

AS

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

O.A.No.65/1990

Laxman Prasad Nigam

Applicant.

versus

Union of India & others

Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon. Mr. A.B. Gorthi, Adm. Member.

(Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant was appointed as Engine Cleaner and promoted to the post of Fireman grade II in the year 1965 and when he was due for promotion to the post of Fireman Grade I in the year 1980, he was not promoted. Then in a disciplinary proceeding in January, 1982 he was awarded punishment of reduction in rank and in appeal the punishment was reduced, even then he was not promoted. In the mean time another chargesheet was issued to him for defrauding the administration along with several others. He was placed under suspension on 1.10.82, on 29.10.82 he was chargesheeted and major punishment was awarded. The applicant preferred an appeal on 22.9.83 and the charge sheet was withdrawn and cancelled by the order dated 4.2.86. Thereafter, again on 3.3.86 the applicant

4

was chargesheeted by the respondent No. 3 for the charges which were levelled in the year 1982 with the same evidence he was punished by the opposite party No. 2 and thereafter the the punishment was withdrawn vide order dated 23.6.1988. The applicant, thereafter represented for the promotion to the post of Fireman Grade I as the juniors to the applicant were promoted. In the mean time on 18.10.88 the applicant was required to discharge the duties of 'Telephone Clerk'. According to the applicant he was not imparted training for Telephone Clerk post and specially when he was required to discharge the duties of the post of Fireman, which is totally different than the duties of Telephone Clerk and has nothing to do with the post of Fireman as it required technical knowledge like the understanding the voices of 'Breath Analyser' to detect the intoxication of a Railway personnel and has to discharge other complicated ministerial duties viz. to receive and attend the telephone calls from those, who are connected with the running of trains and to transmit the same to all concerned immediately for averting any mishappening on the Railway tracks and trains etc. He was required training, for all this.

u

Then an inspection was made at about 11.00 hrs in the night when the train drivers Rama Deen and R.S. Misra came to the place where the petitioner was sitting and asked to which train their duty was and the applicant informed of the trains on which their duty was and also filled in the entries in the 'Signing on Register' which also contains the columns of 'Glass Test' and 'Intoxication Test' entries. The following note was made by the officer who inspected:

"Checked at 11.05 hours the entries had been made in advance. This is highly irregular and is in complete disregard of safety precautions."

There is no denial of the fact that consequently nothing wrong was found with the driver. The enquiry officer held that the petitioner without having tested the Driver filled the entries as O.K. only on the basis of his personal knowledge and experience as he had worked with them for very long time which was not proper and he found the petitioner guilty.

2. The grievance of the applicant is that without giving any opportunity or show cause the applicant was removed from service vide order dated 10.4.89. The applicant filed an appeal, which was partly allowed and the removal order was set aside. The applicant's

u

grievance is that the punishment awarded to the applicant is more severe, as not only he has been deprived of his future promotion and losing the benefit of entire service on the post of Fireman Grade II from 1965 upto the date of order as he was appointed again in the basis grade at the initial stage and will also lose his entire seniority of the post of Fireman grade II.

3. The respondents have tried to justify their order stating that the applicant could not be promoted due to disciplinary enquiry pending against the applicant and that while the applicant was performing the duty of phone Attendant, irregularities were detected in the 'Sign on Register.'

4. When all the earlier punishments were cancelled, the applicant should have been promoted with retrospective effect from the date his juniors were promoted. The charge sheet was issued in respect of a particular irregularity and minor penalty and not the major penalty which was given to the applicant. The charges against the applicant, which were not ^{of} such a nature to impose the penalty of removal and the respondents did not proceed in accordance with law. The applicant was not given opportunity to defend himself. As a matter of fact the charges should have been ^{be} framed applying the mind. Thus, it can be said that ~~no~~ reasonable opportunity was ^{not} given.

not given to the applicant. Accordingly this application deserves to be allowed. The orders dated 20-4-89, 22-6-89 and 28-9-89 are quashed. However, it will be open for the respondents to impose ~~minor~~ penalty on the applicant in respect of charges after holding enquiry giving full opportunity to defend the applicant. The enquiry to be completed within a period of three months from the date of receipt of a copy of this order. No order as to costs.


Adm. Member.


Vice Chairman.

Shakeel/

Lucknow:Dated: 16.4.92.