CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW

Original Application No. 284 of 1992

Lucknow this the 24th day of Jan 1996

Hon'ble Mr. V.K. Seth, Member (Administrative)
Hon'ble Dr. R.K. Saxena, Member (Judicial)

Guru Prasad, S/o Sarju Prasad R/o Village-Karora, Distt. Lucknow, employed as Porter, Northern Railway, Nigohan Station, Lucknow Division.

APPLICANT

By Advocate Shri K.P. Srivastava.

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Operating Superintendent (1), Northern Railway, Divisional Manager,'s Office, Lucknow.
3. The Assistant Operating Superintendent, Northern Railway, Divisional Railway Manager's Office, Lucknow.

RESPONDENTS.

By Advocate Shri Anil Srivastava

O R D E R

By Hon'ble Dr. R.K. Saxena, Member (Jud.)

This O.A. has been brought questioning the legality of the orders annexures A-2 and A-5 passed by the disciplinary and appellate authorities respectively.

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2. The brief facts of the case are that the applicant was working as Porter and was posted at Railway Station, Nigohan. He was directed to attend the refresher course which was starting from 11.3.1986. He avoided the said course on one ground or ther other. He absented himself from duties from 21.3.1986 to 03.4.1986. He was again directed to join the refresher course which was starting w.e.f. 11.4.1986. He again absented himself from duties on 09.4.1986 and 10.4.1986. It appears that he came to resume duties on 11.4.1986 but he was not allowed. He, therefore, approached A.S.S.(G) and pleaded to join the subsequent course. Thus, he was allowed to join the duties.

3. The next refresher course was to start from 21.4.1986, but the applicant failed to join the same. He was then placed under suspension on 22.4.1986 but the same was revoked on his giving assurance to join the subsequent course but as usual he avoided the course everytime. Not only this, he unauthorisedly remained absent for different periods from 22.5.1986 to 03.6.1986, 05.6.1986 to 13.6.1986, 27.6.1986, 08.7.1986 to 12.7.1986, 13.8.1986 to 21.8.1986 . On 05.10.1986 when he was on duty at gate no.186C, he absented himself right from the morning and without informing any person. He was again absent from 22.10.86 to 28.10.86 and from 28.10.86 to 24.11.86. The medical certificates of private doctor were subsequently submitted for

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certain period of absentism.

4. The applicant was then served with memo of charge-sheet dated 19.5.1988 annexure A-1 accompanied with statement of imputations. The names of the witnesses and document were disclosed. The charges were denied. Hence, the enquiry was entrusted to Shri R.S. Pandey T.I. He recorded the statements of the witnesses in support of the charges and of the delinquent employee. On conclusion of the enquiry, he submitted his report to the disciplinary authority holding that all except charge no.3, were established.

5. The disciplinary authority passed the order dated 04.9.1989 annexure A-2 whereby the applicant who was at the stage of Rs.995-00 in the grade of Rs.775-1025 was reverted to the stage of Rs.775-00 in the same grade for one year but without future effect. The applicant preferred appeal challenging the order of punishment. The appellate authority vide order dated 28.12.1989 annexure A-3, rejected the said appeal.

6. The applicant then approached the Tribunal by way of O.A.No.231/90 which was decided on 27.1.1992 by remitting the case to the appellate authority with the direction that the said authority should decide the application on merits after giving personal hearing to the applicant. It was further

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directed that the appeal be decided by a reasoned and speaking order within two months from the date of communication of the said order. Consequently, the appellate authority passed order dated 03.4.92 modifying the earlier punishment of reduction of salary for one year to W.I.T (withholding of increment) temporarily for three years. Hence, this O.A.

7. The grounds taken are that the charge-sheet is vague, non-supply of the report of enquiry officer is in violation of the principle of natural justice, non-cross examination of the prosecution witnesses by the applicant and his own cross-examination by the Enquiry Officer, has vitiated the proceedings, the enquiry report is not based on any evidence, and that the disciplinary as well as the appellate authorities have not considered the points of defence.

8. The respondents resisted the O.A. on the grounds that the appellate authority decided the appeal in the light of the directions given by the Tribunal in O.A.No.231/90. It is averred that the points raised in this O.A. were also taken in O.A.No.231/90 and they were decided by the Tribunal and thus the applicant is estopped from raising them again. It is, therefore, pleaded that the application is devoid of merits and liable to be dismissed.

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9. By filing the rejoinder, the applicant asserts that the Tribunal while remitting the case to the appellate authority, had observed that there was violation of principles of natural justice; and as such the appellate authority ought to have taken those points into consideration. It is also contended that the appellate authority has imposed the penalty of WIT for three years and thus the punishment has become more -severe and is not sustainable in law. It is claimed that the order annexure A-5 passed by the appellate authority is vague and non-speaking.

10. We have heard the learned counsel for the parties and have perused the record including the enquiry file.

11. The learned counsel for the respondents has raised the question that the points which were taken in the earlier O.A. 231/90 and were decided by the Tribunal, have again been agitated in this O.A. It is, therefore, asserted that the principle of estoppel operates. The principle of estoppel as is understood in law, in general, and under Section 115 of the Indian Evidence Act, 1872 in particular, lays down that when one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceedings between

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himself and such person or his representative, to deny the truth of that thing. Thus, the principle of estoppel is distinguished from the principle of res-judicata which operates on the adjudication of a particular issue on merits by a competent Court between the same parties. Thus, in the present case the plea could have been of the application of principle of res-judicata rather than the principle of estoppel.

12. Now we have to see if the points raised in this O.A. which , if decided on merits in the earlier O.A., are barred by the principle of res-judicata. None of the parties has filed the copy of O.A. 231/90. Thus, we are unable to pinpoint those issues which were then raised. The copy of the judgment of said O.A.-annexure A-4, has, however, been brought on record. It's perusal shows that the enquiry proceedings were challenged on several grounds. They were :

(i) non-engagement of defence helper,
(ii) non-supply of the copy of the report of of the Station Master,
(iii) non-supply of the copy of report of enquiry officer; and
(iv) denial of various other opportunities.

It is true that these grounds have been taken in the present O.A.also. The question arises if these grounds were finally decided by the Tribunal on merits. Looking from this angle, the decision of the Tribunal, we find observation "all these are the matters which required attention of the appellate authority." It means that the appellate authority

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was directed to give it's decision on all those matters. There was no decision of the Tribunal. Thus if an issue or point of contention has not been decided on merit, there is no application of the principle of res-judicata. Accordingly, the objection raised by the learned counsel for the respondents, does not hold good.

13. We have already set out the facts of the case and the grounds which were taken by the applicant to challenge the orders of the disciplinary and appellate authority. We shall discuss them and try to find out if there is violation of the principle of natural justice.

14. The learned counsel for the applicant contends and very emphatically that the charge-sheet which has been served on the applicant is vague in as much as that it does not specify the period of absence and other facts. We have gone through the charge-sheet carefully and found that the points were not serialised. The mere omission to give the facts serially, will not make the charge-sheet vague. The Enquiry officer enquired of the delinquent employee on 15.1.1989 by putting the charges separately in six heads, as is clear from the enquiry file, and enquired of him if he pleaded guilty or wanted to get them enquired into. The applicant denied them and pressed for enquiry. The vagueness of the charges is material only when the delinquent employee is unable to make head and tail of them. We do not see any such

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situation in the matter. Thus we are not in agreement that the charge-sheet is vague. This argument is, therefore, turned down.

15. The applicant asserts that prejudice is caused to him in his defence because the copy of the report of Station Master, Nigohan which is mentioned in the charge-sheet, had not been given to him. The applicant, through his defence helper Sri B.L. Verma, had submitted a written defence note in which first point which was discussed was that Sri B.B. Singh, Station Master Nigohan had made a report without any specific date, against the applicant. This fact in itself suggests that the copy of the report was made available to the applicant. Thus the plea of non-supply of copy of the report of Station Master Nigohan is demolished.

16. The case of the applicant is that he was not given an opportunity to cross-examine the prosecution witness Shri B.B. Singh. The Enquiry officer cross-examined Sri B.B. Singh as well as the applicant himself. The enquiry file supports this contention. It appears that the defence helper of the applicant could not turn up on 03.6.89 which was finally fixed for the statements of witnesses. Shri B.B. Singh who had appeared earlier, turned up on 03.6.89. The applicant agreed to proceed with the enquiry and thus was recorded the statement of the witness. The language of the questions put to the witness, suggests that Enquiry officer put all those questions. No opportunity was afforded

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to the applicant. There is no remark that any question was put for or on behalf of the delinquent. There is no doubt that Shri B.B. Singh was the report maker and thus the main witness against the applicant. In such a situation, by giving no opportunity of cross-examination to the applicant, definite prejudice is caused and the proceedings are vitiated.

17. The next contention is that the copy of the report of the Enquiry officer has not been given to the applicant and thus, the prejudice is caused to him. In this connection, the reliance has been placed on the decision in the case of 'Union of India and Others Vs. Mohd. Ramzan Khan (1991) 1 S.C.C. 588'. Their Lordships of Supreme Court in the said case of Ramzan Khan's had held that the copy of the report of the enquiry-officer is required to be given to the ~~applicant~~ delinquent before the order of punishment is passed. The applicability of the said plea was explained in 'Managing Director E.C.I.L. Hyderabad Vs. B. Karunakar 1993 Vol.IV S.B.L.R.(L) 1'. Their Lordships in this case held that the law laid down in Ramzan Khan's case shall be applicable prospectively. The Judgment in Ramzan Khan's case was rendered on 20.11.90. Thus, the plea of furnishing the copy of the report of the enquiry officer would be applicable in those cases in which the punishment ~~is~~ was recorded after 20.11.90. In this case before us, the order of punishment was given on 04.9.89. Meaning thereby that this punishment

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was awarded before the date of the decision in Ramzan Khan's case. Accordingly, we are of the view that the applicant was not entitled to get the copy of the report of the enquiry officer. In this way, the plea raised by the learned counsel for the applicant is not tenable.

18. The contention of the learned counsel for the applicant is that the orders passed by the disciplinary authority as well as by the appellate authority are illegal because they are non-speaking orders. Our attention has been drawn towards Annexure A-2 and A-5 which are the orders of the two authorities. The disciplinary authority had filled in the blanks in the printed form of order (annexure A-2). The discussion of evidence adduced in support of the charge and of course the points which were raised by the applicant in his statement and through written note of defence, have not been discussed at all.. Thus, there is no application of mind and the order of the disciplinary authority by no means can be said to be speaking one. Similar is the situation with the appellate order Annexure A-5. The Tribunal while disposing of O.A. 231/90 had given directions to consider all those points which were raised on behalf of the applicant and were specified in the Judgment at para 2, copy of which is annexure A-4. In view of the facts that the specific direction to the appellate authority about consideration and

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adjudication of certain points was there, it was expected of the appellate authority to have considered them elaborately and to reach a conclusion. We find that such an exercise is not done.

19. Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968 enjoins upon the appellate authority to consider the points enumerated therein. The relevant portion of Rule 22 is as given below :

> "Rule 22
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> (2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider-
> (a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
> (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
> (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders-
> (i) Confirming, enhancing, reducing or setting aside the penalty; or
> (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case:"

The reading of this Rule 22 makes it quite clear that for proper adjudication of the appeal, appellate authority ought to have taken all these points into consideration on its own. In the present case,

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the appellate authority failed to follow the rule as well a s the directions of the Tribunal. For this reason, the order of the appellate authority suffers from the application of mind and from the defect of its being non-speaking one. When there is no application of mind in passing the order of punishment or an order in ~~apparent~~ appeal & and the order is found to non-speaking, there is violation of principle of natural justice. ~~Subsequently~~, Consequently, the proceedings are vitiated.

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20. Learned counsel for the applicant has also argued that the appellate authority had made the punishment awarded by the disciplinary authority severe through annexure A-5. We are unable to agree with this contention. What has been concluded by the appellate authority may best be quoted in its own words:

> "Considering his offence and his appeal, he has awarded W.I.T for 3(three) years setting aside earlier punishment of reduction to the lowest stage in the same time scale of pay for one year."

The order of the disciplinary authority was that the applicant was reverted to the stage of Rs.775/- from Rs-995/- in the grade of Rs-775-1025/ for one year. The order of the appellate authority does not reduce the salary of the applicant but, only increments are withheld for 3 years. When we look into the penalties which have been enumerated under

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Rule 6 of the Railway Servants(Discipline and Appeal) Rules, 1968, we find that reduction to the lower stage in the time scale of pay is specified at serial (v) under the head of the major penalties, whereas withholding of increments of pay is described at serial no.(iv) under the head of minor penalties. Thus, it is not correct that the appellate authority has enhanced the penalty. We, therefore, reject the said arguments.

21. On the consideration of the points which were raised on behalf of the applicant, we come to the conclusion that the proper procedure of recording the statements of the witnesses including the cross-examination was not adopted. The applicant had no opportunity to cross-examine Shri B.B. Singh. The impugned orders passed by the disciplinary and appellate authorities were non-speaking orders and lacked application of mind. Thus, these orders are not sustainable in law. Accordingly, both the orders of disciplinary and appellate authorities, are quashed and set aside. The O.A. is disposed of accordingly. No order as to costs.

Member (J) Member (A)

/M.M./