(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No: 1510 of 1993

This 6th The Day of October, 1994

Mahesh Chand S/O Munna Lal

.... Applicant.

By Adv. Shri V.K.Barman

Versus

1. Union of India through General Manager, North Eastern Rly, Gorakhpur
2. D.R.M. N.E.Rly. Izatnagar (Bareilly)
3. Divisional Railway Manager N.E.Rly. Izatnagar (Bareilly)

.... Respondents.

By Adv. Shri P.Mathur

Coram:

Hon'ble Mr. S.Das Gupta, Member-A
Hon'ble Mr. T.L.Verma , Member-J

JUDGEMENT

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

The subject matter of challenge in this application is order dated 13.9.1993 (Annexure A-11) whereby the applicant has been reverted as Token Porter in the scale of Rs. 750-940/- from the post of Booking Clerk by way of punishment in the disciplinary proceeding drawn up against him.

2. The applicant, [redacted], while working

as Booking Clerk at Lalkuan Railway Station, was put under suspension on 13.7.1990 in contemplation of initiating disciplinary proceeding against him. He was served with a memo dated 9.8.1990 (Annexure A-1) containing articles of charges and substance of imputation. The disciplinary proceeding was initiated against the applicant on the allegation that he was in a state of intoxication while on duty on 9.7.1990 and that he misbehaved with and realised extra charges from the passengers for the tickets sold to them. The Inquiry Officer submitted his report (Annexure A-3). The Inquiry Officer found that the charges leveled against the applicant have not been substantiated. The disciplinary authority, however, disagreed with the finding of the Inquiry Officer and held that the charges have been established and imposed penalty of reversion to the post of Token Porter for 5 years in the scale of pay of Rs. 750-940/- and ordered that his seniority be fixed at the bottom of the scale. The disciplinary authority had passed the said punishment order without serving copy of hisdissenting note on the applicant and to show cause against the tentative punishment. The appeal filed against the order of punishment was dismissed by order dated 7.10.1991 (Annexure-5) and the revision petition filed against the order of the appellate authority also met with the same fate vide Annexure A-6.

3. The applicant, thereafter, filed O.A. 263 of 1992 challenging the validity of the orders (Annexure A-4 , A-5 & A-6) passed by the disciplinary authority, appellate authority and the Reviewing Authority. The application was allowed in part and order of punishment

was set aside. It was, however, open to the Punishing Authority to pass fresh order in accordance with law after serving copy of thedissenting note recorded by the Punishing Authority. The applicant, was, thereafter, served with a notice along with note of disagreement recorded by the Punishing Authority (Annexure A-9) to show cause as to why he should not be punished for his commissions and comissions as contained in the chargesheet. The show cause filed by the applicant was considered by the Disciplinary Authority and the applicant was again held guilty of the charges framed against him and was reverted as Token Porter from the post of Booking Clerk by way of punishment.

4. The impugned order of punishment, it is stated, is bad in law because the same is not supported by evidence, hence, this application for setting aside order dated 13.9.1993 (Annexure A-11) and for issuing a direction to the respondents to restore the applicant to his original post with consequential benefits.

5. The respondents have resisted the claim of the applicant interalia on the ground that the application is premature as the same has been filed without exhausting alternative remedy of appeal and review by competent authorities and that neither any rule nor the principle of natural justice has been violated in conducting the disciplinary inquiry, as such the impugned order cannot be interferred with.

6. The first question that falls for consideration in this case is whether the impugned order is utterly perverse. In other words, whether it is not supported by evidence in the sense that no conclusion of guilt can be recorded on the basis of the given material.

7. We have heard the rival contentions and perused the record. From the perusal of the Inquiry Report (Annexure A-3), it appears that Shri Raj Kumar who had lodged written report against the applicant that he had charged in excess of the fare for journey from Lalkuan to Varanasi did not appear to give evidence in the inquiry to support the allegations made in the written report alleged to have been made by him. The Inquiry Officer has recorded in his report that he examined the relevant register in that connection and found that on 9.7.1990, only two tickets were sold for journey from Lalkuan to Varanasi . One Sahzad Khan was examined in course of the inquiry on 16.3.1991. He gave evidence to the effect that he had purchased two tickets for two of the employees of Lalkuan Paper Mill on 19.7.1990. for journey from Lalkuan to Varanasi by 5307 DN Train and that 200 rupee notes were given to the applicant. The applicant, it is stated, returned 40/- rupees to him. The applicant, it is stated, charged only Rs. 160/- for the two tickets which, according to the Inquiry Officer is the fare for the said journey. The Inquiry Officer has also referred to the statement of the A.S.M. Shri Umesh Chandra. Shri Umesh Chandra is not an eye witness of the alleged sale and purchase of the ticket

hence, he is not a competent witness to depose in support of this allegation. The Station Master is also stated to have given evidence that none had complained against the Booking Clerk. It would thus, appear that there is absolutely no evidence to support the charge that the applicant had realised extra charges for the tickets for the journey from Lalkuan to Varanasi.

8. In view of the foregoing conclusion, the next question that arises for consideration is whether the finding that the applicant was in state of intoxication while on duty on 9.7.1990. is based on evidence on record.

From the Inquiry Report, it appears that three witnesses including A.D.M.O. were examined, in proof of the said allegation. All the witnesses have given evidence in support off the allegation that the applicant appeared to be in the state of intoxication. The learned counsel for the applicant urged that no conclusion can be arrived at on the basis of the evidence of the aforesaid witnessess that the applicant was in a state of drunkenness in absence of medical examination. Admittedly, no medical examination of the applicant was done. The A.D.M.O. and the A.S.M. however, have stated that the applicant was in intoxicated state. There is nothing on the record to suggest that the A.D.M.O. and A.S.M. who have given evidence that the applicant appeared to be in state of intoxication had any malice against the applicant. The learned counsel for the applicant, however, has laid great emphasis on the

(19)

statement of the A.D.M.O. that the condition in which the applicant was seen at the relevant time, could have been produced on account of excess use of medicine. From para 3 (b), of the Counter Affidavit, it appears that at the time, the A.D.M.O. visited the place of occurrence for medical examination, the applicant closed the door of the Booking Office from inside and did not permit him to medically examine him. We will not re-assess the evidence of the witnesses examined in course of the inquiry in proof of the allegation that the applicant has taken alcohol while on duty. ~~It was said~~ Suffice it to say that the ~~applicant~~ conclusion arrived at by the disciplinary authority in that behalf on the basis of the evidence before him cannot be said to be utterly perverse. The conclusion arrived at by the disciplinary authority appears to be quite probable. Hence, we find that no case for interference with the punishment awarded against the applicant has been made out.

9. In addition to the above, the learnedcounsel for the respondent urged that this application was premature inasmuch as the same has been filed without exhausting the alternative remedies of appeal and revision as provided under the provisions of Indian Railways Departmental Appeal Rules. It is not in dispute that the applicant has rushed to file this application without filing appeal/revision before the appropriate authorities. Section 20 of the Central Administrative Tribunal's Act provides that an application under Section 20 shall not be admitted unless other remedies have been exhausted. The provision is

(16)

extracted below for convenience of reference;

Application not to be admitted unless other remedies exhausted --

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the application had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

From a bare reading of the provisions of Section 20 extracted above, it is clear that except under compelling circumstances applications without exhausting other alternative remedies shall not be admitted. For deviating from the above provision a strong case has to be made out. ~~In deviating from the above provisions~~. We are not satisfied with the reasons given by the learned counsel for the applicant in his Rejoinder Affidavit and also in course of argument for not exhausting statutory remedies available before filing this case. Be that as it may, ~~since~~ in view of the finding recorded above, the decision on this issue is not very material.

10. In view of our discussions made above, we find that there is no merit in this application and the same is dismissed. There will be no order as to costs.

Member-J

Member-A

/jw/

6.10.94