

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA. NO. 1012 of 1996

Date of order : 7.12.2001

Present : Hon'ble Mr. Justice D.N.Chowdhury, Vice-Chairman
Hon'ble Mr. S. Biswas, Administrative Member

MANTOO GHOSH

VS

UNION OF INDIA & ORS (E RLY.)

For the applicant : Mr. S.K.Ghosh, Counsel

For the respondents : Mr. P.K.Arora, Counsel

O R D E RPer Justice D.N.Chowdhury, V.C.:

1. The applicant at the relevant time was working as Gangman in Gang No. 3 under PWI, E.Rly. Bolpur at Rampurhat. He was served with a memo of charge under rule 11 of Railway Servants (Discipline & Appeal) Rules, 1965 for allegedly misbehaving with the Assistant Engineer on 28.10.94. The applicant submitted his representation to the Assistant Engineer concerned and the Assistant Engineer passed an order dated 21.11.94 imposing a penalty of stoppage of increment for one year without any cumulative effect. The applicant preferred an appeal against the said penalty to the appellate authority. Without getting any reply, he approached this Tribunal. Subsequently, on the direction of the Tribunal, the appellate authority passed the appellate order dated 19.2.98 upholding the penalty imposed on the applicant.

2. We have heard the learned counsel for both parties. It is contended by the 1d. counsel for the applicant that the principle of natural justice had been violated in the conduct of the DA proceeding because the complainant himself had acted as the disciplinary authority and passed the punishment order without holding any enquiry. He has also challenged the appellate authority as the same has been passed without proper application of mind.

3. On a consideration of the facts and circumstances of the case, we are inclined to agree with the contention of the ld. counsel for the applicant. Admittedly, the charge against the applicant was that he allegedly misbehaved with the Assistant Engineer. On the basis of the complaint/allegation made by the self-same Assistant Engineer, the complainant himself acted as the disciplinary authority and imposed the punishment which is against principle of natural justice and fair play. The appellate order also is very cryptic and it does not take into consideration the fact that the complainant himself has imposed the punishment. In that view of the matter, we are unable to sustain the punishment order and it is liable to be quashed. When the basis of the decision making process imposing the impugned penalty is quashed, the appellate order does not survive.

4. In view of the above, the application is allowed. The punishment order dt. 21.11.94 is hereby set aside. The applicant be refunded the pay already deducted with restoration to his original position within one month from the date of communication of this order. No costs.

S. Dua
MEMBER(A)

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VICE CHAIRMAN