CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 979/94

Date of Decision : 5.7.2000

R.K.Rajput _____ Applicant.

Shri P.G.Zare _____ Advocate for the Applicant.

VERSUS

Union of India & Others, _____ Respondents.

Shri V.S.Masurkar _____ Advocate for the Respondents.

CORAM :

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

The Hon'ble Shri Govindan S. Tampi, Member (A)

(i) To be referred to the Reporter or not ? } No

(ii) Whether it needs to be circulated to other Benches of the Tribunal ? }

(iii) Library

(R.G.Vaidyanatha)
VICE CHAIRMAN

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.979/94

Wednesday this the 5th day of July,2000.

CORAM : Hon'ble Shri Justice R.G.Vaidyanatha,Vice Chairman

Hon'ble Shri G.S.Tampi, Member (A)

R.K.Rajput,
Permanent Way Inspector,
Grade-III, at Shegaon,
Dist. Akola, Maharashtra. ... Applicant

By Advocate Shri P.G.Zare

V/S.

1. Union of India through
the General Manager,
Central Railway,
Bombay V.T.,Bombay.

2. The Divisional Railway Manager,
Central Railway,
Bhusawal. ... Respondents

By Advocate Shri V.S.Masurkar

O R D E R (ORAL)

{Per : Shri Justice R.G.Vaidyanatha, VC}

This is an application filed by the applicant challenging the disciplinary action taken against him. Respondents have filed reply. We have heard Shri P.G.Zare, learned counsel for the applicant and Shri V.S.Masurkar, learned counsel for the respondents.

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2. At the relevant time in 1992 the applicant was working as Permenent Way Inspector at Chalisgaon, Bhusawal Division. There was an incident which took place on 23.7.1992 when there was a derailment of train. A chargesheet was issued against the applicant dated 17.9.1992 alleging that there was a derailment of train and the applicant being a PWI has negligent in his duty in protecting the track and thereby he has committed misconduct and liable for disciplinary action. A preliminary enquiry was done which had put the blame on the engineering department which was responsible for the incident. On that basis, chargesheet was issued against the applicant. The applicant gave a reply. Then a regular enquiry was held in which 7 witnesses came to be examined. The applicant was also questioned. Then, after a regular enquiry, enquiry officer held that the charges are proved and submitted a report dated 31.12.1992. On the basis of enquiry report and after receiving reply from the applicant, the disciplinary authority by order dated 15.3.1993 held that the charges are proved against the applicant and imposed a penalty of reduction of pay from the stages of Rs.1640/- to the stage of Rs.1560/- for a period of 2 years and on expiry of the period, the reduction will have the effect of postponing the future increments.

Being aggrieved by the order of the disciplinary authority, the applicant carried the matter in an appeal before the appellate authority. The appellate authority by the order dated 1.9.1994, after giving personal hearing to the

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applicant, held that the charges are proved and that the penalty is on lenient side and accordingly confirmed the penalty. The applicant has challenged the order of disciplinary authority and appellate authority.

In the meanwhile the revisional authority suo-moto issued a show cause notice to the applicant calling upon him to show cause as to why the penalty should not be enhanced from reduction of pay from two years to three years. It appears the applicant gave a representation against the show cause notice, which according to the respondents, was not received in time. Hence, the revisional authority passed an order dated 28.10.1994 confirming the show cause notice. The applicant has since amended the OA. challenging the order of revisional authority.

3. The applicant's case is that he has been wrongly found guilty by the respective authorities. He, therefore, challenges the correctness and legality of the penalty.

4. The respondents have mentioned the facts in the reply and justified the orders passed by the disciplinary authority, appellate authority and the revisional authority.

5. The learned counsel for the applicant has not pointed out any procedural irregularities. He only challenges finding of misconduct. As can be seen from the enquiry report and the other materials on record, there was a lapse on the part of the applicant to some extent and there was some negligence on his

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part in not protecting the Railway track as expected of him. It is held in number of judgements of Apex Court that Courts and Tribunals cannot interfere in the arena of discussion of evidence. We can test the legality of decision making process and not legality of actual decision. The Tribunal cannot discuss the evidence and come to a different conclusion, even if another view is possible. Therefore, in view of the law declared by the Apex Court, we cannot go into the merits of the case. There is a latest judgement of the Apex Court in the case of Apparel Export Promotion Council vs. A.K.Chopra, AIR 1999 SC 625 on this point. Since the applicant has not been able to point out any irregularity in conducting the enquiry and the order is based on some evidence, we cannot go into the question of adequacy of evidence or inadequacy of evidence. It is a matter exclusively in the jurisdiction of domestice Tribunal. This is not a case of no evidence but it is a case of some evidence if believed, sufficient to prove the case.

6. We have found from the papers that applicant's stand is that he is not fully responsible for the accident in question. He is attributing that the accident was also due to the high speed of the train. The applicant cannot excape his basic responsibility of protecting the track. Therefore, in the facts and circumstances of the case, we cannot interfere with the finding of guilt and the order of the competent authority.

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7. Learned counsel for the applicant contended that the order of the disciplinary authority is not a speaking order. When the enquiry officer has given detailed order and the disciplinary authority agrees with him, it is not necessary to give detailed order. Therefore, when the disciplinary authority is agreeing with the enquiry report, it is not necessary to write a detailed order.

8. Then, the learned counsel for the applicant questioned the order of revisional authority dated 20.8.1994 under which penalty was enhanced from reduction of pay from two years to three years. He first argued that when this application has been filed in the Tribunal, the revisional authority cannot enhance the penalty when the OA. is pending in the Tribunal. If the OA. is admitted, further proceedings will abate. In the present case, the OA. was admitted in February,1995. Therefore, there was no legal bar to exercise the revisional powers.

The order of the Revisional authority is at Ex.`R-2' which is page 36 of the paper-book. No doubt in the order of the Revisional authority, it is stated that the punishment levelled against applicant is on the lower side, and applicant called upon to show casue as to why the punishment should not be enhanced. He has given 10 days time for giving the reply. Then he passed the final order which is dated 28.10.1994 and it reads as follows :-

> " As no representation has been received within the stipulated time against the above Show Cause Notice, is hereby confirmed."

It is a cryptic one sentence order.

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On the face of it, the order does not give any indication of application of mind to the facts of the case and the necessity to enhance the punishment. Even in the show cause notice, he has not discussed the facts of the case to say as to why penalty should not be enhanced. Without even mentioning the few facts pertaining to the alleged misconduct, he cannot enhance the penalty. He has not given the reasons as to why he is enhancing the penalty. Therefore, the leraned counsel is right in his contention that the impugned order suffers from non application of mind. We do not say that the revisional authority should write a detailed order about the necessity for enhancing the penalty, but he should have given some facts to show application of mind.

9. In addition to this, we also feel that the order also suffers from vice of violating principles of natural justice. Applicant was asked to submit his representation within 10 days, we find that the applicant did give his reply to show casue by representation dated 9.10.1994 which is at page 38 of the paper book. He gave his representation to his official superior, who in turn, endorsed the same to the competent authority by his letter which is dated 19/24.10.1994 when the applicant has given representation to his office on 9.10.1994, the local office has taken two weeks. Even if it had reached the competent authority, he would have the benefit of going through the same before passing the impugned order dated 10.1.1994. The learned counsel for the respondents has produced before us the relevant file which shows that the representation has reached the office of DRM

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one month later on 22.11.1994. When the applicant has given his representation as early as on 9.10.1994, to hold up the papers for no reasons is not correct. Therefore, in the facts and circumstances of the case, we hold that the respondents did not have sufficient ground for delay in forwarding the representation. Even on this ground the impugned order cannot be sustained. Therefore, in the facts and circumstances of the case, we hold that the order of revisional authority should be set aside.

10. In the result, the application is allowed partly. While confirming the penalty order of disciplinary authority and confirmed by the appellate authority, we hereby quash and set aside the order of revisional authority dated 28.10.1994 under which the penalty was enhanced. As a consequence, the applicant should be restored whatever financial benefits he has suffered due to order dated 28.10.1994. Respondents are directed to comply with this order within three months from the date of receipt of a copy of this order. No order as to costs.

(GOVINDAN S. TAMPI)
MEMBER (A)

(R.G.VAIDYANATHA)
VICE CHAIRMAN

mrj.