

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

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Original Application No. 298 of 1989

this the 27-th day of March, 1996.

HON'BLE MR S. DAS GUPTA, ADMN. MEMBER
HON'BLE MR D.C. VERMA, JUDICIAL MEMBER

Lalji Mishra, aged about 52 years, S/o Late Gomti Prasad Mishra, R/o Station Road, Pacheerwa District Gonda, presently functioning as Head Goods Clerk, N.E. Rly, Sohratgarh.

Applicant

By Advocate : None

Versus

Union of India through General Manager, N.E. Rly., Gorakhpur.

2. Divisional Commercial Superintendent, N.E. Rly. Lucknow.

3. Enquiry Officer, Sri N.P. Singh, Assistant Commercial Superintendent (II) N.E. Rly., Lucknow.

4. Senior Divisional Commercial Superintendent, N.E. Rly., Lucknow.

Respondents

By Advocate : Sri Anil Srivastava

ORDER (ORAL)

S. DAS GUPTA, MEMBER(A)

This application has been filed under section 19 of the A.T. Act/1985, challenging the order dated 25.9.89 (Annexure-1) passed by respondent No. 2 imposing the penalty for reduction in rank. During the pendency of the

this O.A., the appeal of the applicant was rejected by the order dated 12.12.1989. By the subsequent amendment in the O.A., this order was challenged and prayed that both the orders be quashed and the applicant be allowed to continue as Goods Clerk and paid salary and usual allowance attached to the posts

2. The facts of the case is that the applicant was working as Head Goods Clerk when he was served a major penalty charge memo dated 6/11.5.88 in which several charges were levelled against the applicant. An Enquiry was held, and enquiry officer was found that all the charges were ~~not~~ established. Agreeing with the findings of the enquiry officer, the respondent No. 2 imposed the penalty for reduction in rank by the impugned order dated 25.9.89. The applicant filed an appeal which was rejected by the impugned order dated 12.12.89.

3. The applicant has challenged the order of disciplinary authority on the ground that the same has been passed by an authority which is not competent to take disciplinary action. He has pleaded that the charges against him has not been proved in the enquiry. A further contention is that the applicant was not ^{given} an adequate opportunity to defend himself. Lastly, he pleaded that the copy of the enquiry report was not given to him. Therefore, an opportunity to challenge the findings of the enquiry officer before the same was accepted by the disciplinary authority has been denied.

4. The respondents have filed their Counter

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affidavit in which it is submitted that on receipt of report from Sri S.P. Srivastava, preliminary enquiry was held and after the said inquiry, a memorandum of charges was issued. The inquiry was held in accordance with the rules and the charges were found to have been established. The inquiry officer's report was considered and accepted by the disciplinary authority who imposed the penalty of reduction in rank. It has been further submitted that the applicant is a Group 'C' staff and that though the appointing authority in respect of the applicant is the Divisional Railway Personnel Officer, the competent authority to institute and impose the punishment is the respondent no.2 who has passed the impugned order as he is a Senior Scale Officer holding independent charge. It has also been submitted that the appointing authority of the applicant i.e. Divisional Railway Personnel Officer is equal in rank to Divisional Commercial Superintendent under whom the applicant was working.

5. The applicant has filed rejoinder affidavit reiterating the points raised in the O.A. with assertion that the appointing authority of the applicant is Divisional Railway Personnel Officer, who is only competent to impose major penalty. In the Supplementary Counter Affidavit filed by the respondents this contention has been rebutted and it has been reiterated that Divisional Commercial Superintendent is equivalent in rank to the Divisional Personnel Officer.

6. The appellate order has been challenged

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by the applicant on the ground that the same has been passed without application of mind in contravention of provisions of Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968.

7. In the absence of the learned counsel for the applicant, we have heard the learned counsel for the respondents and carefully gone through the pleadings on record.

8. The plea of the applicant that the order of the disciplinary authority is bad in the eye of law on the ground that the report of the disciplinary authority was not supplied to him before imposing the penalty can easily be disposed of. It is now settled law that delinquent employee is entitled to a copy of the enquiry report submitted by enquiry officer but this law is applicable only after the date of the order of Hon'ble Supreme Court in the case of Mohd. Ramzan Khan and the penalty in this case was imposed much earlier.

9. As regards challenge on the ground that the charges have not been established in enquiry, it is settled law that Tribunal is only expected to determine whether the enquiry was held in a proper manner and the principles of natural justice are complied with. When the findings or conclusions of the inquiry officers are based on some evidence, the tribunals cannot reassess the evidence and substitute their own findings for those of the inquiry officer/disciplinary authority. When the authority accepts the evidence and the conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of charge. We have seen a copy of the inquiry report annexed with the C.A., we do not find it a case of no evidence. Findings of

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the enquiry officer is based on evidence.

10. The plea taken as regards inadequacy of opportunity is not well founded on the basis of the averments. No assertion has been made in this regard specifically indicating in what manner the principle of natural justice or mandatory provision has been violated. This plea, therefore, is rejected.

11. As regards competence or otherwise of the disciplinary authority, the respondents have specifically stated that Senior Scale officer is competent under rule to inquire into the charges and impose major penalty on the employees belonging to Group 'C' to which the applicant also belongs. Though the appointing authority is the Divisional Personnel Officer, the authority passing the impugned order of penalty is an authority who is equivalent in rank. As the applicant was actually working under the control of Divisional Commercial Supdt. and he is equal in rank to Divisional Railway Personnel Officer, we do not find any irregularity committed in this regard.

12. Coming to the appellate order, we do not, however, find that the said order conforms to the statutory requirements imposed on the appellate authority by Rule 22(2) of the Railway Employees(Discipline & Appeal) Rules. It would be clear from a reading of this rule that a statutory obligation is cast on the appellate authority to consider certain aspects of the case while disposing of the appeal. In this regard, we may refer to the appellate order passed. The text of the appellate order is as below :-

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