

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.510/1995

TUESDAY, THIS THE 10TH DAY OF DECEMBER, 2002

HON'BLE MR. GOVINDAN S. TAMPI .. MEMBER (A)

HON'BLE MR. A.K. BHATNAGAR .. MEMBER (J)

Girish Chandra Mishra,
S/o (Late) Bauke Behari Mishra,
Presently posted as Executive Engineer
under the Divisional Railway Manager (Works),
Central Railway, Jhansi. ... Applicant

(By Advocate Shri H.P. Mishra - absent)

Versus

1. Union of India through
the Ministry of Railways,
New Delhi.
2. The Railway Board,
Ministry of Railways,
Rail Bhawan, New Delhi,
through Deputy Secretary (E)-II. .. Respondents.

(By Advocate Shri Lalji Sinha)

ORDER

Hon'ble Mr. Govindan S. Tampi, Member (A) :

None was present for the applicant even on the fourth call. Respondents were represented by Shri Lalji Sinha, learned counsel. We are in the circumstances proceeding to dispose of the O.A. on merits, in terms of Rule 15 of the C.A.T. (Procedure) Rules, 1987, after hearing the learned counsel for the respondents.

2. This O.A. has been filed by Shri G.C. Mishra, Executive Engineer, Jhansi Division, challenging the order dated 25.4.1995, passed by the Railway Board, in disciplinary proceedings. The applicant was proceeded against under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968, on 5.2.1990 alleging gross mis-conduct

involving award of an unrealistic contract. The charge-sheet had seven articles, out of which, the Inquiry Officer held Articles I, II and VII as not proved, Articles III & IV as proved and Articles V and VI as partly proved. After considering the Inquiry Officer's report, the documents brought on record and the applicant's representation, Railway Board, as the Disciplinary Authority on 25.4.1995, awarded the penalty of reduction to the lower time scale, i.e., from Rs.3000-4500/- to Rs.2000-3500/- till his date of superannuation due on 31.7.1995, fixing the pay at Rs.2000/-. Hence, this O.A.

3. The applicant who joined as an Apprentice Permanent Way Inspector on 14.2.1957, earned a number of promotions, due to his satisfactory performance, became an Executive Engineer on 24.10.1988. He was posted to Jhansi on 1.8.94 as Executive Engineer (Material Handling) in which capacity he had to deal with accepting tenders, which he did strictly in accordance with the instructions and properly and gave a contract, which he himself cancelled keeping in view the interest of the Railways. Proceedings were initiated against him in the matter on the basis of some complaint, for imposition of major penalty. On his denial of the charges, enquiry proceedings were held which concluded with the submission of Inquiry Officer's report on 31.1.1994. The Inquiry Officer's report holding that out of the seven (7) articles, two (III & IV) stood proved was perverse, improper and not based on facts. Still, the Disciplinary Authority has imposed on him the penalty of reduction to the lower time scale. The order was also discriminatory in that two other officers who were also concerned had been separately dealt with and one of them Shri N.S. Nikhare was imposed

only the penalty of reduction in pay by two stages for six months with cumulative effect. Hence, this O.A.

4. The grounds raised in this O.A. are that:-

- i) Inquiry Officer had not proposed any penalty;
- ii) Inquiry Officer's findings were perverse with regard to Articles III and IV;
- iii) the proceedings were considerably delayed;
- iv) the applicant's integrity was always accepted;
- v) impugned order has been mechanically passed;
- vi) it has not been passed by the General Manager, but only by the Railway Board;
- vii) Railway Board did not consider that the applicant was due to retire and
- viii) the penalty was harsh and unconsciously high.

Applicant therefore prayed that the O.A. be allowed with full relief to him.

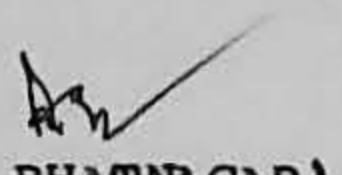
5. Replying on behalf of the respondents, Shri Lalji Sinha, learned counsel pointed out that the applicant had not availed himself of the statutory appeal. According to him, the respondents have acted carefully and dealt with the mis-conduct of the applicant, who was a senior and responsible officer, and after perusing the Inquiry Officer's report and the applicant's representation had imposed on him the penalty. All the proceedings have been gone through correctly and no infirmity in the proceedings. ^{h Sinha} We ~~had~~ noticed applicant's defence that another officer has been given a lesser penalty also does not merit endorsement, as the proceedings though related, were separate and the penalties have been imposed keeping in view the degree of

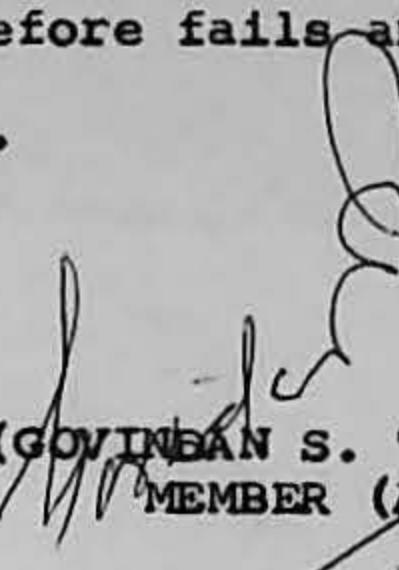
misconduct. Applicant cannot have any legitimate grievance as he had been dealt with properly, correctly and leniently and the O.A. should therefore be dismissed, urged Shri Sinha.

6. We have carefully considered the rival contentions and perused the facts and circumstances brought on record. In this case, the applicant, an Executive Engineer has been imposed a penalty of reduction in rank to the lower scale for a period of less than four months, i.e., from the date of imposition of punishment (25.4.95) to the date of his retirement on superannuation (31.7.1995). This was based on the findings of the Inquiry Officer that out of seven articles of charge in the charge sheet dated 5.2.1990, two (III and IV) stood proved and two (V & VI) stood partially proved and the punishment also has been ordered after considering the applicant's representation. Perusal of documents brought on record makes it clear that the proceedings have been gone through properly and correctly and no procedural irregularity has been given ^{arise} ~~given~~ rise to. That being the case, we cannot accept the view that the respondents were guilty of any infirmity or illegality. Keeping in mind, the circumstances of the case and the relatively high responsibilities of the applicant to guard the interest of the Railways, it cannot be said that the ^{for his future guidance} penalty imposed on him is anything which would shock our judicial conscience to warrant any interference, as brought out in the case of B.C. CHATURVEDI Vs. UNION OF INDIA & ORS. (1996 SCC (L&S) 80). The fact that another officer Shri N.S. Nikhare also concerned in the case, has been given only a lighter penalty does not help the cause of the applicant as the penalty is relatable to the degree of mis-conduct and the Disciplinary Authorities are the best judge to

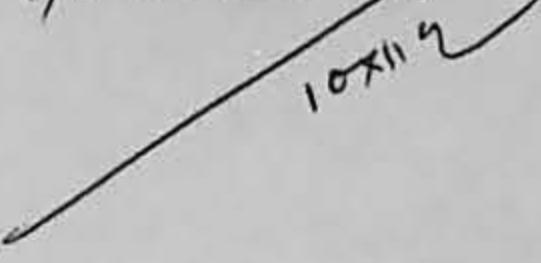
determine the quantum of penalty and once they have exercised the power, the Tribunal cannot interfere in the same.

7. In the above view of the matter, we are totally convinced that the applicant has not brought out any case for our interference. O.A. therefore fails and is accordingly dismissed. No costs.


(A.K. BHATNAGAR)
MEMBER (J)


(GOVINDAN S. TAMPI)
MEMBER (A)

psp.


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