

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No.O.A. 203 of 1996

Present: Hon'ble Mr. S.K. Ghosal, Administrative Member

Hon'ble Mr. P.C. Kannan, Judicial Member

K.N. BHARTY

VS.

UNION OF INDIA & ORS.

For the applicant : Mr. P.K. Munsi, counsel

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

Heard on : 12.5.2000

Order on : 12.5.2000

O R D E R

S.K. Ghosal, A.M.

The applicant, while working as Commercial Clerk in Mughalsarai, was served with a memorandum of charges dated 22/23.10.1990 which is seen at Annexure 'C' of the O.A. As found from the statement of Articles of Charges, following charges were framed against him:-

Article-I

"The said Shri K.N. Bharty, committed a gross insubordination on 15/10/90 at 16.30 hrs with ACS/Catg/MGS in his chamber in as much he furiously threatened him of physical manhandling and assaults, thereby he has shown a sheer misbehaviour in a very rude and revengeful manner about regularisation of his unauthorised absence from 19/9/90 to 23/9/90, which is quite in contravention of Rly. Servant's Conduct Rule 1966 (3.(iii)).

Article-I

The said Shri K.N. Bharty has further committed a great breach of office discipline and has shown a sheer morale turpitude in demoralising, humiliating, and insulting, ACS/Catg/Mughalsarai, E. Rly, in a very rough and rude manner, as well as he has unlawfully dragged the issue of S.C. & S.T. in a quarrelling/

Shouting voice and challenged him on this account during the course of his duty on 15/10/90 at 16.30 hrs. Thus, he projected a very awful and vulnerable condition/ position of his Superior Officer(ACS/Catg/E.Rly./MGS) who was on duty in his chamber which is most unbecoming of a Rly. or Government servant and is in contravention of Rly. Servant's Conduct Rule, 1966(3.(III)).

Article-II

The said K.N. Bharty, while on duty, was found under influence of Alcoholic drink(liquor) and was projecting a very objectionable and illegal conduct with his Superior Officer(ACS/Catg/MGS,E.Rly.) during performance of his duty on 15/10/90 at 16.30 hrs. in his chamber; which is quite in contravention of Rly. Servant's Conduct Rule, 1966(Clause-22, Sub-clause(b))."

The applicant submitted an explanation denying the charges. The explanation submitted by the applicant is dated 16.11.90 seen at Annexure 'F' of the O.A. Not being satisfied with the explanation, the disciplinary authority i.e. the Divisional Commercial Superintendent, Eastern Railway, Mughalsarai, decided to proceed with the departmental enquiry in respect of the charges. In the meanwhile, the applicant had been placed under suspension by the order of the said Divisional Commercial Superintendent dated 15.10.90 seen at Annexure 'B' of the O.A. The aforesaid order of suspension was revoked by the Divisional Commercial Superintendent by his order dated 23.10.1990 w.e.f. 24.10.90. However, the applicant was once again placed under suspension by the same Divisional Commercial Superintendent under his order dated 31.10.90 w.e.f. the same date. The first order initially placing the applicant under suspension, the second order revoking that suspension and the third order placing the applicant under suspension once again are found collectively at Annexure 'D' of the O.A.

2. On conclusion of the enquiry the enquiry officer submitted a report incorporating his findings dated 22/23.10.90 and that report is seen at Annexure 'G' of the O.A. The enquiry

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Officer who was the Assistant Commercial Manager, Eastern Railway, Mughalsarai held that all the three charges levelled against the applicant were proved. The applicant submitted ^{a defence} note after completion of the departmental enquiry on 17.1.94. The disciplinary authority then recorded its order dated 13.5.94 which is seen at Annexure 'I' of the O.A. In the preamble of that order it has been specifically mentioned that a copy of the enquiry report indicating the findings, which have been sent to the applicant, had been received by him on 13.1.94 and that the applicant had failed to submit his reply in defence within the time limit as specified in the forwarding letter and that a reminder had been sent to him which was also similarly acknowledged by him on 4.3.94. The disciplinary authority then recorded his decision after going through the report of enquiry and after discussing the main facts that emerged from the enquiry report. The disciplinary authority found that the charges against the applicant had been proved. He further was of the opinion that there was no reason for which the services of the applicant should be continued in those circumstances. He, therefore, passed an order removing the applicant from service with immediate effect. The order passed by the disciplinary authority i.e. the Divisional Commercial Manager, Eastern Railway, Mughalsarai was by an incumbent of the said post who was different from the previous incumbent who had framed the charge earlier in his capacity as the Divisional Commercial Manager, Eastern Railway, Mughalsarai.

3. The applicant filed an appeal dated 13.6.94 which is found at Annexure 'J' of the O.A. The applicant had mentioned the grounds in that appeal which are similar to the ones which have been urged in this O.A. These are briefly that the non-sanction of the leave applied for by him was a very small matter and that when he had cited the reasons for the

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leave, it should have been either sanctioned by the Assistant Commercial Superintendent or forwarded by him to the DM of it Mughalsarai, that ~~by~~^{it} the Assistant Commercial Superintendent who had misbehaved with the applicant, assault~~ed~~^{ed} him physically in the face, drag~~ged~~^{ed} him to the chamber of the Divisional Commercial Superintendent, that the main charge against the applicant was of unruly behaviour in a drunken condition which charge could not be substantiated in the face of the report of the medical officer which clearly indicated that at the time of his examination by the medical officer the applicant was not under the influence of liquor, that there was no eyewitness to the alleged unruly behaviour on the part of the applicant and that the Assistant Commercial Superintendent had acted against him falsely alleging unruly behaviour on his part in order to settle an old personal score. The appellate authority that is the Divisional Railway Manager, Mughalsarai passed an order dated 4.10.94 on the appeal submitted by the applicant. That order is seen at Annexure 'K' of the O.A. In that order, the appellate authority ~~has~~^{is} referred to the ground urged by the applicant that there was no eyewitness for that alleged incident on 15.10.90. The appellate authority ~~has~~^{is} then referred to the evidence adduced by certain witnesses which according to the appellate authority ~~has~~^{clearly} established that the applicant had threatened the Assistant Commercial Manager (Catering) / Mughalsarai ~~of~~^{with} physical assault and insulted him by using unparliamentary language. The appellate authority ~~has~~^{is} further observed that the provocation for the said misbehaviour on the part of the applicant appeared to be the non-regularisation of unauthorised absence and held that the said non-regularisation could hardly justify the act of indiscipline on the part of the applicant. The appellate authority ~~has~~^{has} then recorded his specific findings on the various

other points regarding procedural ^{flaws} ~~flaws~~ which had been raised by the applicant in his appeal. He has recorded that on consideration, he was convinced that there was no procedural flaw in the enquiry proceedings and that the order of the disciplinary authority was very much a speaking order. Finally the appellate authority also was of the opinion that the misconduct proved against the applicant was too grave to warrant any sympathetic ~~condition~~ ^{treatment} and that the punishment of removal from service imposed by the disciplinary authority ~~to stand~~ ^{to stand}. Thereafter, the applicant filed a revision petition before the Chief Commercial Manager, Eastern Railway, Calcutta. That revision petition contained the same grounds urged ^{here} ~~by~~ by the applicant. The said revision petition was rejected by the Revisional authority on the ground that after going through the case carefully, the revisional authority was convinced that the charges levelled against the applicant had been proved substantively and that there was no effective rebuttal from the explanations averred by the applicant. He, therefore, decided not to interfere with the punishment already imposed upon the applicant and ^{to let} the order of punishment stand.

3. It is against ^{the} ~~the~~ order that the applicant has preferred the present O.A. He has sought the following reliefs :-

- "(i) Quashing of the impugned order of removal vide No.Com/KNB/MPA/MGS/90, dated 13.5.94(Annexure 'I') followed by appellate and revision orders vide No.E/Appeal/TCC/78/R/MGS/94, dated 4.10.94 (Annexure - 'K') and No.E.308/4323/AP, dated 28.7.95(Annexure 'M');
- (ii) Consequential benefits as a result of above quashing including re-instatement in service;
- (iii) Any further order or orders as seem necessary by this Hon'ble Tribunal.
- (iv) Costs."

The case of the applicant is that the Assistant Commercial Manager in whose chamber the applicant had entered on 15.10.1990 was ~~bias~~ ^{biased} against him and that he alongwith the Deputy Commercial Superintendent were responsible for framing

the memorandum of charges and eventually in holding him guilty of the articles of charges. We, however, ⁴⁹observed that none of these incumbents against whom mala fide has been alleged has been impleaded in their personal capacity. Further the only mala fide action on the part of the Assistant Commercial Superintendent that has been alleged by the applicant is that the said ACS had earlier obtained accelerated promotion on the ground that he belonged ⁴⁹to ²Scheduled Tribe community and that the said matter was under investigation. ⁴⁹We fail to understand how these developments could have been responsible for any mala fide action on the part of the abovesaid ACS. We, therefore, ⁴⁹held that the applicant has failed to lay any foundation for the allegation of mala fide either against the ACS or against the DCS.

4. The other grounds urged by the applicant in support of the reliefs prayed for by him are briefly that the disciplinary authority having himself framed the charge could not have passed the order removing him from service. We find ⁴⁹that this argument is quite strange for the reason that it is the function statutorily imposed on the disciplinary authority not only to frame the charges, but also to pass the order after considering the report of enquiry held into the charges. The applicant has also urged the grounds that the respondents had changed the enquiry officers twice and it is the enquiry officer who was appointed on the third occasion ^{that} ~~was~~ prepared the enquiry report. In the reply statement filed on behalf of the respondents it has been explained that the first enquiry officer had retired during the pendency of the enquiry and that the second enquiry officer was promoted and had to be transferred out of that post. We are convinced that ⁱⁿ these circumstances, the appointment of a third enquiry officer was perfectly in order. We also are satisfied that the appointment of these enquiry officers were done following the due procedure and after passing the requisite orders. The applicant has then contended that the

enquiry should have been completed in about 150 days and the respondents ^{who have} failed to do so, have thus contravened ^{the} the statutory provisions and ^{therefore} proceedings should be held invalid on that ground. The completion of disciplinary enquiries depends on a host of factors. It is not feasible for the administration to complete all disciplinary enquiries within the prescribed period of time. In this particular case, the applicant had not only fully participated in the enquiry but also had the assistance of the Defence Assistant. A major penalty proceeding cannot be hurriedly conducted. ^{No undue delay has been done in the matter.} We, therefore, ^{are} of the firm opinion that, on this score, the decisions of the respondents cannot be said to be unjustified. The ld. counsel for the applicant has next argued that the respondents were not competent to order the punishment of removal from service since the charges are not of a serious nature and that only if the charge was one of acceptance of illegal gratification, a severe punishment like removal from service was warranted. We find ourselves unable to agree with this contention urged on behalf of the applicant. The charges, as we have quoted verbatim above, related to unruly behaviour, assault, use of unparliamentary language and drunkenness while dealing with the superior officers, on the part of the applicant. ^{We} are of the opinion that these charges were serious enough and in the event of these charges ^{or} some of them being proved, it was competent for the respondents to impose ^a major penalty like the removal from service. The ld. counsel for the applicant has then argued that the main charge against the applicant was of drunken behaviour and that in the light of the report recorded by the medical officer that charge must be held not to have been proved. It is true that the medical officer in his report dated 16.10.90 seen at Annexure 'B' of the O.A. relating to the examination conducted on 15.10.90 at 5.45 p.m.

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~~was~~ certified that the applicant was not under the influence of liquor at that point of time ~~and~~ that his behaviour on that point of time was normal. However, he has specifically recorded that the applicant even at that point of time was smelling of alcohol. We observe that the alleged misconduct on the part of the applicant took place at 16.30 hrs. ~~on~~ 15.10.90 and thus, ^{more than} there is a gap of one hour fifteen minutes before the applicant was examined by the medical officer. Be that as it may, we find that the main charge against the applicant was ^{not 49} ~~that~~ that he was found under the influence of liquor, and, therefore, committed very objectionable and illegal conduct with the superior officers. ^{Only 49} Article-III of the Article of charges refers to his alleged behaviour under the influence of liquor. The other two charges in Article-I and Article-II deal with his misbehaviour and unruly behaviour and use of unparliamentary language against the superior officers. We are, therefore, convinced that the charge of being under influence of liquor was not the main charge in respect of the applicant, even ^{that 49} ~~that~~ ⁴⁹ ~~the~~ charge has been held to be proved by the enquiry officer after following the proper procedure and after giving the applicant a reasonable opportunity of hearing and defending himself.

5. The applicant has also alleged that the decisions of the appellate authority and the revisional authority have been taken without applying their mind. We have already referred to those orders and the reasons incorporated there. We find that both the appellate authority and the revisional authority have on proper consideration recorded their decisions and that the orders passed by them are obviously speaking orders. On this score, therefore, we hold that the actions of the respondents cannot be held as invalid or irregular.

6. In the light of the detailed discussions made by us above, we do not find any reason to interfere with the actions taken by the respondents in this case. The O.A. does not have