

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 258 of 1992

Versus

Union of India & Others Respondents

Hon'ble Mr. S.N. Prasad, Member (Judicial)

The applicant has approached this tribunal under section 19 of the Administrative Tribunals Act, 1985 with the prayer for setting aside the impugned order dated 18.11.1991 and 24.1.1992 (contained in ^xAnnexure 5 and 7, respectively.)

2. Briefly, stated the facts of the case, inter alia, are that the applicant is working as Head clerk in Northern Railway and since his appointment, his work was satisfactory and he was found of good behaviour. The main grievance of the applicant appears to be that the respondent no. 4 who conducted surprise inspection of the ministerial staff and checked the register and found the applicant absent. But the respondent no. 4, though the applicant was on leave on 5.6.1991, in his inspection note mentioned that the applicant was though absent, ^{but} appeared in the office at 12.45 hours and again appeared in Railway Room at 14 hours in ^{intoxication} condition and ~~wrong~~ misbehaved with the respondent no. 4 and used unparliamentary language and charge-sheet to this effect was issued against the applicant, and the applicant submitted his reply to the charge-sheet. But without holding any enquiry and without affording reasonable opportunity to the applicant, the respondent no. 4 (A.M.E. (I) Northern Railway Lucknow) passed the impugned order dated 18.11.1991 (Annexure-5) whereby the applicant has been reduced to lower stage in the same

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time scale of Rs. 1400-2300/- from Rs. 1560 to Rs. 1400/-
without postponing further increments
for a period of three years. It has been stated that
against the above impugned order dated 18.11.1991, the
applicant preferred an appeal and that appeal was rejected
by the respondent no. 3 without applying his mind and as
such the appellate order dated 24.1.1992(Annexure-7) is a
illegal and invalid.

3. The respondents have filed their counter-reply
with the contentions, interalia, that the charge-sheet
issued against the applicant was for minor penalty against
which the applicant had also submitted his reply/explanati
and after considering his explanation, the impugned order
dated 18.11.1992 was passed, as for minor penalty, no
enquiry, as envisaged under rules 9 to 13 of the Railway
Servants(Discipline & Appeal) Rules, 1968 is required. It
has further been contended that ample opportunity was
afforded to the applicant before passing the impugned order
and there is no any violation of Article 311 of the
Constitution of India. It has further been contended that
the appeal preferred by the applicant was rejected
validly and legally by the respondent no. 3: In view of
the above circumstances, the application of the applicant
is liable to be dismissed with cost.

4. I have heard the learned counsel for the parties
and have thoroughly gone through the records of the case.
The learned counsel for the applicant while adverting to
the contents of the application, contents of the counter-reply
and the papers annexed thereto has argued that the impugned
orders are not valid and proper order in the eyes of law
and in as much as the impugned order dated 18.11.1991

(Signature)

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has been passed by the respondent no. 4 without conducting any enquiry and without affording reasonable opportunity to the applicant to defend himself, and has further argued that the impugned appellate order dated 24.1.1992 (Annexure-7) whereby the appeal of the applicant has been dismissed is not valid and proper appellate order as the respondent no. 3, who decided the appeal, did not apply his mind and passed the appellate order in a mechanical and routine way.

5. The learned counsel for the respondents while drawing my attention to the ~~contention~~ of the pleadings of the parties and to the amended provisions contained in Railway servant(Discipline & Appeal) Rules 1968, has argued that misconduct complained of comes under the category of minor penalty and as such no enquiry was essential in this case and has further argued that the applicant's reply/explanation submitted in regard to the charge-sheet was considered by the respondent no. 4 while imposing the above penalty, and has further argued that this tribunal cannot interfere in such cases on the ground that penalty imposed by the applicant is not commensurate with delinquency of the applicant and as such the application be dismissed. In support of his arguments, has placed reliance on the ruling reported in A.I.R.1989 (Supreme Court) Union of India, (Appellant) Vs. Parma Nanda (Respondent) at page 1185, wherein it has been enunciated that :-

" If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to ~~concern~~ concern with. The Tribunal also cannot interfere

and the with the penalty if the conclusion of the enquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

6. I have perused the above rulings.

7. This is significant to point out that a perusal of reply/explanation to the charge-sheet given by the applicant (Annexure-4) reveals that the respondent no. 4 (A.M.E.(I) N.Railway, Lucknow) had any personal grudge with the applicant prior to the crucial date i.e. 5.9.91, on which surprise inspection was conducted by the respondent no. 4 (A.M.E.(I) N.Railway, Lucknow). Though, the applicant was on leave on 5.6.91, but his presence on that date i.e. 5.9.91 at 12.45 hours in the office and at 14 hours in the retiring room of the respondent no. 4 (A.M.E.(I) N.Railway, Lucknow) may not be impossible. A perusal of Annexure No. 2, which is statement of imputations of misconduct shows that the applicant arrived in the office at 12.45 hours and misbehaved and used un-parliamentary language; and at 14 hours, he again appeared in the retiring room (at Faizabad Station) in intoxication condition and misbehaved with the respondent no. 4 in presence of Loco Foreman/F.D. who intervened.

8. After considering all the facts and circumstances of the case, and keeping in view the provisions contained in the Railway Servant (Discipline & Appeal) Rules, 1968 as amended, and keeping in view the above principle of law as enunciated in the above ruling of the Supreme Court; I find that the application of the applicant is devoid of force and merit and there is no illegality and invalidity in the impugned orders.

NA

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9. Consequently, the application of the applicant
is dismissed. No order as to costs.

[Signature]
Member (J) 15.4.93

Lucknow Dated: 15.4.1993

(RKA)