

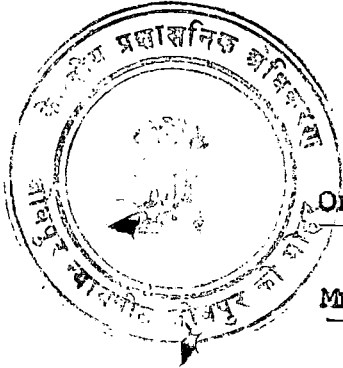
(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 302/1997
~~P.A. No.~~

199

DATE OF DECISION : 23.05.2000.



Om Prakash Gurjar

Petitioner

Mr. J.K. Kaushik,

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent (s)

Mr. S.S. Vyas,

Advocate for the Respondent (s)

CORAM :

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

The Hon'ble Mr. Gopal Singh, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? NO
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? NO
4. Whether it needs to be circulated to other Benches of the Tribunal ? NO

Gopal Singh
(Gopal Singh)
Adm. Member

A.K. Misra
(A.K. Misra)
Vice Chairman

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

.....

Date of order : 23.05.2000.

O.A.NO.302/1997

Om Prakash Gurjar S/o Shri Bhanwarlal, aged 38 years, R/o C/o Station Master, Lunkarnsar, N.Railway, at present employed on the post of Pointsman, at Lunkarnsar Railway Station, Distt. Bikaner, N.Railway.

.....Applicant.

versus

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

.....Respondents.

.....

CORAM :

HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

.....

Mr.J.K.Kaushik, Counsel for the applicant.

Mr.S.S.Vyas, Counsel for the respondents.

.....

PER HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER :

In this application under section 19 of the Administrative Tribunals Act, 1985, applicant Om Prakash Gurjar, has prayed for setting aside the impugned chargesheet dated 19.4.64 at Annex.A/1, orders of the disciplinary authority dated 30.7.96 (Annex.A/2), imposing the penalty of removal from service upon the applicant, order dated 17.10.96 (at Annex.A/3) of the appellate authority, reinstating the applicant as Pointsman in scale Rs. 950-1500 with all consequential benefits.

Om Prakash Gurjar

2. Applicant's case is that while he was working as Assistant Station Master at Mahajan Station of Bikaner Division of Northern Railway, the Senior D.S.O., Bikaner, conducted a surprise inspection and compelled the applicant to write a statement that he was drunk and on this statement, the signatures of 2nd Station Master and Loco Inspector were also taken as witness but no medical examination was got conducted. The applicant has challenged the disciplinary proceedings initiated against the applicant on the ground that the same are based on no evidence and the penalty imposed upon the applicant is disproportionate to the alleged misconduct.

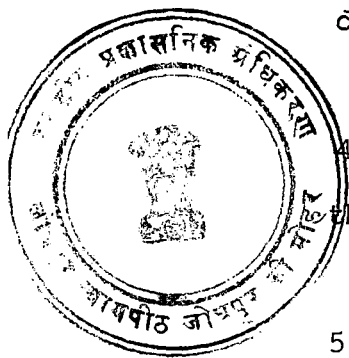
3. Notices were issued to the respondents and in reply they have denied the contentions of the applicant.

4. We have heard the learned counsel for the parties and perused the record of the case carefully.

5. We are aware that the Tribunal cannot sit in judgment over the decisions of the competent authority in disciplinary cases. However, the Tribunal can interfere if it comes to the conclusion that there has been procedural lapses in conduct of the departmental proceedings, or it is a case of no evidence or the penalty imposed is disproportionate to the alleged misconduct and shocking to the conscience of a normal human being.

6. A perusal of records reveal that the applicant was served with a chargesheet (SF-5) on 19.4.94 on the charge that the applicant was in drunken condition while he was performing the duty of Assistant Station Master at Mahajan Station. This charge was levelled against the applicant on the basis of inspection report of the Senior D.S.O., Bikaner, for the surprise inspection conducted on 28.3.94. List of documents by which the articles of charge was proposed to be sustained included the "statement of employee himself" only and Shri Lal Singh, Loco Inspector and Shri Pratap Singh, TDR, ASM/MHJ, were cited as

Impals of



witness.

7. The departmental inquiry was conducted ex-parte. This is also revealed from the order of the appellate authority. The charge against the applicant has been proved only on the basis of his own statement which the applicant maintains that the statement was given under threat of the Senior D.S.O. Only one prosecution witness, namely, Shri Pratap Singh, was examined by the inquiry officer and this prosecution witness was asked to testify his statement dated 25.3.94 but he did not testify that the applicant was in drunken state at the relevant time. On the contrary, he asserted that he signed the statement of the applicant on the direction of the Senior D.S.O. The other prosecution witness was dropped. It is also contended by the applicant that no medical examination of the applicant was got conducted as required under Para 585 of the Indian Railway Medical Manual. We consider it appropriate to extract Para 584 and 585 of Indian Railway Medical Manual as under :-



"584.Definition of "Drunk".- A person is "drunk" when he is so much under the influence of an intoxicating drink or drug as to lose control of his faculties to such an extent as to render him unable to execute safely the occupation at which he is engaged at the material time.

585.All drunkenness cases to be examined carefully (1) Every case of drunkenness is a potential medico-legal case and the Railway doctor called upon to certify such a case should make a careful examination and should note down every important particular.

(2)Railway doctors may also have to issue drunkenness certificates to persons produced by police at places where there are no civil hospitals or dispensaries and only a Railway hospital or health unit exists.

(3)In places where prohibition is in force, it is an offence even if one has imbibed alcohol, let alone getting drunk. When a case is brought, the Railway doctor should carefully examine the case and certify as to whether (a)the person has imbibed alcohol but not drunk or (b)the person is actually drunk, i.e., under the influence of alcohol.

(4)The proforma for recording particulars of a suspected case of drunkenness is given in Annexure XXX to this Chapter. This form should always be kept handy as the Railway doctor may be called upon to certify drunkenness at any moment and sometimes away from his headquarters.

Carab...

(5).It is desirable that a Railway doctor, when certifying cases of drunkenness, should base his opinion on the following considerations :-

(i) Whether the person concerned has recently consumed alcohol.

(ii) Whether the person concerned is so much under the influence of alcohol as to have lost control of his faculties to such an extent as to render him unable to execute safely the occupation on which he was engaged at the material time.

(iii) Whether his state is due, wholly or partially, to a pathological condition which causes symptoms similar to those of alcoholic intoxication, irrespective of the amount of alcohol consumed.

(6)He should not certify the case as drunk just because the patient is smelling of alcohol. The quantity taken is also no guide, but the fact of impairment of his capacity to perform his duties has to be taken into account."



8. Thus, with a view to prove conclusively the drunken state of the applicant, we are of the view that the applicant should have been medically examined.

9. In view of the definition of 'drunk' given in para 584, it is doubtful that the applicant would have been in a position to give such a statement if he was drunk. In all probability, the applicant at the relevant time was in sound mind and not drunk and the statement was extracted from him under threat by the Senior D.S.O.

10. The appellate authority in his order dated 17.10.96 has also observed as under :

"I have gone through the service record of the employee and find that his service record has been relatively free from punishments. The charge-sheet, in question, is the first time that the CO has been charged for a major offence."

11. In the light of the above discussions, we are of the view that the charge that the applicant was in drunken state on duty is not sustainable and it is a case of no evidence. Thus the O.A. deserves to be allowed.

Copy of

12. The O.A. is accordingly allowed. The chargesheet dated 19.4.94 (Annex.A/1), disciplinary authority order dated 30.7.96 (Annex.A/2) and the appellate authority order dated 17.10.96 (Annex.A/3), are quashed and declared non-est. The applicant would continue to be treated as Assistant Station Master with all consequential benefits.

13. Parties are left to bear their own costs.

Gopal Singh

(GOPAL SINGH)
Adm.Member

A.K. Misra

(A.K.MISRA)
Judl.Member

.....

jrm

[Faint, illegible text]