

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH : JODHPUR

Date of order : 2/3/1996

O.A. No. 146/96

Bheru Ram son of Shri Ram Ratan by caste Brahmin aged 59 years resident of Dadhimati Nagar, Near Bhadwasia School, Jodhpur, retired (30.6.95) H.S. Fitter grade Ist under Electric Foreman, Northern Railway, Jodhpur.

... Applicant.

v e r s u s

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Jodhpur.
3. Senior Divisional Electric Engineer, Northern Railway, Jodhpur.

... Respondents.

Mr. N.S. Solanki, Counsel for the applicant.

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

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

O R D E R

(Per Hon'ble Mr. A.K. Misra)

Applicant, Bheru Ram, has moved this application with the prayer that the disciplinary action instituted under the charge-sheet dated 12.3.92 (Annexure A/2) and punishment order dated 12.1.93 (Annexure A/1) and appellate order dated 12.6.95 (Annexure A/10) be declared illegal and be quashed with consequential relief as to grant of increment and promotion on the due date when the applicant's juniors were promoted. The applicant had also prayed that respondents be directed to pay him full bonus for the year 1992-93 treating the suspension period as on duty.

2. Notice of the application was given to the respondents who have filed their reply stating therein that the applicant had admitted his guilt and, therefore, charges were held to have been proved and consequently, the applicant was awarded penalty of stoppage of one grade increment with no future effect. The appeal was also considered in detail and, therefore, the orders passed by the disciplinary authority and the appellate authority are not required to be interfered with. The O.A. deserves to be dismissed. The applicant had filed a rejoinder stating therein that he claims limitation from the date of communication of the order passed by the appellate authority and the objection of the respondents relating to limitation is baseless.

3. We have heard the learned counsel for the parties and have gone through the case file.

4. The applicant had challenged the impugned orders on the ground that misconduct has nowhere been defined in the Railway Services (Conduct) Rules, 1966, hence the disciplinary authority is not fit to interpret the conduct of the applicant as per his own convenience. He has also challenged the punishment order on the ground that there is no evidence worth the name in support of the charge and no departmental witnesses were examined by the presenting officer. The applicant was charged Rs. 614/- on account of fare and penalty and for extra luggage, hence no departmental action could be initiated thereafter on the same ground. It is also alleged by the applicant that no enquiry report was ever given to the applicant before the order of punishment was passed against him. The applicant was cross-examined by the enquiry officer inspite of the fact that it had recorded that the departmental witnesses have not been produced. The punishment order was made operative from a retrospective date and, therefore, the same deserves to be quashed.

5. We have given our consideration to the point of attack in support of which the learned counsel for the applicant had also argued the case in detail.

6. The applicant was charged for having used the Railway pass for return journey from Delhi to Jodhpur after the same had expired. He was also charged for having brought with him luggage of commercial



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nature which was 85 kilos in weight, without payment of luggage fare.

7. From the statement of imputation of charges annexed to Annexure A/2, it appears that at Jodhpur station, the applicant was detected to have travelled from Delhi on a pass which was expired, with luggage weighing 85 kilos and was consequently charged Rs. 614/- by the Ticket Collector, Shri Mandal Datt. It is also stated in the statement that he admitted in his statement all these facts. But in departmental enquiry, nobody was tendered from the department as witness in support of the charges. In the list of witnesses, Shri Ram Kishore and Shri R.K. Sharma, Chief Vigilance Inspectors, have been shown as prosecution witnesses, but none of them were examined who could have given detailed version of factual aspects of the case. Likewise, Shri Mandal Datt, TTI on duty, has neither been named as a witness nor seems to have been tendered by the department as its witness. It appears that the enquiry officer had relied upon the statement of the applicant before the Vigilance Inspectors for treating the same as admission of the applicant in respect of the charges which in our opinion, is not a correct approach. If the applicant had admitted before the concerned Railway officials about his having travelled from Delhi to Jodhpur without a ticket on an expired Railway pass alongwith 85 kilos of commercial luggage then such statement ought to have been proved before the enquiry officer by the official who had recorded the same. Likewise, Vigilance Inspectors should have been produced to prove this fact, but they have also not been produced as is very clear from the opening para of the enquiry proceedings dated 13.11.92 (Annexure A/7). The opening para can be usefully quoted as under:-

"As per demand of the Defence Helper of Shri Bhairu Ram during the first sitting, the prosecution witness of the case were informed to attend the enquiry on 13.11.92 but not attended. However, DAR proceedings continued.... Questions by enquiry officer."

It appears that inspite of non-appearance of the prosecution witnesses, the enquiry officer proceeded interrogating the delinquent as if the burden of proving innocence was on the delinquent. This, in our opinion, was absolutely against the rules for conducting such departmental enquiry. The applicant had denied the charge vide Annexure A/3 and had also stated therein as to how

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he was made to pay Rs. 614/- for the fare charges for luggage and for himself. There is no unqualified admission of the applicant in his reply which could have helped the enquiry officer in coming to the conclusion that the delinquent had admitted his guilt. Even as per the enquiry proceedings dated 16.10.92 (Annexure A/5) it is clear that in respect of the charges the applicant had stated that he does not accept the charges and, therefore, the prosecution witnesses were directed to be produced on 13.11.92. No prosecution witnesses turned up on the date fixed as mentioned in the foregoing paragraphs. Therefore, in our opinion, this is a case in which there is no evidence worth the name against the applicant and, therefore, the charge-sheet, punishment order and the appellate orders deserve to be quashed. In this case, the enquiry was entrusted to the Assistant Engineer, Northern Railway, by the disciplinary authority as is clear from the copies of the proceedings Annexure A/5 and Annexure A/7. The punishment order was passed by the disciplinary authority vide Annexure A/1. The applicant has stated that he was supplied with no enquiry report before the impugned punishment order was passed. This fact has not been controverted by the respondents and nothing has been brought to our notice which may go to show that the enquiry report was delivered to the applicant before the disciplinary authority imposed the impugned punishment on him. Therefore, in our opinion, the disciplinary authority had not provided any opportunity to the applicant to explain the charges vis-a-vis the conclusion arrived at by the enquiry officer. Thus, the applicant was highly prejudiced and consequently, the punishment order deserves to be quashed.

8. The punishment order Annexure A/1 is dated 12.01.93 and has been made effective from 1.1.93, i.e., by this order the annual increment which the applicant had earned on 1.1.93 has been ordered to be stopped for one year. In our opinion, a person cannot be awarded punishment from a retrospective date. It is settled law that unless otherwise ordered, a Government servant earns his annual grade increment on the very first date when it becomes due. Therefore, in the instant case, on 1.1.93 the applicant had earned his annual grade increment. Once he had earned it, he cannot be deprived of the same by subsequent punishment order. This punishment order should have been enforced with effect from 1.1.94. But this has not been done and, therefore, also the same deserves to be quashed.

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9. Punishment order Annexure A/1 is, in our opinion, a non-speaking order. How the charges against the delinquent were held to have been proved has not been stated in the order. The disciplinary authority himself had not conducted the enquiry. No mention of the enquiry report has been made in this order. Therefore, it is difficult to comprehend as to how the disciplinary authority came to the conclusion against the applicant regarding his failure to maintain integrity and causing loss to the Railways. Therefore, the punishment order, being a non-speaking order is difficult to sustain. Annexure A/10 which is a letter communicating the order passed by the appellate authority shows that even the appellate authority had also passed no reasoned order in the instant case. The cryptic order passed by the appellate authority is "I have considered the appeal and do not see any need to change the penalty already imposed." No reasons whatsoever have been given by the appellate authority in respect of the punishment order and the applicant's challenge thereto. In our opinion, both the orders, i.e., orders passed by the disciplinary authority and by the appellate authority are absolutely non-speaking orders and can safely be held to have been passed without due application of mind and, therefore, both the orders deserve to be quashed.

10. Inspite of having come to the conclusion that in departmental enquiry against the delinquent, procedure as prescribed by law has not been followed and also having come to the conclusion that this is a case of no evidence, we do not propose to remit the case back to the authorities for passing appropriate orders as per law after holding the enquiry because of two reasons, (i) the incident relates to the year December, 1991 and is now quite old and (ii) the applicant has since retired on superannuation. The applicant had also prayed for full bonus during the year 1992-93 taking suspension period as on duty. But in our opinion, for suspension period which has been treated as duty, the applicant cannot be held entitled to bonus. Bonus is given as an incentive to the working employees as per their duty period. In the instant case, for the suspension period the applicant had rendered no duty, as a suspended employee is not expected to work as per rules. The fact that the applicant has been treated as on duty for continuity in service, does not entitle him to claim bonus for that period and, therefore, his prayer in this respect deserves to be rejected.

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11. As per the above discussion, the application deserves to be accepted in part. The impugned orders as mentioned in the prayer deserve to be quashed.

12. The O.A. is, therefore, partly accepted. The impugned charge-sheet dated 12.3.92 (Annexure A/2), punishment order passed by the disciplinary authority dated 12.1.93 (Annexure A/1) and the order passed by the appellate authority dated 12.6.95 (Annexure A/10) are hereby quashed with all consequential benefits. The respondents are directed to release the withheld increment of the applicant and refix his pay with all consequential benefits of actual payment of difference of pay and allowances etc., within a period of three months from the date of communication of this order. The applicant should also be considered for promotion at par with his juniors if in consequence of the said punishment he was refused promotion. The applicant's prayer for grant of bonus is hereby rejected.

13. Parties are left to bear their own costs.

(Signature)
(GOPAL SINGH)

Adm. Member

27/11/2000
(A.K. MISRA)
Judl. Member

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