

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

No.OA 1175 of 96

Present : Hon'ble Mr.S.K.Hajra, Administrative Member  
Hon'ble Mr.K.V.Sachidanandan, Judicial Member

BISHNU PADA CHAKRABORTY,  
S/O Sri B.Chakraborty,  
working as Call Boy under  
Sr.Divisional Operation Manager,  
S.E.Rly., Adra at Bhojudih,  
R/O West Palaskhola Retd.Colony,  
P.O. Adra, District - Purulia.

APPLICANT.

VERSUS

1. Union of India, service through the General Manager, S.e.Rly., Garden Reach, Calcutta.
2. General Manager, S.E.Rly., Garden Reach, Calcutta.
3. Divisional Railway Manager, S.E.Rly., Adra, Dist.-Purulia.
4. Sr.Divisional Operation Manager, S.E.Rly., Adra, Purulia.
5. Divisional Personnel Officer, S.E.Rly., Adra, Purulia.
6. G.S.Haldar, Asstt. Operating Supdt. S.E.Rly., Adra, Purulia.

RESPONDENTS.

For the applicant : Ms.K.Banerjee, counsel

For the respondents: Mr.S.Choudhury, counsel

Heard on:

Order on : 12.8.2004

O R D E R

S.K.Hajra. A.M.

Disciplinary Proceedings were instituted against the applicant by memorandum dated 11.7.88 on the charge of having attacked unprovoked on 28.5.88 Sri S.Ganguly, Roster Clerk and caused serious injury and for misconduct. The Enquiry Officer conducted enquiry and in his report concluded that the charge framed against the applicant was established. Pursuant to the directive of this Tribunal in order dated 16.12.94 in OA 228/89, Enquiry Report was made available to the applicant to make representation to defend himself. Thereafter the Disciplinary Authority by order dated 20.4.95 removed the applicant from service with immediate effect. The applicant filed an appeal to

the Appellate Authority. The Appellate Authority by order dated 26.10.95 reinstated the applicant in service with initial grade of Rs.750-940/-. The applicant filed an appeal for revision of punishment. This was rejected by order dated 7.2.96. Aggrieved by the Appellate and Revisional orders, the applicant filed this OA for direction to the respondents to cancel the Departmental Proceeding, the charge sheet, the Enquiry Report, the review punishment order dated 26.10.95 and memo dated 7.2.96 rejecting his appeal with the benefits of restoration to his original pay as was being drawn by him before imposition of penalty with all arrears of salary from 28.1.89 to 11.5.89.

2. Ms.K.Banerjee, Id.counsel appears for the applicant and Mr.S.Choudhury, Id.counsel appeared for the respondents.

3. Id.counsel for the applicant argued as follows. The Enquiry was not conducted in accordance with the rules, of the two witnesses cited in the memorandum dated 11.7.88 Smt.Golafi Mahato, Hotwaterman was not examined as a witness, Sri Manraj Ray, Jeep Driver in his evidence did not substantiate the charge that the applicant had assaulted Sri Ganguly. On the other hand it was averred that there was a tussle going between Sri Ganguly and the applicant. The Enquiry Officer hold the applicant guilty of the charge without a <sup>shed</sup> ~~shed~~ of evidence in support of his conclusion. The Enquiry Report is liable to be rejected as it was based on no evidence. A criminal case was instituted against the applicant on the same charge. The Disciplinary Authority <sup>was</sup> ~~was~~ required to accept the acquittal of the applicant in a criminal case and close the Disciplinary Enquiry against him. Strangely enough the Disciplinary Authority ignoring the acquittal of the applicant and accepting the flawed Enquiry Report removed the applicant from service by the impugned order dated 20.4.95. The Appellate Authority by order dated 20.6.95 reinstated the applicant in service as a Call Boy in the initial grade of Rs.750-940/-. The order

of the Appellate Authority is illegal and arbitrary as it <sup>did</sup> ~~need~~ not spell out the period of reduction of pay in contravention of Rule 6(v) of Railway Services (Discipline & Appeal) Rules, 19688. <sup>in</sup> <sup>provides for</sup> ~~the aforesaid rule~~ the reduction to a lower stage in time scale of pay for a specified period, with directions as to whether expiry of such period, the reduction will or will not have the effect of postponing the future increment. However, the order of the Appellate Authority is contrary to the aforesaid rule as no specified period of reduction of pay was laid down in the order. The appeal of the applicant for revision of his punishment was summarily rejected by order dated 7.2.96 without assigning any reason. Such cryptic order is unsustainable. In view of the aforesaid facts the impugned orders are liable to be set aside and the applicant is entitled to the reliefs as prayed for in the OA.

4. The ld.counsel for the respondents <sup>submitted</sup> ~~submits~~ as follows. The enquiry against the applicant was conducted in accordance with the rules giving the applicant ample opportunity to defend himself. The enquiry report was based on tangible evidence leading to the establishment of the charge framed against the applicant. This Tribunal in OA 2288/89 did not interfere with the Enquiry Report. The acquittal of the applicant in a criminal case came from benefit of doubt. It was not an honourable acquittal. The criminal case and the Disciplinary Proceeding being separate Proceedings, the Disciplinary Authorities <sup>was</sup> ~~were~~ right in completing the Disciplinary Proceeding inspite of the acquittal of the applicant <sup>by</sup> ~~from~~ the criminal case. The Disciplinary Authority on consideration of the Enquiry Report and a written statement of the applicant removed the applicant from service in view of the gravity of the charge framed against him. However the Appellate Authority took a lenient view of the applicant's misconduct and reinstated him in service as a Call Boy with initial grade of Rs.750940/-. There is no ground for interfering with this order. The

appeal for revision of punishment was rejected on consideration of the appeal and the enquiry report, the competent authority did not find adequate reasons to change the decision of the Sr.D.O.M. and the OA is liable to be dismissed.

5. We have heard the ld.counsel for both sides and perused the pleadings. The contention of the applicant that enquiry report is not supported by any evidence is misconceived. The Enquiry Officer supported his finding that a charge against the applicant was proved assigning reasons on consideration of materials placed before him.

6. The plea of the applicant that Disciplinary Proceedings should have been closed on account of the acquittal of the applicant in a criminal case is not tenable. The witnesses examined in the criminal case are different from those examined in the *disciplinary enquiry* case. The acquittal of the applicant in a criminal case cannot be construed as an honourable acquittal. This apart this Tribunal by order dated 16.12.94 in OA 22888/89 filed by the applicant directed the Disciplinary Authority to make available a copy of the Enquiry Report to the applicant and give him an opportunity to make a representation against the same and pass final order on consideration of such representation. Thus there is no ground for dropping the Disciplinary Proceedings because the applicant was acquitted in a criminal case.

7. The Disciplinary Authority by order dated 20.4.95 removed the applicant from service. However, on consideration of the appeal filed by the applicant the Appellate Authority by order dated 26.10.95 reinstated him as a Call Boy in the initial grade of Rs.750-940/-. The Appellate Authority passed his order on humanitarian ground keeping in mind the fact that the applicant was young and had a lot of years of service and that the punishment of removal from service was extreme. Thus the Appellate Authority took a very lenient view of the guilt of the applicant considering all the factors cited by him and

dealt with this case in a consistency. The contention of the applicant that the order of the Appellate Authority is contrary to Rule 6(v) of the Railway Service (Discipline & Appeal) Rules, 1968, is a narrow interpretation of rule. The Appellate Authority reduced the applicant to his initial grade of Rs.750-940/- as a Call Boy. The fact that the reduction to a lower stage in the time scale of pay for a specified period was not spelt out <sup>does</sup> ~~It has~~ not rendered this order void. On the contrary the order was beneficial to the applicant.

8. The grievance of the applicant about the rejection of his appeal for revision of punishment is misconceived. The appeal was rejected by the competent authority because there was not adequate grounds for changing the decision of the Appellate Authority.


9. The Tribunal is not expected to interfere with the quantum of punishment imposed by the Disciplinary/Appellate Authority unless a punishment is disproportionately harsh or based on perverse grounds. We are of the considered opinion that the Appellate Authority took a generous and lenient view of the applicant's misconduct and reinstated him in service with reduction of his pay to the initial grade. We see no reason for interfering with the impugned orders dated 26.10.95 and 7.2.96. The OA is therefore liable to be dismissed.

10. Accordingly the OA is dismissed. No order as to costs.



MEMBER(J)

in



MEMBER(A)