

CENTRAL ADMINISTRATIVE TRIBUNAL<

LUCKNOW BENCH, LUCKNOW.

ORIGINAL APPLICATION NO.610/1992

this the 23<sup>rd</sup> day of March, 2001

HON'BLE SMT. LAKSHMI SWAMINATHAN VICE CHAIRMAN (J)

HON'BLE MR. A.K. MISRA, MEMBER (A)

K.K. Srivastava, aged about 57 years, s/o Sri Barati lal, at present resident of II-72 G, Sleeper Ground, Alam Bagh, Lucknow.

....Applicant

By Advocate: Shri L.P. Shukla.

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Chief Workshop Engineer, Northern Railway, Baroda House, New Delhi.
3. Deputy Chief Mechanical Engineer, C&W Shops, Northern Railway, Alambagh, Lucknow.
4. Works Manager (C), C&W Shops, Alambagh, Lucknow.

....Respondents.

By Advocate: Shri A.k. Chaturvedi.

ORDER

A.K. MISRA, MEMBER (A)

The applicant of this O.A. has prayed that the order of punishment dated 19.4.1982 (Annexure No.2 to the OA) and the order dated 27.2.1992 (Annexure No. 6 to the OA) be quashed. It has also been prayed that the respondents be directed to treat the applicant as continuing in service and consequently entitled to payment of arrears of salary and allowances.

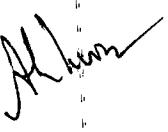
2. Pleadings on record have been perused and learned counsel for the parties have been heard.

3. The applicant was initially appointed as a Clerk on 31st January, 1957 in the Northern Railway and was subsequently promoted in 1974 as Senior Clerk. A charge



sheet dated 14.11.1980 was served on the applicant by the Respondent No. 4 i.e. Works Manager, C&W Shop, Alambagh, Lucknow. The charge against the applicant was that while working as Senior Clerk in the Mill Wright Section, the applicant was apprehended by Shri Upendra Prasad Srivastava and Shri Caisor Mirza and was found in ~~XXXXXXXXXX~~ possession of about 13 Kgs. brass boring costing Rs. 250/- at the time office gate at about 11.15 AM on 24.10.1980. The applicant was carrying the brass boring on the carrier of his bicycle. The applicant is stated to have admitted his guilt in the presence of Shri B.N. Sinha, Sr. Clerk of the Time Office. An enquiry in the matter was held and the enquiry officer in his report dated 4.2.1982 came to the conclusion that the charge against the applicant was proved. The enquiry officer however, observed ~~that the weight of the brass boring was 7.5 Kg and not 13 Kg as mentioned in the charge sheet.~~ Accordingly ~~the~~ disciplinary authority by order dated 19.4.1982 (Annexure A-2) levied the penalty of removal from service. The appeal filed against the order of disciplinary authority was dismissed by the appellate authority by his order dated 26.2.1983. The applicant challenged the appellate order dated 26.2.1983 by T.A. No. 1167/87 ~~in~~ (Writ Petition No. 3536 of 1983) before this bench of the Tribunal. The said T.A. was decided by order dated 10.12.1991 by Division Bench of this Tribunal holding that the appellate order dated 26.2.83 cannot be sustained as no personal hearing was given to the applicant by the appellate authority. The appellate order was accordingly quashed and following directions were given by this Tribunal to the appellate authority:-

"The appellate authority is directed to dispose of the appeal filed by the applicant and pass a speaking order taking into consideration all the pleas taken by the applicant after giving him personal hearing".

  
4. Subsequently the appellate authority passed an order dated 27.2.1992 in compliance of the directions given

by this Tribunal by order dated 10.12.1991. The appellate order dated 27.2.1992 states that the appeal filed by the applicant has been carefully considered by the competent authority after having afforded personal hearing to the applicant on 31st January, 1992. The appellate authority came to the conclusion that the plea taken by the applicant that the Works Manager was not competent to issue a charge sheet was not acceptable. The appellate authority also came to the conclusion that the disciplinary authority had imposed the penalty of removal from service in accordance with the Railway Servants (D&A) Rules, 1968, that the principles of natural justice had been observed, and that the enquiry had been properly conducted in which the charge of theft against the applicant was found as proved. The appellate authority, therefore, declined to interfere in the penalty of removal from service imposed by the disciplinary authority.

**5** The factual position that the applicant was apprehended on 24.10.1980 at about 11.15 AM at the time office gate and was found carrying brass boring weighing 13 Kg on his Bicyle carrier is admitted. On 24.10.1980, when the applicant was found carrying the said brass boring, his statement was recorded in the presence of one Shri B.N. Sinha, Time Keeper. The applicant admitted in his statement that he had taken out the said brass boring from the Mill Stores where he was working and was carrying this brass boring with the intention to sell. In his statement, the applicant has also stated that he was willingly giving this statement without any pressure or coercion. Shri B.N. Sinha, Time Keeper in whose presence the statement of the applicant was recorded has endorsed his signature below the applicant's statement stating that the applicant has given the statement of his own accord. The statement of one Shri Caisor Mirza, SRK who was on duty on 24.10.1980 was

also recorded. Besides the statement of Shri Upendra Prasad, (R.K) was also recorded. Shri Caisor Mirza and Shri Upendra prasad both testified that the applicant was caught outside the time office gate at 11.15 AM carrying a bag on his cycle carrier which contained brass boring weighing 13 Kg. The applicant was also given opportunity to cross examined all the three witnesses. The cross examination of shri Caisor Mirza was made by the applicant is available as Annexure C-IV to the C.A. During the course of the enquiry, the applicant was also cross examined. As already stated, the fact of having committed theft was admitted by the applicant. The applicant produced Shri R.R. Yadav, Sr. Clerk, Shri S.N. Srivastava, head Cleak, mill Wright Shop and Shri Shaturghan, Sr. Clerk, Time Office as defence witnesses whose statements were also recorded and who were also cross examined. The stand taken on behalf of the applicant that the applicant's statement recorded on 24.10.1980 when he was caught carrying 13 KG of brass boring was given under duress cannot be given much credence in the light of the fact that the applicant did not retract from the statement given by him on 24.10.1980 outside the time office gate within a reasonable period of time. The contention that the statement was given under duress has been raised at a very late stage and appears to be an after-thought. The relevant documents requested for were also duly supplied to the applicant. The applicant was also given full opportunity to defend himself during the course of enquiry. The report of the enquiry officer was also furnished to the applicant along with punishment order. During the course of hearing, it was fairly conceded by the learned counsel for the applicant that the decision of the apex court in Ramzan Khan's case, 1991 (1) SCC page 588 applies only prospectively and will not be applicable to the facts as obtaining in the present O.A.

It was contended by the learned counsel for the applicant ~~XXXX~~ during the course of hearing that the provisions of Clause (b) of Rule 22 of the Railway Servants (D&A) Rules, 1968 were not complied with by the appellate authority. Clause (b) of Sub Rule (2) of Rule 22 of the Railway Servants (D&A) Rules, 1968 is reproduced below:-

"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-

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record."

7. The second order of the appellate authority dated 27.2.1992 was passed in compliance of the directions given by this Tribunal by its order dated 10.12.1991 passed in T.A. No. 1167/87 (W.P. No. 3536/83) in the case of the applicant. The directions given by this Tribunal was that the appellate authority shall dispose of the appeal and pass a speaking order taking into consideration all the pleas taken by the applicant after giving him a personal hearing. Accordingly the appellate order was passed on 27.2.1992 after giving the applicant a personal hearing and after considering the pleas raised by him during the course of personal hearing. The appellate authority has observed in his order dated 27.2.1992.

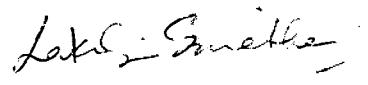
"He did not come with any defence counsel and represented the case by himself. On the basis of what he told and the case file, the orders are passed that his plea that the Works Manager, Alambagh, Lucknow was not competent to issue charge sheet is not agreed as he was fully competent to inflict one of the major penalty punishment. I also find that the rules followed by Disciplinary Authority in this case are in conformity with Railway Servants (D&A) Rules, 1968 and no where the appellate has been denied the principles of natural justice and the enquiry has been conducted in a correct manner, wherein the charge of theft has been proved. No fresh points have been brought out by the party, warranting any revision of punishment already imposed. Therefore, it is not proposed to reduce or enhance the punishment already imposed".

8. Thus the appellate authority passed the orders

after giving the applicant a personal hearing and after considering the grounds raised by him during the course of personal hearing. He has also observed that the disciplinary authority has acted in conformity with Railway Servants (D&A) Rules, 1968 and it therefore, cannot be said that the provisions of clause (b) of sub Rule (2) of Rule 22 of the Railway Servants (D&A) rules 1968 have not been complied with. The reference made on behalf of the applicant to the decision of the Hon'ble Supreme Court in the case of Ram Chander Vs. Union of India, 1986 (3) SCC, 103 will also not help the applicant because in the cited case the impugned order of the Railway Board was found by the Apex Court to be just a mechanical reproduction of the phraseology of Rule 22 (2) of the Railway Servants Rules without any attempt on the part of the Railway Board to Marshal the evidence on record with a view to deciding whether the findings arrived at by the disciplinary authority could be sustained or not. The Apex Court also found in that case that the Railway Board <sup>the</sup> had confirmed penalty without applying his mind. ~~in the~~ In the present O.A. the applicant had been given a personal hearing by the appellate authority and pleas raised by him during the course of personal hearing had duly been considered by the appellate authority while confirming the order of punishment <sup>passed</sup> by the disciplinary authority.

¶ In the light of the discussions made in paras 5, 6, 7 & 8 we do not find any good reasons to interfere either in the punishment order dated 19.4.1982 or in the appellate order dated 27.2.1992. The O.A, therefore fails and is accordingly dismissed. No costs.

  
MEMBER (A)

  
VICE CHAIRMAN (J)

LUCKNOW: DATED: 23<sup>rd</sup> March 2007

HLS/-