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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR

Date of order : 18.2.1998

O.A. No. 353/1996

S.J. Verma s/o. Shri Ram Sunder Verma, aged about 52 years, r/o. Railway B.G. Quarters, Nawa City, District Nagour (Rajasthan), presently working as A.S.M. in the office of the Station Superintendent, Nawa City, District Nagour (Rajasthan).

... Applicant.

versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Jodhpur.
3. The Additional Divisional Railway Manager, Northern Railway, Jodhpur.
4. The Senior Divisional Operating Manager, Northern Railway, Jodhpur.

... Respondents.

Mr. S.K. Malik, Counsel for the applicant.

Mr. R.K. Soni, Counsel for the respondents.

CORAM:

Honourable Mr. A.K. Misra, Judicial Member.

Honourable Mr. Gopal Singh, Administrative Member.

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PER HON'BLE MR. A.K. MISRA :

The applicant has filed this O.A. with the prayer that the charge-sheet dated 19.5.1995 (Annexure A/1), punishment order dated 23.4.1996 (Annexure A/2) passed by the Disciplinary authority, order dated 5.3.1996 (Annexure A/3) and the order dated 19.9.1996 (Annexure A/4) passed by the appellate authority be quashed and the respondents be directed to release the increments to the applicant with all consequential benefits including the arrears alongwith the interest @ 24% per annum.

were

2. The respondents served with the notice of the O.A. On behalf of the respondents their advocate had also put in appearance in the case and sought time to file reply on two occasions but no reply was filed by the respondents and thus their right to file reply was forfeited on 18.3.1997. Thereafter also the case continued to remain pending for hearing and was finally heard on 18.12.1997 till that date respondents had taken no steps to file counter/reply.

3. We have heard the learned Counsel for the parties. The arguments of the learned Counsel for respondents were directed to be restricted only on the legal aspect of the matter as the respondents failed to give reply on factual aspect of the case as pleaded by the applicant.

4. In this case, applicant was proceeded against departmentally by serving upon him a Charge-sheet (Annexure A-1) and was punished by way of stoppage of three grade increment by the Disciplinary Authority vide its order dated 23.4.1996 (Annexure A/2) with immediate effect. Applicant's departmental appeal was rejected by the appellate authority vide its order dated 5.7.1996 (Annexure A/3) and applicant's mercy

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appeal was also rejected by the appellate authority vide its order dated 19.9.1996 (Annex.A/4). All these orders are under challenge.

5. The learned Counsel for the applicant has challenged the departmental proceedings on the following grounds viz :

- (i) The applicant was punished for the charges which were not served on him and for which he was not called upto to explain;
- (ii) The Inquiry Officer was a rank lower than the applicant and as such was not competent to conduct inquiry against the applicant;
- (iii) The applicant was deprived of the help of the defence nominee because on the date of hearing his defence nominee was deputed to Delhi on some Government job and the Inquiry Officer disposed of the matter on the very same day, and
- (iv) The applicant was not supplied with a copy of Inquiry Report before the Disciplinary Authority passed the order of punishment.

The learned Counsel for the applicant elaborated his arguments on the above points and has cited the following rulings :-

1. 1990(14) ATC 823 - State of Haryana vs. Om Prakash
2. 1988 (8) ATC 410 - Onkar Prasad Chaubey vs. Union of India.

6. We have considered the rival arguments and gone through the rulings.

7. Point No.1 The applicant was chargesheeted for having caused Railway Administration a loss of revenue amounting to Rs.17,600/- while he was working as Assistant Station Master, Nawa, in taking more time in allotment for loading 34 BRNE. But from the punishment order (Annex. A/2) it appears

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that applicant was held responsible and punished for slack supervision by allowing the Assistant Station Master Shri Prem Chand on duty to change the placement time from 14.00 hrs. to 14.10 hrs. on 7.5.1995 and put the Railways in revenue loss of Rs.17,600/-, he being Supervisory Officer. Thus, from the above it is clear that applicant has been punished for slack supervision whereas he was chargesheeted for having taken more time in allotment. From the punishment order it is clear that on the particular date Shri Prem Chand was working as Assistant Station Master and it was he who was responsible for allotment of wagons for loading. This is also not brought on record that applicant was entrusted with the job of supervising Sh. Prem Chand and the applicant both were working on the post of Assistant Station Master on that particular station. Therefor the applicant who himself was working as Assistant Station Master cannot be a supervisory authority over another Assistant Station Master. In this case, the applicant was never called upon to explain his supervisory lapse. Therefore, he could not have been punished for supervisory negligence or slackness. The applicant was charged for having taken more time in allotment of 34 wagons but the applicant had not allotted the wagons at the relevant time. Therefore, in our opinion, the applicant has been highly prejudiced by the present finding and punishment and the same deserves to be quashed. In this respect the case of Onkar Prasad Chobey vs. Union of India & Others (1988 (8) ATC 410) lends support to the case of the applicant

8. Point No.2 The applicant has stated that he was working as Assistant Station Master in the grade Rs.1600-2660 whereas the inquiry was conducted by Shri Pukh Raj Dave, Traffic Inspector Safety Grade Rs.1400-2300 who was lower in rank and grade than the applicant. This factual aspect has

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not been denied by the respondents by placing their reply on record. Therefore, there is no reason to disbelieve the allegation of the applicant. In the punishment order (Annex.A/2) the grade of the applicant has been mentioned as Rs.1600-2660. Therefore, in view of the allegations of the applicant it was for the respondents to show that the Inquiry Officer was superior to the applicant, which they have failed to do. Therefore, in our opinion, applicant has been highly prejudiced by the inquiry conducted by a person lower in rank than him. On this count also, the punishment awarded to the applicant deserves to be quashed.

9. Point No.3 It is alleged by the applicant that his defence nominee Shri Jai Bhagwan Sharma was directed on 16.1.96 to appear in the viva-voce test to be held at Delhi on 17.1.1996 and, therefore, on 17.1.1996, the defence nominee was not available to the applicant for rendering him help before the Inquiry Officer. The Inquiry Officer did not consider this situation and completed the inquiry the very same day. Thus, applicant was highly prejudiced. This allegation has also not been denied by the respondents. From the inquiry file, we find that examination of departmental witness had not taken place at all. The delinquent was questioned, his defence witnesses were questioned and the case was closed. In our opinion, this was not the correct procedure. By this irregularity the applicant was highly prejudiced and the findings of the Inquiry Officer cannot be treated to be free and fair. Thus, the inquiry and the punishment deserve to be quashed.

10. Point No.4 : A perusal of the record shows that before the Disciplinary Authority passed the punishment order Annex.A/ copy of inquiry report was not passed on to the applicant. The inquiry was conducted in the year 1996. In view of the principles laid down by Hon'ble Supreme Court in Mohammed Ramzan Khar

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case this has amounted to grave irregularity and the applicant was highly prejudiced thereby. Thus, the punishment deserves to be quashed.

11. From the two appellate orders, we find that the appeal of the applicant and the mercy appeal of the applicant were rejected without any debate on the merits of the grounds taken in the memorandum of appeal. This is a case where it can be safely inferred that the appeals were disposed of without any application of mind. The applicant has challenged the finding of the Inquiry Officer on the grounds which have been discussed above but it appears that these grounds were not considered and the appeal of the applicant was disposed of in a routine manner. Therefore, it is difficult to sustain the appellate orders.

12. For the foregoing reasons, we are of the opinion that the charge-sheet Annex.A/1, order of punishment (Annex.A/2) and the orders of the Appellate Authority (Annex.A/3 and A/4) deserve to be quashed.

13. The OA is, therefore, accepted and the orders Annex.A/1, A/2, A/3 and A/4 are hereby set aside and the respondents are directed to release the grade increments to the applicant which were stopped in pursuance of the punishment order, within a period of three months from today. The prayer of the applicant for grant of interest on arrears of the amount withheld, is however, refused.

13. It is further ordered that the Railway Administration would be free to proceed against the applicant *denovo* in respect of the revenue loss suffered by the Railways on 7.5.1995 at Nava Station, if they are so advised. The parties shall bear their own costs.

Gopal Singh
(GOPAL SINGH)
ADM. MEMBER

A.K. Misra
(A.K. MISRA)
JUDL. MEMBER

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Re:

SK malik

25/2/98

Part II and III destroyed
in my presence on 25/2/98
under the supervision of
Section officer as per
order dated 27/1/2003

Section officer (Record)