

Mohamad Ishaque

v_{δ}

... Respondents

Appearances

- 2

DATED : 05/04/1995

(Per. Shri. Justice M.S. Deshpande, Vice Chairman)

In the present case, a departmental enquiry was held against the applicant, who was officiating as Assistant Station Master, in respect of three charges. The first was ^{that} ~~he~~ was found drunk while on duty on 18.8.1989, the second was that he was not wearing the official uniform with the badge and the third was that he had threatened the Sr.D.O.S/Bombay Central with dire consequences for reporting the matter. The charge was framed on 22-9-1989 and the Enquiry Officer held that all the three charges were proved. The applicant appealed to the Appellate Authority who, by its order dated 30/4/1990 also found that the charges were proved. The applicant did not dispute the position that he was not wearing the official uniform at the time of the incident and the learned counsel for the applicant

stated that in view of that admission, he would not say anything more as that part of the charge has been held to be proved.

2. With regard to other two charges, the submission was that the evidence of the seven witnesses who were examined did not say that the applicant being in a state of drunkenness, was unable to take care of himself at the time of the incident, ^{or was} under the influence of alcohol and ^{all} that he had said while leaving, when he was taken for medical examination, was that he would see the officer later, but that was with a view not to threaten him but with an object ^{of} ~~to~~ explain ^{ing} his conduct.

3. We do not wish to go into the details of the evidence though it was extensively ^{read over} ~~explained~~ to us by the learned counsel for the applicant. The main contention was that the applicant was not furnished with the complaint, namely Sr.DOS' Note No.T/257/6/1/Vol.XII dt. 22.8.1989. This point is raised in para 4.vii of the petition by stating that the copy of medical certificate has not been furnished to the applicant. ^{The} ~~In~~ reply filed by the respondents at para 4.vii shows that the Sr.DOS's note was supplied to the applicant alongwith the charge-sheet and ~~stated~~ that the applicant was taken to J.J.Hospital where the doctor ~~has~~ certified him to be in an intoxicated condition. The learned counsel for the applicant urged that this statement was not correct because he has raised the ground of non-supply of the documents also in his memorandum of appeal but it was not considered by the Appellate Authority. In his brief order dated 30/04/1990 without discussing whether the applicant ~~has~~ been supplied with these documents, the appellate

authority observed that even though the applicant's blood was not tested, the certificate given by the casualty medical officer of JJ Group of Hospitals proves that he had consumed alcohol and he was under the influence of alcohol. The appellate authority converted the penalty of 'removal from service' to that of 'compulsory retirement'.

4. We find that the question whether a copy of Sr.DOS's note together with medical certificate had been supplied to the applicant was a major issue and since the applicant had contended that he had not received the document, it was obligatory on the part of appellate authority to consider whether these documents had been supplied to the applicant or not. The point involved was important because it was only on that basis, the charge of drunkenness was held to be proved and in the face of that document not having been furnished to the applicant, the charge would have gone unsubstantiated and it would have affected the punishment that was imposed on the applicant ultimately.

5. We therefore set aside the order passed by the appellate authority on 30.4.90 and direct the appellate authority to consider the applicant's appeal by referring to ~~the~~ other contentions of the applicant raised in his memo of appeal and after giving him personal hearing, the applicant's appeal be disposed of according to law within two months from the date of communication of this order. With this direction, the O.A is disposed of.

(P.P. SRIVASTAVA)
MEMBER (A)

(M.S.DESHPANDE)
VICE-CHAIRMAN