

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. M.A.199/1996
O.A.812/1996

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. G.S. Maingi, Administrative Member

ASIM KUMAR GHOSH
son of Late Benimadhab Ghosh
Electrical Driver, Tatanagar, S.E.Rly.,
now residing at 18, Kumar Para Lane,
P.O. Liluah, Dist. Howrah.

..... Applicant

VS

1. Union of India
through General Manager,
South Eastern Railway,
Garden Reach, Calcutta.
2. General Manager,
South Eastern Railway,
Garden Reach, Calcutta.
3. Chief Operating Manager,
South Eastern Railway,
Garden Reach, Calcutta.
4. Divisional Railway Manager,
S.E. Railway, Chakradharpur.
5. Sr. Divl. Elect. Engineer (TRS/OP),
6. Sr. Divisional Personnel Officer,
S.E. Railway, Chakradharpur.

.... Respondents

For the applicant(s) : Mr. S.N.Mitra, counsel

For the respondents : Mr. S. Chowdhury, counsel

Heard on : 3.3.2000

Order on : 29.3.2000

ORDER

D. Purkayastha, JM:-

This application u/s.19 of the A.T. Act has been
filed by one Shri Asim Kumar Ghosh with an application for
condonation of delay bearing No. M.A./199/1996 seeking

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following reliefs :-

- An order directing the respondents to cancel, withdraw and/or rescind the purported order of suspension dated 12.6.89 major penalty charge sheet dt. 31.7.89, enquiry findings dated 14.3.91, punishment order dated 19/31.7.91, order of appellate authority communicated under letter dated 30.10.91, order of revisional authority communicated under letter dated 30.12.93 and decision communicated under letter dt. 10.5.95 and further directing the respondents to pay to the applicant arrears of difference of salary with all consequential benefits with and interest @ 15% per annum thereon from 1.7.92 till the date on which the amount as due and payable is actually paid to the applicant."
- 2. According to the applicant the Enquiry Proceedings was conducted by the Enquiring Authority in violative of the Rules and principles of natural justice and the Appellate Authority also did not grant the applicant a personal hearing although specific request for such hearing was made by the applicant before the Appellate Authority. According to the applicant all the impugned orders are devoid of reasons and violative of the provisions of the D.A. Rules and principles of natural justice applicable to the applicant. Therefore, all the impugned orders are liable to be quashed.
- 3. Respondents have filed written submission denying the claim of the applicant and it is stated by the respondents in the reply that the charge was framed against the applicant on the fact that on 11.6.1989 the applicant was working in a Goods Train as ^Driver from TATA to DPS and arrived DPS at night time at about 22 hours (10 P.M.). He was provided with escort arm guard in the engine. On 12.6.1989, he was given train order at 8.05 hrs. and was expected to reach Tatanagar, a distance of 116 K.M. during day time. Moreover, it was not considered necessary to provide an escort, as intensive Police Patrolling

was carried out in the section round the clock and the section was peaceful. It is stated that the charge against the applicant was proved in the R.S. (D & A) enquiry and a copy of the Enquiry Report was sent to the applicant as per Rule. The representation against the Enquiry Report has been submitted by the applicant on 14.6.1991 and that was duly considered by the Disciplinary Authority and the Disciplinary Authority passed the order of punishment withholding his increment due on 1.7.1992 for four years with cumulative effect. The Disciplinary Authority also decided to impose upon the applicant, the punishment for withholding of his Annual Increment raising his pay from 1900/- to 1959/- in Scale ^{of} Rs.1350/- ... Rs.2200/- normally due on 1.7.1992 for four years with cumulative effect.

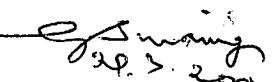
4. It is also stated by the respondents that the applicant preferred Appeal dated 4.9.1991 to the Appellate Authority i.e. the Divisional Rly. Manager, S.E. Rly., Chakradharpur and the said appeal was considered by the Appellate Authority and the Appellate Authority passed Order dated 3.10.1991 rejecting the appeal of the applicant and the said order of the Appellate Authority was communicated to the applicant. It is admitted by the respondents that the applicant ^{has} prayed for a personal interview but the Appellate Authority did not consider it necessary and hence disposed of the appeal without granting any personal interview. It is stated by the respondents that the personal hearing is not a mandatory provision but a discretion. It is also stated by the respondents that the applicant preferred revisional order against the order passed by the Appellate Authority and the review application was considered and rejected by the authority. Therefore, applicant cannot challenge the proceedings as well as the order of punishment. Since the application is devoid of merit and barred by limitation hence the application is liable to be dismissed.

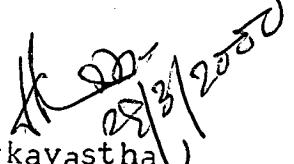
of natural justice. So the order of the Appellate Authority is not sustainable and liable to be quashed.

7. On the face of the order of punishment issued by the Disciplinary Authority on 19.7.1991 withholding the increment. We find that the applicant was asked to submit explanation against the Enquiry Report and the applicant submitted representation against the report but Disciplinary Authority did not state the reason as to why the explanation submitted by the applicant against the Enquiry report was not satisfactory. On a perusal of the said order dated 19/31.7.1991 regarding imposition of punishment on the applicant, we find that the order passed by the Disciplinary Authority is a cryptic one and devoid of reasons. Order ought to have been passed after considering the evidence and explanations submitted by the applicant. Therefore, the order of punishment dated 19/31.7.1991 is not sustainable being cryptic in nature and being devoid of reasons. The Hon'ble Supreme Court had considered in a case of B.C. Chaturvedi -Vs- UOI & Anr. reported in 1996(32) ATC 44 about the role of the Court in the cases relating to disciplinary matters. It is held by the Supreme Court that the findings of disciplinary authority/appellate authority are based on some evidence, Court/Tribunal cannot reappreciate the evidence and substitute its own findings in judicial review.

8. In view of above, we set aside the order of the Disciplinary Authority dated 19.7.1991 as well as the order of the Appellate Authority dated 27.11.1992 (Annexure 'Q' to the application). We also send back the case to the Disciplinary Authority to pass appropriate order after considering the explanation submitted by the applicant against the Enquiry Report and after allowing the personal hearing in accordance with law. With these observations the application is partly allowed.

No order is passed as to costs.


G.S. Maingi
(G.S. Maingi)
Member (A)


D. Purkayastha
(D. Purkayastha)
Member (J)