

(9)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY
CAMP AT NAGPUR

* * * * *

Tr. A.Nos. 331/87 & 337/87

1. K. Surya Rao,
Fireman 'B' Grade,
S.E.Railway, Nagpur & 2 ors. ... Applicants
(T.A. 331/87)
2. R. Seshagiri Rao,
II Fireman,
S.E.Railway, Nagpur & 13 ors. ... Applicants
(T.A. 337/87)

v/s

1. Divisional Mechanical Engineer,
South Eastern Railway,
Nagpur.
2. Divisional Personnel Officer,
South-Eastern Railway,
Nagpur.
3. General Manager,
South-Eastern Railway,
Garden Reach, Calcutta. ... Respondents

CORAM : Hon'ble Vice-Chairman, Shri Justice U.C.Srivastava
Hon'ble Member (A), Shri M.Y.Friolkar.

Appearances:

Mr. N.C.Phadnis, Advocate
for the applicants and
Mr. P.N.Chandurkar, Counsel
for the respondents.

ORAL JUDGMENT:

Dated : 20.11.1991

(Per. U.C.Srivastava, Vice-Chairman)

In both these cases as identical question of facts and law arises the same are being disposed of together more so when the charge against the applicants in both the cases belonging to the same department is the same. In these applications the applicants are challenging the order passed by the Divisional Mechanical Engineer, South-Eastern Railway, inflicting a minor penalty of withholding of their promotion to the next higher grade

of Diesel Assistant in the scale of Rs.290-350 for a period of five years as a disciplinary measure with effect from the date this notice was served upon them. As the appeal filed against the departmental punishment was not allowed the applicants approached this Tribunal. It appears that the charge against the applicants was that they deliberately absented themselves from duty on 22.1.1981 and on that day they unlawfully obstructed and intimidated the staff from performing their legitimate duties. ~~Extrajudicial~~ The applicants submitted their reply to the charge sheet and thereafter the impugned orders have been passed. On behalf of the applicants two contentions have been raised. The first contention that has been raised is that the chargesheet in respect of the major penalty was issued and as such it was incumbent on the respondents to give opportunity of hearing to the applicants which was not done and they also did not file a detailed reply and a minor penalty on the basis of the said charge sheet could not have been awarded. The respondents have challenged the contentions and stated that the applicants were served with show cause notice dated 17.7.1982 in Standard Form 11(c) against rule 9(7)(a)(iv) of RS I&A rules 1968 after considering the explanation tendered by them. They were given opportunity as per rules. It has further been stated that after receipt of reply to the charge sheet, order of minor penalty was issued which they accepted and the contention that ^{There was} no charge sheet in respect of minor penalty is not correct. These facts also stand verified from the record. As such this plea fails. Other plea which has been raised on behalf of the applicants is that this penalty is not provided. As a matter of fact this penalty is prescribed in Railway Servants (Discipline & Appeal) Rules 1968. Rule 6(2) provides withholding of promotion for a specified period. This contention also fails.

2. The contention that once a charge sheet is issued in respect of major penalty it cannot be converted into minor penalty also does not hold water. It may be that some time the disciplinary authority may view a particular offence to attract major penalty but on receipt of the reply or even before that it may change its mind ^{and} take the ^{new} ~~view~~ that as a matter of fact the charge will not attract major penalty ^{but only} ~~and~~ minor penalty and in these circumstances the charge sheet in respect of minor penalty can always be issued.

3. The applications as such have got no merit and accordingly dismissed with no order as to costs.