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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the day 25th Jan' of 1995.

ORIGINAL APPLICATION NO. 150 OF 1994.

Naresh Chand Srivastava,

S/o Late Shri L.K. Srivastava,

Residing at 1085 Babaji Ka Bagh,

Allahabad.

..... Applicant.

By Advocate Sri A.B.L. Srivastava.

Versus

Union of India through

1. The Divisional Railway Manager,

Northern Railway, Allahabad Division,

Allahabad.

2. The Sr. Divisional Electrical Engineer/G/

Northern Railway, Allahabad Division,

Allahabad.

3. The Asstt. Electrical Engineer General,

Northern Railway, Allahabad Division,

Allahabad.

..... Respondents.

By Advocate Sri A.K. Shukla.

CORAM: Hon'ble Mr. T.L. Verma, MEMBER (J)

Hon'ble Mr. K. Muthukumar, MEMBER (A)

O R D E R (RESERVED)

By Hon'ble Mr. K. Muthukumar, MEMBER (A)

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1. The applicant was working as Khalasi in the Allahabad Division of the Northern Railway. Disciplinary Proceedings were initiated against him, on the charge that while on duty on 30th March 1988, he was involved in some quarrel and he had abused Sri Ram Sunder and Saru Prasad ^{thus} and acted in a manner unbecoming of a Government Servant. On the basis of the Inquiry Report, the charges were held to be proved and the Disciplinary Authority imposed the penalty of removal from service. On his appeal against the aforesaid order of punishment, the Appellate Authority held by his order dated 23.12.1993 as follows:-

" I have gone through complete case and appeal of Shri N.C. Srivastava, Ex. Khalasi. He is no doubt responsible for the charges levelled against him. There were two cases of SF-5 pending against him.

In one of the case he was reverted to Khalasi from helper Khalasi and in the second case which is the present case he has been removed from service. No doubt history of Sh. N.C. Srivastava is bad and he has been irresponsible and ill mannered.

He has given in writing that in future he will behave and will give no chance to his superiors to complain about him. He is also willing to go to CNB, if taken on service. Since he has met undersigned and ensured his behaviour in future.

A lenient view is taken and is restored back to Railways as fresh Khalasi and posted at CNB."

2. By the aforesaid order, the applicant was taken back in Railway Service as a fresh Khalasi. Aggrieved by this order, the applicant has approached this Tribunal with a prayer for quashing the impugned order of the removal from service passed by the disciplinary authority and also

an order passed by the Appellate Authority, appointing him as a fresh Khalasi.

3. The grounds on which the applicant seeks relief are as follows:-

- a) Preliminary facts by the inquiry and the departmental inquiry were vitiated as they were conducted on account of personal malice and prejudice caused by false allegations of his having abused his Senior Officer.
- b) The Inquiry Report lacked application of mind and based on mere conjectures and surmises and the inquiry report was perverse.
- c) An Authority who imposed the punishment ~~acted~~ beyond jurisdiction as he was not the appointing authority and, therefore, the order of punishment was ab initio void.
- d) While an appeal of the applicant was made to the Appellate Authority namely, the Divisional Railway Manager, Northern Railway, Allahabad, against the impugned order, the appeal was disposed of by the Divisional Electrical Engineer and, therefore, the order passed by the Divisional Electrical Engineer which is also impugned in the application as Annexure-I is also ab initio void and is not sustainable in law.
- e) The quantum of punishment in the impugned order of the authority appointing him as a fresh Khalasi involved forfeiture of his past service of more than 29 ~~years~~

and he was also reduced to the post as a fresh Khalasi and this punishment besides being ~~too~~ severe, was also disproportionate to the charges levelled against the applicant and amounted to double jeopardy.

4. In the counter reply, the respondents have strongly resisted the averments made by the applicant. They have strongly denied the allegation of any bias against the applicant in the inquiry proceedings or while imposing the punishment or while considering his appeal. The respondents, averred that the applicant had never raised any objection regarding the basis of the allegations, either in his reply to the memorandum of the chargesheet or before the Inquiry Officer or before the Disciplinary Authority or even before the Appellate Authority at any stage. His representation against the show cause notice in question was duly considered by the Disciplinary Authority and then only the punishment was awarded. The applicant had never raised any objection before the Appellate Authority either through his appeal or orally and, therefore, he cannot raise the objection regarding bias and malafide nature of the inquiry and the order of punishment in this application now. The respondents also have averred that the order passed by the Assistant Electrical Engineer was well within the jurisdiction as ~~the~~ Competent Authority ~~xxx~~ was in the rank of the Assistant Personnel Officer, the authority who appointed the applicant and, therefore, the punishment order did not suffer from the lack of jurisdiction or competence. Similarly, the next Senior Officer to the punishing authority, was a

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Senior Divisional Electrical Engineer who was clearly indicated in the order of punishment as the Appellate Authority and, therefore, the applicant had no reason to submit his appeal to the Divisional Railway Manager when Senior Divisional Electrical Engineer was the Competent Appellate Authority. The Appellate Authority had duly considered his appeal and taking a lenient view, he had set aside the punishment order of " Removal from Service" and maintained him in the status of Khallasi on initial basis. The respondents have averred that this Appellate Order placing him as a fresh Khallasi, is no punishment at all but is measure of ~~xxxxx~~ ^{setting} aside the punishment imposed by the Disciplinary Authority and, therefore, the applicant has no real cause of action. The respondents have also further averred that the applicant ~~red~~ had tendered his apology in writing ^{and} /, had admittedly assured that he would not quarrel in future.

5. We have heard the learned counsel for the parties and perused the record.

6. We find that the order of the Appellate Authority has not specifically set aside the order of the Disciplinary Authority. The respondents' averments that the order of the Appellate Authority is no punishment at all but only has effect of ~~setting aside~~ the order of punishment of the Disciplinary Authority is not tenable. The Appellate Authority has certain specific procedure to follow in terms of Rule 22 of the Railway Servant (Discipline & Appeal Rules) 1968, while considering the appeal Under Rule 22 (2) of the aforesaid Rules. The Appellate Authority is required to pass specific

order either (a) confirming, enhancing or reducing or setting aside the penalty or (2) remitting the case to the authority which imposed or enhanced the penalty (3) or to any other authority with such directions as it may deem fit in the circumstances of the case. In the order passed by the Appellate Authority, no such specific order has been passed. On the contrary, the respondents have averred in para 18 of the counter reply that the Appellate Authority through his decision while disposing the appeal of the applicant has set aside the punishment of the removal from service and has not acted under any bias. Instead of giving **on the appeal against the order of punishment,** a speaking order, the appellate authority has simply issued a direction that the applicant is restored back to Railways as a fresh Khallasi and posted to C & B and **therefore** the Appellate Order in our opinion does not conform to the requirements of Rule 22(2) of the Railway Servants (Discipline and Appeal Rules) 1968.

6. The counsel for the applicant has also invited our attention to the decision contained in *Scientific Advisor to the Ministry of Defence and others Versus S. Danial and others (1991) 15 ATC 799 SC* and connected Civil Appeals in support of his contention that the Appellate Authority which imposed the punishment is not the Competent Authority in the case of the applicant and, therefore, the impugned order of the Disciplinary Authority removing the applicant from his service is beyond ~~exclusive~~ jurisdiction and has **to be** quashed. We have perused the above decision and also Rules 2(1) (a), 1(c), Rule 7 and alongwith the details of Disciplinary Authority specified in Schedule '2 of the aforesaid rule which prescribes the authorities for imposing

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the penalties specified the Rule 6 as are applicable in non gazetted staff of the Zonal Railways. In the aforesaid decision of the Apex Court in the case which related to the Ministry of Defense, the Apex Court had partly taken into account the notifications issued by the Ministry in the month of August 1979 in the case of D.E.R.L and in January 1982 in the case of Ordnance Factory, by the President Under Rule 12 empowering certain authorities by the Government by authorities to exercise the disciplinary powers. The Apex Court has also referred in the above case to the relevant Rules 2(1) (a) relating to the Appointing Authority and Rule 2(1)(e) relating to the Disciplinary Authority and also schedule referred to Under Rule 7(2) and Rule 9 of the Railway Servants (Discipline and Appeal Rules) 1968 as some appeals covered by the above decision related to the Ministry of Railways. In dealing with the question of the authority to whom the power of appointment has been delegated under Rule 9, the Apex Court observed:-

" We think, on a proper and harmonious reading of Rule 2(a) and Rule 9, that sub Rule (a) of Rule 2 only envisages the authority to whom the power of appointment has been delegated under Rule 9 and not both the delegator and the delegate."

After giving the reasons for such conclusion and court observed:-

" The whole intent or purpose of the definition is to safe guard against infringement of Article 311(1) and to ensure that a person can be dealt with only by either a person Competent to appoint a persons of his class or the person who appointed him, whoever happens to be higher in rank. That rule

is not infringed by the interpretation placed by the Appellants. The Provisions of Schedule-II in the case of Railway which specify the Appointing Authority or an Authority of equivalent rank or any higher Authority as the Disciplinary Authority are also consistent with this interpretation."

7. It is necessary to advert at this stage to Schedule 2 of the aforesaid Rule under which the Appointing Authority or an Authority of equivalent rank or any Higher Authority has been shown to be a Competent Authority for imposing the punishment namely "compulsory retirement" "removal from service" and "dismissal from service" in respect of non gazetted staff of Zonal Railways which is a relevant Schedule applicable in the present case under consideration. The above schedule of power has been prescribed under Rule 4 and sub Rule 2 of Rule 7 of the aforesaid Rules as per the Railway Board's circular dated 32.12.1979. It is admitted that the Appointing Authority was the Assistant Personnel Officer and the Appellate Railway Authority was the Divisional Manager. In terms of the Provisions referred in Schedule II of the aforesaid Rule, the Appointing Authority or an Authority of equivalent in rank or any Higher Authority can impose the punishment of "removal from service" under the said Rules. In this case, the order of removal from service was issued by the Assistant Electrical Engineer, who is on an Officer of equivalent rank of the Appointing Authority. In view of the matter, the contention of the learned counsel for the applicant that the Disciplinary Authority had acted without jurisdiction, is not tenable. The Appeal was disposed of by the Divisional Railway Manager,

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although the order was communicated by the Senior Divisional Electrical Engineer. This is evident from the order issued from the Divisional Railway Manager's Office on 13.9.1993 which reads as follows in the preamble:-

"Appellate Authority has considered your appeal st. 23.11.1993 Under Rule 22(2) of the Railway Servants (Discipline & Appeal Rules) 1968 and passed the following orders which may be noted."

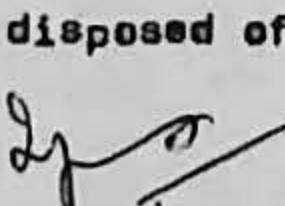
and the order of the Appellate Authority has been given in a question as extracted in the earlier part in this order. From these, it appears that neither the impugned order of punishment nor the Appellate Order suffers from lack of jurisdiction of competence.

8. In the light of this, the contention of the learned counsel for the, in regard to the jurisdiction and competence of the Disciplinary Authority is not accepted. Notwithstanding the averments made by the respondents in the counter affidavit in regard to the Appellate Authority, we find that the appellate order as passed by the Appellate Authority is defective ^{and} for the reasons mentioned in para 6 above, can not, therefore, be sustained.

9. Having made the above observations, we however, find that the impugned order of punishment of removal from service is quite disproportionate to the nature of the charge. While ⁱⁿ the normal course, the Court/ Tribunal does not sit as a court of appeal on the quantum of punishment, we cannot resist the conclusion that the nature of charge in our view cannot call for such exemplary punishment. The punitive power of the Disciplinary Authority should not be unconscionably excessive and

out of proportion to the nature and gravity of the proven charges, against the Government Servants. Where the Court/Tribunal finds the quantum of punishment, unduly harsh such interference by the Tribunal, will be justified in the circumstances of the each case, as decided by the Supreme Court in Union of India Versus Giri Raj Sharma AIR 1994 SC 215. In the light of this, we consider it appropriate to quash the impugned order of punishment dated 13.9.1993.

10. In view of these observations, the impugned order of punishment is quashed. We direct the Disciplinary Authority to reconsider his order within a period of three months from the date of service of this order, with reference to the nature of charge and other relevant factors and pass a suitable and reasoned order, taking into account the fact that the applicant has rendered long years of service in the department and afford the applicant further opportunity of appeal against such a fresh order in accordance with Disciplinary Rules. Consequently, the Appellate Order also stands quashed. The applicant is reinstated in his post with his initial seniority subject to such further order of punishment as may be imposed by the Disciplinary Authority as a result of our direction, including the specific order on the treatment of the period from the original date of removal from service till the date of his reinstatement and the consequential benefits, if any, as may be deemed appropriate by the Competent Authority and in accordance with Rules. With the above directions, the application is disposed of. No order as to costs.


MEMBER (A)


MEMBER (J)

ALLAHABAD: DATED:

am/ 25-1-95