

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

O.A.No. 1303 of 1996.

Date of Order: 14.3.05

Present : Hon'ble Mr. J.K. Kaushik, Judicial Member
Hon'ble Mr. M.K. Mishra, Administrative Member

Dwarika Prasad

VS.

Union of India & Ors.

For the Applicant : Mr. B. Mukherjee, Counsel

For the Respondents : Dr. Ms. S. Sinha, Counsel

ORDER

Mr. J.K. Kaushik, JM:

Shri Dwarika Prasad has inter-alia questioned validity and propriety of the order dated 26.2.1993 (Annexure-A/6) and has further sought that the consequential order thereof should also be quashed in addition to the charge sheet dated 11.11.1986.

2. We have heard Ld. Counsel for both the parties at a considerable length and have perused the pleadings and records of this case.

3. The factual background leading to filing of this case is that the applicant while working on the post of Electric Driver Grade 'C' and driving a special goods train on 21-7-1986 was faced with a peculiar situation. The train collided with 28 UP Express standing at Gomo Platform. The applicant was immediately suspended and a major penalty charge sheet came to be issued under Rule 9 of Railway Servants (D & A) Rules, 1968 along with a set of charges and imputations. The applicant denied the allegation and a full-fledged enquiry was conducted. In the enquiry the applicant was found guilty and all the charges were held as proved. In the first instant, the Disciplinary Authority imposed the penalty of removal from service without making available of a copy of the enquiry report. The applicant took recourse to this Bench




of the Tribunal that the order of penalty be declared invalid with direction to the respondents to proceed in the matter from the stage of supply of the enquiry report.

4. The further fact of the case is that the applicant submitted representation against the findings of the Enquiry Officer and after taking into account the enquiry report and the said representation the Disciplinary Authority imposed the penalty of compulsory retirement on the applicant vide order dated 26-2-1993. The same came to be affirmed in appeal by the Appellate Authority as well as by the Revisionary Authority. The Revisionary Authority passed the final order on 27-12-2002 (Annexure-R/1). The Original Application has been grounded on multiple grounds mentioned in para 5 and sub-paras.

5. The respondents have contested the case and filed detailed reply to the original application and have countered the facts and grounds raised in the original application. The defence of the respondents as set out in the reply is that due procedure has been followed and there is no denial of the principles of natural justice inasmuch as the applicant was given reasonable opportunity to defend his case.


6. The Ld. Counsel for the applicant has strived hard to persuade us that gross irregularity has been committed by the respondents inasmuch as the penalty order has been passed not by the competent authority. He has submitted that the Sr.Divisional Electrical Engineer is not the competent person to pass the penalty order and the same must have been passed by the Divisional Railway Manager. He has next contended that in this case the CRS enquiry should have been conducted; but the same was not conducted. He has also made us travel to the various documents which have been furnished to the applicant. He has also submitted that there is a complaint regarding denial of reasonable opportunity to the applicant inasmuch as certain relevant documents were not made available to him during the enquiry and therefore, the enquiry has been vitiated. The Ld. Counsel for the applicant has submitted that the ADRM was not competent to decide the appeal.



7. Per contrary, the Ld. Counsel for the respondents has strongly opposed the contention raised on behalf of the applicant and has submitted that due opportunity was given to the applicant and no irregularity whatsoever has been committed. He has further submitted that even the authority who passed the order of penalty was fully competent to impose the same. Thus, no interference is called out in this case; otherwise also the scope of judicial review in this proceeding is limited.

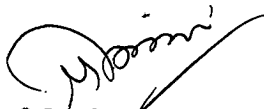
8. We have considered the rival submissions put forth on behalf of both the parties. As regards the contention of the Ld. Counsel for the applicant that the penalty order was not passed by the competent authority, we find from page 42 of the paper book in the earlier original application that the same plea had also been raised therein and was not agreed upon by this Bench of the Tribunal. In this view of the matter, there is no reason to adjudicate on the same afresh since which would fall within the ambit of resjudicata since the earlier judgment attained finality.


9. As far as supply of copy of the CRS findings is concerned, the Ld. Counsel for the applicant was questioned as to whether such findings have in any way been used by the Enquiry Officer, the Ld. Counsel, after going through the records, answered in negative. As regards non-supply of documents to the applicant, we find that it is not the case of the applicant in any way the defence of the applicant has been prejudiced due to non-supply of the said documents. We may clearly assert that scope of judicial review in the disciplinary proceeding has been illustrated in a case of Kuldeep Singh -Vs- Commissioner of Police AIR 1999 SC 677 wherein their Lordships of the Supreme Court have clearly laid down the scope of judicial review in the D&A case; otherwise also it is not the review of decision but the review in respect of decision making process, No doubt, the Tribunal can interfere but only on limited ground when it is found that findings of the enquiry officer are perverse in any manner or the order of the authority is without jurisdiction. But nothing has come to our notice in the instant case. In this view of the matter, we do not find that this is a fit case where we can undertake judicial review. We are fully satisfied that



due procedure has been followed by the respondents and there is no fault in the decision making process.

10. However, it has not been argued that the question of disproportionate penalty could have been one of the reasons for challenging the penalty order. In the instant case we find that the said plea could have rightly not been raised when there is charge of collision of train and the penalty in clause 8 to 9 shall ordinarily be imposed which prescribes removal from service and dismissal from service respectively. But in the instant case, the penalty of compulsory retirement has been imposed and thereby a very lenient view has been taken in the matter. Thus, no interference is called for on this count also. In the result, the O.A. is devoid of merit or substance and the same is dismissed with no order as to costs,


Member(A)


Member(J)