

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. M.A. 445 of 99
O.A. 636/1997

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. G.S. Maingi, Administrative Member

ANUP KR. SINHA

VS.

UNION OF INDIA & ORS.

For the applicant : Mr. Samir Ghosh, counsel

For the respondents : Mr. M.K. Bandopadhyay, counsel

Heard on : 19.7.2000

Order on : 19.7.2000

O R D E R

D. Purkayastha, J.M.

In this O.A., the applicant has challenged the order of his suspension dated 24.3.95, chargesheet dated 30.11.95, enquiry report dated 19.5.96 and the order of removal/dated 22.10.96 issued against him. By filing an amendment application bearing No.445 of 99 the applicant has also challenged the appellate order dated 23rd June, 1999 passed after filing of the O.A. Both the O.A. and the M.A. are taken up for hearing today.

2. One of the substantial question of law involved in this case as raised by the ld. counsel for the applicant Mr. S. Ghosh is that the respondents blatantly violated the provisions of the rule regarding furnishing of the enquiry report to the delinquent officer before imposition of punishment. It is stated by the ld. counsel for the applicant that the alleged disciplinary authority Additional Divisional Railway Manager, Malda Division, E. Rly. imposed the punishment order upon the applicant on 22.10.96 (Annexure A-13 of the O.A.) without furnishing the report of the enquiry officer to the applicant for making appropriate representation.

contd

against the findings of the enquiry officer, therefore, he is seriously prejudiced in this case. He also raised other points such as the ADM, Malda Division by the aforesaid order dated 22.10.96 (Annexure A-13) directed the applicant to prefer appeal before the Chief Commercial Manager, Calcutta against the findings made by him as Disciplinary Authority in this case. Accordingly, the applicant preferred appeal before the Chief Commercial Manager, Calcutta on 29.1.97 (Annexure A-15) but that appeal has been disposed of by the Chief Engineer, Eastern Railway, Calcutta vide order dated 22.6.1999 (Annexure A-18 to the M.A.). Mr. Ghosh also submits that the Chief Engineer has taken into consideration the parawise remarks of ADM, Malda Division in the file No. RB-1/94-95 at the time of disposing the appeal. Therefore, the Chief Engineer took cognizance of the evidences which are not available with the disciplinary authority. So, the order of the disciplinary authority as well as the order of the appellate authority are liable to be quashed.

3. Ld. counsel, Mr. M.K. Bandopadhyay appearing on behalf of the respondents admitted the fact that enquiry report of the enquiry officer has not been forwarded to the delinquent officer before passing the impugned order of punishment dated 22.10.96, but he submits that non-furnishing of the enquiry report would not materially affect the disciplinary proceeding since the applicant is not going to be prejudiced in any manner. So, the contention of the ld. counsel for the applicant is not sustainable on that score.

4. We have considered the submissions made by the ld. counsel for both sides. We find that this issue was settled by the Hon'ble Apex Court in the judgment reported in 1991 SCC(L&S) 612 (Union of India & Ors. Vs. Mohd. Ramzan Khan). We further find that the Hon'ble Apex Court in a subsequent judgment decided the matter finally reported in 1993 SCC(L&S)

1184(Managing Director ECIL, Hyderabad & Ors. Vs. B. Karunakar & Ors.). In Mohd. Ramzan Khan's case, it was held that copy of the enquiry report has to be forwarded to the charged officer and he should be given an opportunity to represent against the findings therein notwithstanding the first provision of the proviso 311 of Sub-clause(2) of the Constitution. Further of the Apex Court it has been laid down in the judgment/that decision should be operative prospectively from the date of judgment i.e. 20.11.1990 in Ramzan Khan's case. We find that the judgment of Mohd. Ramzan Khan's case has been reaffirmed by the Hon'ble Apex Court in the subsequent judgment as mentioned above. We also find that after passing of the aforesaid judgment by the Hon'ble Apex Court Rule 15 has itself been amended and sub rule (1)A (1)B have been inserted therein vide notification dated 3rd May, 1995 in the Gazettee of Government of India dated 29th July, 1995. So, we are of the view that in all fairness of principles of natural justice enquiry report ought to have been furnished to the applicant before imposition of penalty. That provision has been blatantly violated by the disciplinary authority in this case. Therefore, the impugned order of punishment dated 22.10.96(Annexure A-13) cannot be said to be sustainable under rules. At the same time we have gone through the appellate order passed by the appellate authority at Annexure A-18 of the M.A.. We find that the appellate authority made a finding that parawise remarks given by ADRM, Malda Division has been taken into consideration at the time of disposal of the appeal preferred by the applicant. We notice that the applicant raised various points in his appeal, but the appellate authority did not disclose the reasons for which the memo of appeal made by the applicant was not considered to be sustainable under rules. Though the order of the appellate authority is a speaking order, it is devoid of consideration of material grounds raised by the applicant.

As per rules, the order of the appellate authority should contain the reasons for disagreement with the grounds raised by the applicant in his memo of appeal, which was not followed in this case. Under such circumstances, we find that both the order of punishment dated 22.10.96(Annexure A-13) and the order of the appellate authority dated 23.6.1999(Annexure A-18) are not maintainable in law. On a perusal of the order of punishment it is found that a finding has been made by the Disciplinary Authority i.e. the Additional Divisional Railway Manager of Malda that the applicant shall be removed from service as a disciplinary measure and the same will take effect immediately. But after that no removal order has been passed stating that the applicant has been removed from service. We find some infirmities in the order dated 22.10.96(Annexure A-13).

5. In view of the aforesaid reasons, we set aside the order of the disciplinary authority dated 22.10.96(Annexure A-13) and the order of the appellate authority dated 23.6.1999(Annexure A-18). The disciplinary authority is directed to serve a copy of the enquiry report to the applicant. On receipt of the reply in respect of the enquiry report, the respondents shall proceed further from the stage of furnishing the enquiry report to the applicant in accordance with the extant rules. In the meantime, the applicant shall be reinstated in service. It be mentioned here that the applicant shall be given all consequential reliefs in this case in accordance with the rules. *as admissible then will be reinstated in*
~~and full~~
Accordingly, both the M.A. and the O.A. stand disposed of.

No order is passed as to costs.

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MEMBER(A)

s.m.

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MEMBER(J) 19/1/2000