

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION No.791/2002

TUESDAY, THIS THE 26TH DAY OF NOVEMBER, 2002

HON'BLE MR. JUSTICE R.R.K. TRIVEDI .. VICE CHAIRMAN

HON'BLE MAJ. GEN. K.K. SRIVASTAVA .. MEMBER (A)

K.D. Mishra,
S/o Late Sri O.D. Mishra,
R/o 50-A, Gauri Nagar,
Dharam Shala Road,
Hardoi.

... Applicant

(By Advocate Shri H.C. Shukla)

Versus

1. Union of India through
Secretary,
Railway Board,
241, Rail Bhawan,
New Delhi.

2. General Manager (Railway),
Baroda House,
New Delhi.

3. Divisional Superintendent Engineer (C),
Moradabad Division,
Moradabad.

4. Divisional Engineer, IIIrd,
Northern Railway,
Moradabad.

... Respondents

(By Advocate Shri P. Mathur)

O R D E R

Hon'ble Mr. Justice R.R.K. Trivedi, Vice Chairman:

We have heard Shri H.C. Shukla, learned
counsel for the applicant and Shri P. Mathur, learned
counsel appearing for respondents.

2. By this O.A. under Section 19 of the A.T.
Act, 1985, the applicant has challenged orders dated
19.11.2001 by which the ^{appeal of the} applicant was dismissed, order

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dated 5.7.2001, by which the applicant was awarded the punishment of removal after conclusion of the enquiry and order dated 6.12.2000, by which the appeal of the applicant was partly allowed and the matter was remitted back to the Disciplinary Authority and the applicant was reinstated. The applicant has also prayed that the period during which he has not been allowed to work may be treated as period spent on duty and he may be awarded consequential benefits.

3. The facts in short giving rise to this application are that, the applicant while serving as a Junior Clerk in 1984 in the Office of D.R.M., Northern Railway, Moradabad, ~~he~~^{he} was served with a memorandum of charge dated 20.7.1987. The allegation against the applicant was that while posted and functioning as Clerk in Engineering Section, Northern Railway, D.R.M. Office, Moradabad, during the year 1984, ^{he} failed to maintain absolute integrity and devotion to duty and committed the mis-conduct inasmuch as he got sent two recommendatory letters to D.R.M., Moradabad, purported to have been sent by Chairman, Railway Board and Private Secretary to Railway Minister, thereby contravened Rule No.3(i)(ii)(iii) of Railway Services (Conduct) Rules, 1966. In the statement of imputation of misconduct, it has been stated that the applicant while posted as Clerk in Engineering Section, D.R.M. office, Moradabad, during the period 1984, sent a letter dated 30.7.1984 to D.R.M., purported to have been sent by Chairman, Railway Board for promotion of Chandra Kanth Shama, Khalasi, to the post of Clerk. This letter also accompanied an application of Shri Chandra Kanth Shama, who had given it to the applicant.



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4. It is further alleged that the applicant got sent another letter dated 30.7.1984 purportedly written by the Private Secretary to the Railway Minister to the D.R.M., Moradabad, requesting transfer of the applicant from Moradabad Division to Lucknow Division and grant him the scale of Senior Clerk.

5. As usual, Inquiry Officer was appointed. The Inquiry Officer submitted the report. His conclusion was that the charges are proved on the basis of preponderance of probability keeping in view the statement of Chandra Kanth Sharma. In his report, the Inquiry Officer observed that the material witness of ACFOD and Shri A.K. Sharma, Inspector, CBI, were not examined. Only Chandra Kanth Sharma, PW-1, could be examined, whose application accompanied the letter written for his promotion. The Disciplinary Authority agreed with the report of the Inquiry Officer and awarded the penalty of removal from service by order dated 30.10.1990, Annexure-2. A perusal of the order will show that it does not contain any reasons. Against the order of the Disciplinary Authority, the applicant filed an appeal which was dismissed by order dated 18.6.1992. The order of the Appellate Authority reads as under:

"No new facts have been brought forward by Sri K.D. Mishra. The punishment already awarded will stand. The appeal is rejected."

The applicant approached this Tribunal by filing O.A. No.240/1992, which was disposed of finally on 28.8.2002, holding the aforesaid appellate order not legal. The

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following observations were made ^{in respect of the order} ~~to that effect.~~

"In our opinion the order of the appellate authority does not satisfy the legal requirements. Appellate authority is required to examine all the charges, the material produced in support of charges and have to examine the punishment awarded against charges. There is no discussion on any of points in the appellate order. Right of appeal is an important right."

The O.A. was allowed by order dated 28.8.2000 and the matter was remitted to the Appellate Authority for deciding fresh.

6. The Appellate Authority, by order dated 6.12.2000 allowed the appeal and set aside the order of removal passed by the Disciplinary Authority and directed to reconsider the case from the stage of receipt of the report from the Inquiry Officer. The Disciplinary Authority, again considered the case and passed the order on 5.7.2001 and awarded the punishment of removal from service. Against this order, the applicant filed O.A. No.1045/2001, without availing the ^{remedy} ~~right~~ of appeal. The O.A. was disposed of on 29.8.2001, giving liberty to the applicant to file an appeal and the Appellate Authority was directed to decide the same on merits within three months. In pursuance of the aforesaid order, the Appellate Authority has passed the order dated 19.11.2001, a copy of which has been filed as Annexure-12C. The order reads as under:

"In reference to above, the Appellate Authority has passed the following orders:-

"I have gone through the appeal made by Shri K.D. Mishra and found that the applicant has made all false allegations on administration. I stand with the decision made by D.A. The appeal made by Sri K.D. Mishra is hereby rejected."



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7. From the aforesaid order, it is clear that the Appellate Authority did not have in mind the observations of this Tribunal made in the order dated 28.8.2000. The Appellate Authority has not discussed whether the punishment awarded is commensurate with the charges. He has not discussed why the Inquiry Officer has not examined the statement of ACFOD and Shri A.K. Sharma, Inspector CBI and has proceeded on the basis of the statement of the solitary witness of Chandra Kanth Sharma, who was the beneficiary of the recommendatory letter. We express our dissatisfaction in strong words that the Appellate Authority even on the second occasion has failed to discharge his legal obligation as an Appellate Authority. Shri P. Mathur pleaded and submitted that the appeal may be remitted back to the Appellate Authority to decide the case in accordance with law. We are not inclined to accept the request that the matter be remitted back to the Appellate Authority for deciding the case in accordance with law. The charge against the applicant relates to the year 1984. More than 18 years have passed. We do not see that any useful purpose will be served by sending the matter back for decision of the Appellate Authority afresh. The person who has been out of service for such long period cannot be compelled to approach such authorities again and again who are not prepared to act in accordance with law. In the circumstances, we propose to dispose of this O.A. ourselves by awarding suitable punishment after hearing counsel for the parties.



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8. We have heard the counsel for the applicant and Shri P. Mathur for respondents on the question of punishment.


9. As the applicant did not contest the proceedings and it went ex-parte against him, we are also not inclined to re-open it. We accept the charge against the applicant as proved.

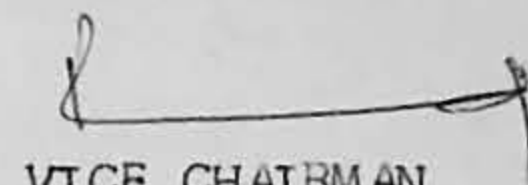
10. The only allegation against the applicant is that he got two letters on the same date, one from the Private Secretary to the Railway Minister and the other from the Chairman of Railway Board which recommended for his transfer from Moradabad to Lucknow and also to give scale of the Senior Clerk and another letter for the benefit of Shri Chandra Kanth Sharma for his promotion from Khalasi to Clerk. We do not approve the course adopted. But, we cannot ignore what is happening in our Society. It is almost everyday happening in every department, and such recommendations are made by authorities frequently without any hitch. The punishment of removal for such a charge cannot be termed as commensurate. One of the objects of awarding punishment is also for correction of the ^{delinquent} employee, and extreme penalty of removal from service should not be awarded unless it is found that the delinquent employee is unfit to be retained in service. The Disciplinary Authority and the Appellate Authority should have awarded such punishment which may prove to be deterrent so that the applicant may not indulge in such activity in future. There is no finding recorded by either of the authorities that applicant has rendered himself unfit to be retained in service and in the absence of such finding, the punishment of ..



removal cannot be justified. In our opinion, the ends of justice will be served if the applicant is deprived of three increments with cumulative effect.

11. For the reasons stated above, this O.A. is allowed in part. The order of punishment dated 5.7.2001 passed by the Disciplinary Authority and the order of the Appellate Authority dated 19.11.2001 shall stand modified and the punishment of removal shall stand quashed and substituted by the punishment of with-holding of three increments with cumulative effect. The applicant shall be reinstated on the post and shall be entitled for all consequential benefits. However, he shall be paid 50% of the wages for the period he has not actually worked. No order as to costs.


MEMBER (A)


VICE CHAIRMAN

psp.