

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA.733 of 1996

Date of Order: 22.7.98.

Present: Hon'ble Mr. Justice S.N. Mallick, Vice-Chairman.
Hon'ble Mr. S. Dasgupta, Administrative Member.

ASOKE KR. ROY CHOWDHURY

-VS-

UNION OF INDIA & ORS.

For the petitioner: Mr. B.C. Sinha, counsel.

For the respondents: Mr. P.C. Saha, counsel.

Heard on: 22.7.98.

O R D E R

S. Dasgupta, AM

1. This application has been filed challenging an order dated 16.5.96 -Annexure.A.8 to the petition, by which the Reviewing Authority had confirmed the penalty which was imposed on the applicant by the Disciplinary Authority. He has prayed for quashing of the aforesaid order and also for a direction to the respondents to consider his appeal dated 10.8.94 and to communicate the order thereon.

2. The grievance of the applicant is that he was served with a Charge Memo dated 19/20-3-92 by the Disciplinary Authority, ~~and~~ The applicant filed a written statement of ~~details~~ ^{defence} and thereafter, an enquiry officer was appointed. The enquiry officer found the charges against the applicant ~~was~~ established. Thereafter, the Disciplinary Authority issued an order dated 2.6.94 imposing a penalty of reduction to the lower stage. The applicant submitted an appeal dated 10.8.94. The applicant claims that although no order of appeal

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was ever passed or communicated to him, reviewing authority by the impugned order dated 16.5.96 have confirmed the order which was passed by the Disciplinary Authority.

3. In order to appreciate the manner in which the disciplinary action has been taken against the applicant, we had directed the ld.counsel for the respondents to produce before us the complete records of the disciplinary proceedings. We have seen therefrom that although the Appellate Authority had passed an order reducing the penalty from that of reduction to the lower stage to that of withholding of Pass/PTO , the said order was never communicated to the applicant. It appears that on receipt of a copy of the said order, the vigilance department of the respondents recommended that since the penalty imposed by the Appellate Authority was not commensurate with the gravity of the misconduct, the file be placed before the Reviewing Authority for reconsideration. It appears that thereafter, Reviewing Authority had passed the impugned order dated 16.5.96.

4. The power to review an order passed in a disciplinary proceeding has been conferred on the reviewing authority by Rule 25 of the Railway Servants (Discipline and Appeal) Rules. Under this rule, any order passed in the disciplinary proceedings can be reviewed by the reviewing authority either suo moto or by receiving an application for the review. In the present case no review application was filed by the applicant. At the same time, we have seen that there was no appellate order communicated to the applicant. Therefore, the appeal was never disposed of and legally there was no appellate order in existence to be reviewed. The review cannot be held in a vacuum . It has to be with reference to an order. In the present case the review was made of the so-called appellate order at the ~~instance of the Vigilance~~ instance of the Vigilance Department. Since no Appellate Order existed inasmuch as it was never communicated to the applicant,

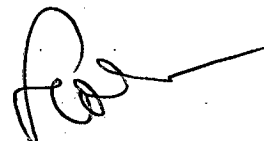
there was no order to be reviewed. In that view of the matter, the impugned order of review is wholly without jurisdiction and must be set aside.

5. In view of the foregoing, we set aside the impugned order dated 16.5.96 at Annexure-A.8 to the petition. We, however, grant liberty to the respondents to consider the appeal, a copy of which is Annexure-6 to the petition, and to pass appropriate order thereon in accordance with the rules. Until the appeal is disposed of in accordance with the rules and the order is communicated to the applicant, the respondents shall not give any effect to the order passed by the Disciplinary Authority.

6. The present application stands disposed of accordingly at the admission stage itself. No order as to costs.



(S. Dasgupta)
Member (A)



(S.N. Mallick)
Vice-Chairman.