

(13)

FINAL ORDER

CENTRAL ADMINISTRATIVE TRIBUNAL: LUCKNOW BENCH

Wednesday the 10th day of May 2000

PRESENT

The Hon'ble Shri D.V.R.S.G.DATTATREYULU, MEMBER(J)

and

The Hon'ble Shri S.MANICKAVASAGAM, ADMINISTRATIVE MEMBER

O.A.No. 86 of 1991

Hari Mohan Saxena .. Applicant
Vs.

1. Union of India through the Secretary
M/o Railways, Govt. of India,

Railway Board, New Delhi

2. The Chief Works Manager,
Northern Railway, Loco Workshop, Charbagh
Lucknow

3. The Production Engineer
Northern Railway, Locomotive Works
Charbagh, Lucknow

4. The Asst. Works Manager,
Locomotive Works, Northern Railway,
Charbagh, Lucknow

5. The Shop Superintendent/Enquiry Officer
Locomotive Works, Northern Railway,
Charbagh, Lucknow .. Respondents

Mr. G.S.L.Varma .. Advocate for the applicant

Mr. Anil Srivastava .. Advocate for the respondents

A4

Order: Pronounced by the Hon'ble Shri D.V.R.S.G. DATTATREYULU
MEMBER (J)

The applicant prays for quasing the order No.L/PC/LMS/3203 dated 19.3.1990 and also the review application dated 12.2.1990, by declaring the inquiry conducted against him as null and void. The applicant further prays for reinstatement in service.

2. The averments in the application would go to show that the applicant was appointed to the post of Khalasi Helper by the Works Manager. Subsequently he was promoted to the post of Skilled Machinist- Class III. The applicant was suspended by the fourth respondent - vide order dated 17.2.1988, for a misconduct on the allegation that he quarrelled with one Mr. Vazir Chand on 9.2.1988. The suspension order is at A-1, the charge sheet at A-2. The applicant replied under Annexures A-3 and A-4. The applicant requested for supply of copies of certain documents, but these were not supplied to him. The applicant states that he had asked for defence counsel and they had to be changed from time to time. Finally the applicant submitted his defence plea - Annexures A-9 and A-10. The inquiry officer submitted his report - vide report dated 4.7.1989 (Annexure A-11) holding the applicant guilty of the charges. According to the applicant the inquiry report is not correct for the reason that he was not medically examined to prove the charge of intoxication. The applicant preferred his appeal against his removal from service under Ex.A-10. The appeal was also dismissed - vide Annexure A-12 dated 5.2.1990. Thereafter the applicant preferred a review application. In the review application, the second respondent by orders dated 19.3.1990 had reinstated the applicant back in service with effect from 20.3.1990 as

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a Khalasi Helper on the pay of Rs.800/- in the pay scale of Rs.800-1150 for a period of three years. On account of this the applicant lost his seniority. The review application is at annexure A-13. According to the applicant the orders passed are not correct since the appointing authority has not taken the decision. Hence this O.A.

3. In the reply filed by the respondents the allegations in the OA are denied parawise. It is stated that the applicant has committed the misconduct of coming to office in a drunken condition and in fact the applicant was shown the leniency in the review application in that he was imposed the ~~maximum~~ lesser penalty. The reply proceeds to state that necessary documents were supplied to the applicant and adequate opportunity was given to the applicant to defend himself in the enquiry conducted against him. The authority who passed the punishment order of removal is the Production Engineer who is a senior scale officer. He is the appointing authority and also the competent authority and therefore there is no illegality with regard to the orders passed and that the OA is liable to be dismissed as devoid of merit.

4. When the OA was taken up for final disposal on 8.5.2000, neither the applicant nor his counsel was present. However the learned counsel for the respondents made his submissions reiterating the averments in the reply. Since the pleadings are complete ^(This is not a rule) we have decided to dispose of this OA on merits.

5. The point for consideration is whether there is any need to interfere with the orders passed by the disciplinary authority, or not.

6. As regards the question of the authority who passed out the penalty order, it is clearly pointed in the reply at page 5 of the reply as follows:-

" The appointing authority of the skilled Machinist

in Grade Rs.950-1200 is Senior Scale Officer in the grade of Rs.3000-4500(RPS). The disciplinary authority who passed the punishment order of removal from service of the applicant is Production Engineer who is senior scale officer. As per the extant rules the Production Engineer is the appointing authority as well as the disciplinary authority of the applicant. "

From the above it is clear that the authority who passed the orders of disciplinary action against ^{the applicant} is the proper authority and questioning the same is without any merit.

6. As regards the allegation that the applicant was not supplied with the copies of certain documents etc., we find that the applicant has participated in the enquiry and is fully aware of all the facts. The averment in the application that the charges ought not to have been accepted for the reason that the applicant was not medically examined regarding intoxication (page 7 of the OA) does not hold good for the reason that the proof in the departmental enquiry is not that of a proof in a criminal case. The inquiry officer had considered the various statements made by the witnesses in their depositions and had come to the conclusion that the charges stood proved. disciplinary as also the The appellate authority had agreed with the findings of the inquiry officer. But to the applicant's good luck the reviewing authority in the review application has reinstated him in ^{again on a deplorable} service. Thus the applicant must thank his stars.

7. With regard to seniority ^U cannot be considered now for the reason that the charges against the applicant has been proved and the disciplinary authority has taken a proper action. In the review application it appears the the authorities have taken a lenient view and appointed the applicant back in service. Therefore there is no need to interfere with any orders of ~~any~~

~~order~~ passed against the applicant.

8. In the light of the discussion above we hold that the applicant fails and the OA is dismissed with no order as to costs.

Syamal Bhattacharya

(S. MANICKAVASAGAM)

MEMBER (A)

10/5/2000

(D. V. R. S. G. DATTATREYULU)

MEMBER (J)

10-5-2000

nks: