

CENTRAL ADMINISTRATIVE TRIBUNAL: LUC NOW PENCH:

LUCKNOW

ORIGINAL APPLICATION NO.131 of 1992.

Lucknow this the 21st day of April 1997.

HON'BLE MR. V.K. SETH, MEMBER (A.)

HON'BLE MR. D.C. VERMA, MEMBER (J.)

SRI KANT TIWARI s/o late Baleshwar Tiwari
Ex-Assistant Station Master, Northern Railway,
Barabanki
R/o Village & Post - Bahadurpur (Deogaon),
District - Azamgarh.

..Applicant
Versus

1. D.R.M., NORTHERN RAILWAY, HAZRATGANJ,
LUCKNOW.
2. A.D.R.M. (II), NORTHERN RAILWAY, HAZRATGANJ,
LUCKNOW.
3. SENIOR DIVISIONAL SAFETY OFFICER,
NORTHERN RAILWAY, HAZRATGANJ, LUCKNOW.
4. DIVISIONAL OPERATING SUPERINTENDENT,
NORTHERN RAILWAY, LUCKNOW.
5. UNION OF INDIA - through -
SECRETARY, NORTHERN RAILWAY, BARODA HOUSE,
NEW DELHI.

..Respondents.

For the applicant: Sri A.C. Mishra, Advocate.

For the respondents: Sri Anil Srivastava, Advocate.

ORDER

D.C. VERMA, MEMBER (J.)

By this O.A. applicant Sri Kant Tiwari, who was working as Station Master, has challenged the order of punishment dated 21.1.85 (Annexure no.3) and the order of the appellate authority dated 20.8.90 (Annexure-8).

2. The brief facts of the case is that the applicant, who was an Asst. Station Master, worked as Station Master during the vacancy of Station Master at Chandrauli Railway Station. During the period he worked as such i.e. between 24.8.82 to 22.2.83 it was noticed that cash

remittances from station were not regular. On an enquiry, it was found that amount of Rs.8356.40 were still to be remitted but the cash available was only Rs.1617.75. For the balance amount of Rs.6738.65 a notice was given to the applicant to deposit the amount immediately. A disciplinary proceedings was initiated and charge-sheet was issued on 19.1.83 for misappropriation of railway fund and other grave irregularities. Subsequently the applicant was placed under suspension w.e.f. 22.2.83. During the suspension period the applicant deposited the amount in two instalments. The suspension was finally revoked on 1.9.83. On the report of Enquiry Officer dated 1.8.85 the disciplinary authority imposed penalty of removal from service with immediate effect on 21.1.85. ^{7-16 said} The applicant appealed against ~~the~~ order, which was decided on 9.9.85(Annexure no.4) the punishment was, upheld, and the reviewing order is Annexure no.5.

3. Aggrieved by the said orders the applicant filed O.A.no.46136 which was decided by the Tribunal vide its judgment and order dated 23.1.90. After considering the merits and demerits of the case, the Tribunal vide its order dated 23.1.90 directed the appellate authority to dispose of the appeal on merits by a reasoned order.

4. In compliance of the Tribunal's order the appellate authority passed a detailed order dated 20.8.90 (Annexure no.8), The applicant has challenged the initial punishment order (Annexure no.3) and the appellate order (Annexure no.8) in the present O.A.

5. The learned counsel for the respondents has contested the case and has filed counter affidavit. Pleadings have been exchanged between the parties.

6. We have heard the counsel of both the sides at great length. The learned counsel for the applicant has submitted that the enquiry proceedings against the applicant was ex parte and the applicant was not afforded

any opportunity, that the appellate order (Annexure-8) is not a reasoned order and that the penalty imposed on the applicant is excessive.

7. We find that the punishment order dated 21.1.85 (Annexure-3) was challenged in the earlier O.A.no.461 of 1986. While deciding the said O.A. the Tribunal has given following findings:

(i) Notices of enquiry were served on the applicant to appear before the Enquiry Officer on 6.10.83, 9.11.83, 10.2.84 and 23.8.84 but the applicant did not choose to be present for the enquiry.

(ii) The enquiry was held ex parte and findings arrived at is based on records.

(iii) At no stage the applicant has denied the charges.

(iv) Vide letter dated 27.8.83 addressed to Senior Divisional Safety Officer the applicant admitted the charges. His letter reads as under:

" Most respectfully I request your honour that I accept all charges framed against me. Therefore, it needs not for the disciplinary authority to arrange for DAR Inquiry to prove the charges against me."

(v) The allegations of the applicant that he was avoided of opportunity to present his case, is not established.

(vi) That the punishment order was passed by a competent authority.

8. After giving above findings the Tribunal in terms of the Hon'ble Supreme Court judgment in Ram Chander Versus Union of India & Others (Civil Appeal no.1621 of 1986 dated 2.5.1986) found that there being non-compliance to the requirements of Rule 22(2) of the Railway Servants(Discipline & Appeal) Rules 1968, as the ~~was~~ non-speaking, quashed the appellate order (Annexure-4 dated 9.9.85) and the Revisional order dated 7.10.85 and directed the appellate authority to dispose of the appeal on merit by a reasoned order.



9. In the light of the above, we find that the punishment order (Annexure-3) was not found invalid on facts or in law. We, therefor, in this second O.A. are not required to examine the said earlier finding of the Tribunal.

10. As regards the appellate order passed subsequent to the decision of the Tribunal in O.A.461 of 1986, we find that the appellate authority has passed a detailed order after giving personal hearing to the applicant. Even defence helper of the applicant was also present before the appellate authority. The appellate authority has also found that the proceedings against the applicant were in conformity with the D.A.R., 1968 and that there was no remittance between 24.8.82 to 16.9.82 even though cash box was available at the station and for which proper account was not maintained for despatch. After recording his own reasonings the appellate authority gave a finding that the remittances of the cash by the employee on a later date and making up the cash deposits of the station does not absolve him of the charges of misappropriation of the Government money, which proves the dishonesty and doubtful integrity of the applicant towards the railway organisation. The appellate authority has thereafter justified the penalty imposed by the disciplinary authority.

11. We find that the order passed by the appellate authority is reasoned and detailed ~~order~~ and calls for no interference.

12. The learned counsel for the applicant has referred to certain decisions, which are being considered as below:-

(1) 1995 Supreme Court Cases (L & S) 313
(Transport Commissioner, Madras-5 versus
A. Radha Krishna Moorthy)

This case is in respect of a charge-sheet, which was found vague. The charges were quashed because it

It was found that in absence of specification of the part the delinquent played, the account which he falsified or helped to falsify and the amount which he individually or together with other named persons, misappropriated, was not clear. Such is not the case in the case before us.

(ii) 1994 Supreme Court Cases (L & S) page 1131
(Union of India versus I.S. Singh)

In this case an ex parte enquiry was found violative of natural principles of justice because the adjournment on medical ground, claimed by the applicant therein, was not granted due to absence of medical certificate. In the present case there is nothing on record to show that at any stage the applicant asked for time, which was not granted.

(iii) 1994 Supreme Court Cases (L & S) page 687.
(State of India & Others vs. Samarendra Kishore Endow and Another)

In this case the apex court held that if the punishment imposed was harsh, the proper course for the High Court/CAT was to remit the case back to the appellate/disciplinary authority. It was also held, while the Supreme Court could interfere with a punishment imposed in a departmental enquiry, there was no corresponding power or jurisdiction with the High Court/CAT for exercising such power or jurisdiction. In the case before the apex court, the charge against the delinquent official was for claiming false travelling expenses and for releasing construction loan but there was no loss to the department and, therefore, the apex court found that the punishment of removal from service was harsh.

In the case before us the charge against the applicant is of mis-appropriation of Government money, which speaks of the integrity of the applicant.

(iv) 1994 Supreme Court Cases (L & S) page 981
(Smt. Indrani Bai vs. Union of India & Others)

In this case there was an ex parte proceedings against the delinquent official. Subsequently, on request,

A

a higher authority permitting the delinquent to participate in the enquiry but the Enquiry Officer did not provide the delinquent official right to cross examine and, therefore, it was held that a fair opportunity was denied.

In the case before us, as has been already found, there was no request for adjournment at any stage by the applicant.

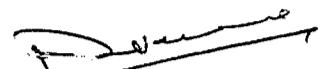
(v) Lastly the applicant has referred to State of Punjab & Others vs. Dr. Harbhajan Singh Greasy (1996 Supreme Court (L & S) page 1248. In this case, the delinquent official before the Enquiry Officer admitted the guilt. The statement of the delinquent was not obtained in writing. It was in these circumstances, that the matter was remitted back for fresh enquiry from the stage the fault was committed.

In the case before us, as has been found and quoted, in the earlier judgment of the Tribunal, the applicant himself had given in writing admitting the charges. This fact is not denied nor challenged even before this bench.

13. Learned counsel for the applicant has submitted that as the proceedings against the applicant proceeded ex parte and the order of the appellate authority is not reasoned and speaking order, the matter be remitted back to the disciplinary authority. Even after giving anxious thought to the submissions of the learned counsel we are unable to agree with his request. We have already found that the order of punishment has been confirmed and found valid by the Tribunal in its earlier judgment. We also found that the appellate order (Annexure-8) is a reasoned and speaking order and the same cannot be faulted. As the charge against the applicant is of temporary embezzlement of Govt. money, which he

failed to remit as per rules during the period he worked as Station Master on adhoc basis, we are of the view that the applicant deserves no leniency.

14. We, therefore, find no merit in the case and the same is dismissed. Cost on parties.



MEMBER (J.)

MEMBER (J.)

Dated: Lucknow: April 21, 1997.

Narendra/