IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 78/94

Date of Decision: 13-11-98

P.C.Deshpande — Applicant.

Shri P.K.Joshi — Advocate for Applicant.

Versus

Union of India & Ors. — Respondent(s)

Shri S.C.Dhawan — Advocate for Respondent(s)

CORAM:

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

Hon'ble Shri. D.S.Baweja, Member (A)

(1) To be referred to the Reporter or not? ✓

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

(D.S.BAWEJA)
MEMBER (A)

(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 78/94

Pronounced this the 13th day of NOVEMBER 1998

CORAM : Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Baweja, Member (A)

Prabhakar Chandidas Deshpande,
C/o Prabhakar K.Joshi,
Rajput Building near Hotel Nandanvan
Station Road, Aurangabad-431 005.

By Advocate Shri P.K.Joshi ... Applicant

V/S.

1. Union of India
through General Manager,
South Central Railway,
'Rail Nilayam',
Secunderabad, Andhra Pradesh.

2. Divisional Railway Manager,
and Disciplinary Authority,
Hyderabad Division,
Secunderabad, Andhra Pradesh.

By Advocate Shri S.C.Dhawan ... Respondents

O R D E R

(Per: Shri D.S.Baweja, Member (A)

The applicant while working as Station Master at Basmat on South Central Railway was issued a chargesheet for major penalty on 27.11.1985 with the charge of misappropriation of station earning of Rs.3,961/-. The applicant did not admit the charge and therefore the enquiry was ordered. Based on the findings of the enquiry report, the disciplinary authority imposed a punishment of reduction to lower grade for a period of three years as per order dated

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3.9.1986. Thereafter, a notice was issued to the applicant for enhancement of punishment and based on the same, the punishment of removal from service was imposed. The appeal filed against the same was rejected but against the revision appeal, the penalty was again modified restoring the punishment of reduction to a lower grade for a period of 3 years. The applicant challenged this punishment through OA.NO.450/89. This OA. was disposed of as per the order dated 30.8.1991 setting aside the impugned punishment order with the liberty to the respondents to proceed with the matter afresh from the stage of supply of a copy of the enquiry report and after giving him an opportunity of making a representation if he wishes so. Subsequent to this, the respondents proceeded further with the disciplinary action and furnished the copy of the report to the applicant on 14.4.1992. The applicant submitted his representation against the same. The show cause notice was issued to the applicant on 15.7.1992 proposing penalty of removal from service. The applicant represented against the same and he was also given a personal hearing by the disciplinary authority. The disciplinary authority passed an order dated 23.7.1987 imposing the punishment of removal from service. The applicant preferred an appeal against the same and the appeal was also rejected as per the order dated 12.9.1993 of the appellate authority. Feeling aggrieved by this punishment, the present OA. has been filed on 21.12.1993 seeking the relief of quashing the orders of the disciplinary and appellate authorities imposing punishment of removal from service.

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2. The applicant has advanced the following grounds in challenging the impugned punishment orders :- (a) The past service of the applicant which is unblemished has not been taken into consideration before passing the impugned punishment order. (b) The management has taken a revenge against the applicant in imposing the punishment as on the earlier occasion he had approached the Tribunal and the Tribunal had quashed the punishment orders. (c) Disciplinary authority was not the competent authority to impose punishment of removal from service, as per the extant rules. (d) The charge against the applicant does not fall under the category under which the punishment is from removal or dismissal from service to be imposed. In other words, the punishment imposed is shockingly disproportionate to the alleged charge. (e) The charge against the applicant is not established as the applicant had advised all concerned about the defective cash box earlier and had been following the matter with the concerned authority for repair of the same. (f) In the earlier proceedings, the revision authority had clearly recorded in his order that the applicant cannot be held responsible for misappropriation of the cash as it was a case of loss of cash. Once such findings have been recorded by higher authority, the respondents cannot go back on the same.

3. The respondents have opposed the application through written statement. The respondents at the outset have taken an objection that the application is pre-mature as the applicant has not availed the departmental remedy of revision application before approaching the Tribunal. On merits, the respondents controvert all the grounds taken by the applicant in challenging the

impugned punishment order stating that the disciplinary proceedings have been held as per the extant rules and punishment has been imposed by the competent authority. The respondents further submit that the charge of mis-appropriation had been established in the enquiry and since the charge is serious, the punishment is not disproportionate to the gravity of the charge. It is further stated that the disciplinary authority and appellate authority have passed their orders after considering all the aspects and giving a personal hearing to the applicant to present his case. The respondents, therefore, plead that the application is devoid of merits and deserves to be dismissed.

4. The applicant has not filed any rejoinder reply in response to the written statement.

5. We have heard the arguments of Shri P.K.Joshi, learned counsel for the applicant and Shri S.C.Dhawan, learned counsel for the respondents. The material brought on record have also been carefully considered.

6. The grounds based on which the punishment orders have been challenged by the applicant have been detailed in Para 2 above. These will be deliberated upon to find out if any of the grounds are valid and the punishment orders are vitiated on account of the same. As regards the question of maintainability of the OA. raised by the respondents due to the fact that applicant has approached the Tribunal without availing the opportunity of revision appeal, we are unable to agree with the contention of the respondents. The applicant has filed the present OA. only after availing statutory provision of appeal and the OA. can be entertained even if the revision appeal had not been made by the applicant.

7. The first ground is that the punishment order has been not imposed by the competent authority. The applicant has not given any details in support of this contention with regard to the competent authority who should have imposed the punishment of removal from service. The respondents have submitted that the Divisional Railway Manager is the competent authority for the applicant and he has acted as such and hence there is no infirmity in the order. In the absence of any details from the applicant, we have no reasons not to accept the contention of the respondents and therefore we are of the opinion that this ground of the applicant does not hold good.

8. The second ground is that the past service of the applicant which is unblamished has been not taken into account for passing the impugned punishment order. This contention is not tenable in view of the fact that chargesheet had been issued with specific charge and disciplinary proceedings were held in respect of the same. Whether the previous record of the delinquent employee is good or bad has no relevance when the punishment has been based on a specific charge-sheet and the enquiry conducted for the same. If at all any consideration has to be given while imposing the punishment to the previous record, it is for the disciplinary authority to keep the same in view. Such a ground cannot be taken in assailing the impugned order and seeking judicial interference for quashing the same.

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9. The third ground of the applicant is that the management has taken a revenge in imposing the punishment order due to the fact that he had challenged the previous punishment order before the Tribunal and the Tribunal had quashed the impugned punishment order. Except making this vague allegation, the applicant has not made any valid grounds to support his contention. The applicant has not named any authority who has taken revenge for his agitating the matter before the Tribunal challenging the earlier punishment order. From the details furnished by the either parties, we gather that both the disciplinary authority as well as appellate authority are different in both the punishment orders. We therefore are unable to appreciate any merit in this allegation without any supporting material.

10. The fourth ground advanced is that as per the rules laid down in the Railway Servants (Discipline & Appeal) Rules, the charge levelled against the applicant does not fall under the category which calls for imposing punishment of removal from service. However, on going through the Railway Servants (Discipline & Appeal) Rules, we find that as per the guidelines, for serious misconduct the penalty of removal from service has been laid down. In the present case, the charge is serious as it pertains to mis-appropriation of funds. We therefore are unable to comprehend as to how the applicant makes a submission that imposing the punishment of removal from service is not called for the charge levelled against the applicant.

11. The next ground taken by the applicant is that the charge against the applicant is not established as the applicant had notified to the concerned authorities about the defective cash box due to which he was forced to keep the cash arrising out of the station earnings with him. He has also submitted that he had been repeatedly following with the competent authority for early repair of the cash box. The applicant has brought out number of documents to support this contention. On going through the enquiry report, we find that as per the findings of the enquiry officer, the charge of mis-appropriation is established against the applicant on account of several grounds. The contention raised by the applicant in the OA. with regard to the defective cash box should have been raised before the enquiry officer and it was for the delinquent employee to lead the necessary evidence before the enquiry officer. In the judicial review, the scope of interference is very limited. The court or Tribunal is not to act as an appellate court to go through the evidence and come to a different conclusion than what have been arrived at by the disciplinary authority. In this connection, reference is made to the Hon'ble Supreme Court in their recent judgements :- (a) Union of India & Ors. vs. A.Nagamalleshwar Rao, 1998 SCC (L&S) 363. (b) Union of India & Ors. vs. B.K.Srivastava, 1998(1) S.C. SLJ 75. Keeping in view what is held by Hon'ble Supreme Court, we are not inclined to go into the contentions raised by the applicant with regard to the findings of the enquiry officer which call for reappreciation of the evidence. In view of this, this ground raised by the applicant does not merit consideration.

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12. The sixth ground of the applicant is that in the earlier proceedings, the revision authority had clearly recorded the findings that the applicant cannot be held responsible for misappropriation of the cash as the cash had been lost by him. The applicant has also pleaded that once such findings have been recorded by the higher authority, the present disciplinary and appellate authority cannot go back on the same and record different findings. Keeping the facts of the case in view, we are unable to endorse the contention of the applicant. The applicant had challenged the earlier punishment order and the same was quashed as there was infirmity in the disciplinary proceedings due to non-supply of the copy of the enquiry report before imposing the punishment. The respondents were given liberty to proceed further with the disciplinary proceedings from the stage of furnishing a copy of the report to the applicant. With this decision in the earlier OA., the earlier orders of all the authorities get set aside and the fresh orders are required to be passed by the concerned authorities after furnishing the enquiry report to the applicant and considering his defence against the same. The disciplinary authority and the appellate authority are required to pass fresh orders after applying their mind without looking to the earlier orders. If the applicant's stand is that the earlier findings should prevail and the respondents should stick to the same, then in that case, the applicant should have not challenged the punishment order of the revision authority. In the present case, we find that the disciplinary authority as well as appellate authority are different from two authorities who had

earlier passed the orders. They have passed recent orders accepting the findings of the enquiry officer and we do not find any infirmity in the same. In this view of the matter, we are unable to appreciate any merit in this ground.

13. The last plea of the applicant and on which the applicant's counsel emphatically argued is that the punishment imposed is shockingly disproportionate to the charge. As held by their Lordships of Hon'ble Supreme Court in the case of Govt. of A.P. vs. B.Ashok Kumar, 1997 SCC (L&S) 1215, the imposition of penalty consistent with the magnitude of misconduct and evidence in support thereof is a right of a disciplinary authority. It is further held by the Hon'ble Supreme Court in the case of B.C.Chaturvedi vs. Union of India & Ors., (1996) 32 ATC 44, that High Court/Tribunal in exercise of review power cannot normally interfere with the punishment imposed except when it shocks the judicial conscience. Even in such a case, the matter should be directed to the authority to reconsider the punishment imposed and in very exceptional cases, the punishment could be moulded by the High Court/Tribunal. In the present case, the chargesheet was issued to the applicant for misappropriation of the station earnings which was public money. As per the findings of the enquiry officer, the charge is proved against the applicant. The charge is very grave as it involves misappropriation of public fund and therefore the punishment imposed, in our opinion, does not shocks the judicial conscience. In view of this, we do not find any ground to direct the appellate authority to reconsider the punishment or to mould the punishment.

14. In the result of the above deliberations, we find that none of the grounds taken by the applicant in challenging the impugned punishment orders have any merit so as to vitiate the disciplinary proceedings and the punishment imposed based on the same. The OA. therefore lacks merits and the same is accordingly dismissed. No orders as to costs.

(D.S.BAWEJA)
MEMBER (A)

13/11/98
(R.G.VAIDYANATHA)
VICE CHAIRMAN

mrj.