. have been accepted ^{only} partly. The Enquiry officer, very fairly after ~~proper~~ analysis of the evidence, has ~~recorded~~ held that the charge of assault by the applicant on Sr.D.P.O. has not been established. Thus the Enquiry officer has not accepted the major charge levelled against the applicant by the Sr.D.P.O. This in our opinion is clear evidence of the fairness of the Enquiry Officer in holding the enquiry.

19. On careful consideration of the facts and circumstances, we are satisfied that no case for interference, with the impugned order by this Tribunal is made out.

20. Before parting with the case, we may briefly refer to the two decisions viz Rama Kant Mishra V/s State of U.P. (AIR 1982 S.C.1552) and Suresh B.Dave V/s Post Master General (1992 19 ATC 374) cited by the applicant in support of his contentions. We have carefully perused both the decisions and we find the same are besides the point. In Rama Kant Mishra case, the applicant was removed from service on the charge of disorderly behaviour or conduct prejudicial to good order and discipline. The Hon'ble Supreme Court has observed :

" where what was alleged against the delinquent workman was that the language used by him disclosed a threatening posture though indiscreet, improper, abusive language may show lack of culture but merely the use of such language on one occasion unconnected with any subsequent positive action and not preceded by any blameworthy conduct during 14 years of service, would not permit an extreme penalty of dismissal from service, and interference by the Supreme Court would be warranted when the Labour court upheld the punishment. In such a situation withholding of two increments with future effect will be more than adequate punishment for a low paid employee. "

The fact of the case before the Hon'ble Supreme Court are altogether different from the facts of the case before us.

21. In Suresh Dave's case, the applicant, who was a postal Assistant, was charge-sheeted for unauthorisedly removing franking machine. After departmental enquiry, he was found guilty and was punished with an order of recovery of certain amount and reduction in pay by 5 stages for 5 years with stoppage of increments during that period with cumulative effect, but on being remanded by the Tribunal, the Appellate Authority enhanced the penalty to reduction by 10 stages. The order of the Appellate Authority was challenged by filing an application before Ahmedabad ^{High} Central Administrative Tribunal. Order imposing punishment passed by the Appellate Authority was set aside by the Tribunal on the ground that the same did not disclose any reason to increase the punishment. The ratio of this decision also is not applicable to the facts of the present case, hence is of no help to the applicant.

22. In the facts and circumstances, discussed above, we find no merit in this case and the same is dismissed, leaving the parties to bear their own cost.

J. M.

A. M.