(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 252/95

Date of Decision: 6.3.2000

P.K.Wadekar
---------- Applicant.

Shri L.M.Nerlekar
---------- Advocate for Applicant.

Versus

Union of India & Ors.
---------- Respondent(s)

Shri V.S.Masurkar
---------- Advocate for Respondent(s)

CORAM:

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

Hon'ble Shri. S.L.Jain, Member (J)

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

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

(3) Library Y

(D.S.BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 252/95

Dated this the 6th day of March,2000.

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

Hon'ble Shri S.L.Jain, Member (J)

Purushottam Kirishnarao Wadekar,
Call Boy under Loco Shed Foreman
(AC), Central Railway, Igatpuri. ... Applicant

By Advocate Shri L.M.Nerlekar

V/S.

1. Union of India through
Divisional Railway Manager,
Central Railway, Bhusawal.

2. Asstt. Electrical Engineer
(TRO), Bhusawal.

3. Sr.Divisional Electrical Engineer
(TRO), Bhusawal. ... Respondents

By Advocate Shri V.S.Masurkar

O R D E R

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

Through this OA., the applicant has sought the relief of quashing the orders dated 30.6.1994 and 17.2.1995 of the disciplinary and appellate authority imposing punishment of reduction to lower stage in the same time scale for a period of two years along with full salary for the suspension period with interest thereof and consequential benefits.

The case of the applicant is as follows :-

The applicant while working as Call Boy on Central Railway was placed under suspension on 29.12.1993. The suspension was revoked on 6.1.1994. Thereafter, a minor penalty chargesheet dated 13.5.1994 was issued to the applicant with the charge of committing neglect of duty several times by refusing to obey lawful orders

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given by the Supervisors on several dates. The applicant replied the same on 3.6.1994. However, without holding inquiry, the disciplinary authority imposed punishment as per order dated 30.6.1994 of reducing in the same time scale of Rs.800-1150 from the pay of Rs.980/- to Rs.905/- for a period of two years. The applicant made an appeal against this order on 7.9.1994,but the same was rejected as per the order dated 17.12.1994. Feeling aggrieved by this punishment, the present OA. has been filed on 6.2.1995 seeking the above referred reliefs.

2. The applicant has assailed the impugned orders pointing out the following infirmities :-

(a) The allegations made in the statement of imputation are vague and stale.

(b) The alleged misconducts for which the punishment had been already imposed had been again repeated in the statement of imputation.

(c) It was obligatory on the part of the respondents to hold inquiry when the charges were not admitted by the applicant.

(d) Both the disciplinary as well as appellate authorities have not applied their minds to the evidence on the record before imposing punishment.

3. The respondents have contested the reliefs prayed for through the written statement. The respondents submit that in his defence statement against the chargesheet, the applicant did not ask for holding any inquiry. The applicant has also not taken up this point in his appeal. It is further stated that in respect of imposing of minor penalty, conducting of inquiry is not mandatory and the inquiry may be conducted at the discretion of the disciplinary authority and in this case the disciplinary

authority did not consider it necessary. As regards the vagueness of the charges, it is contested stating that the charge is clear and supported by documentary evidence as each date of the orders which are disobeyed have been indicated. It is also submitted that both the disciplinary as well as the appellate authorities have passed orders with due application of mind. In fact the appellate authority provided personal hearing on 2.2.1994 before passing his order even though the applicant had not asked for the same in his appeal. With these submissions, the respondents plead that the punishment has been imposed in accordance with the Disciplinary and Appeal Rules, 1968 and therefore the present OA. is misconceived and deserves to be dismissed.

4. The applicant has not filed any rejoinder reply.

5. We have heard the arguments of Shri L.M.Nerlekar and Shri V.S.Masurkar, learned counsel of the applicant and respondents respectively.

6. The infirmities pointed out in assailing the punishment orders have been detailed in para 2 above. These will be considered one by one to determine whether any of them has the effect of vitiating the penalty imposed. The first ground is that there is no specific charge against him in the chargesheet and the allegations made in the statement of imputation are vague and stale. The applicant except making this statement, has not elaborated as to how the allegations are vague. The respondents have contested this assertion. On going through the statement of imputation and the material brought on the record, the plea taken by the applicant is without any

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substance. We find that allegations are not vague but specific. The date of the orders which have been disobeyed have been specifically stated. The applicant in his reply to the chargesheet has not stated that the allegations are vague. In fact, on perusal of the reply dated 3.6.1994, we find it to be very exhaustive and the applicant has given detailed explanation for each cited order separately to contest the allegations. This could be possible only if the applicant had understood the allegations of disobedience made against him. In the face of elaborate defence statement against the chargesheet, we fail to appreciate the plea of the applicant that the allegations are vague.

As regards the staleness of the allegations, we are of the view that this plea is also without merit. It is noted that last order referred to is dated 29.12.1993, just a few months before the chargesheet was issued. The earlier orders cited are to support the allegations that the applicant continued to disobey the orders. Therefore, the citing of the earlier orders which were alleged to have been disobeyed does not make the charge stale.

7. The second ground is that since the applicant has not admitted the charge, the conducting of the inquiry was obligatory. The respondents have contested this stating that for minor penalty chargesheet, conducting of the inquiry is not mandatory. It is further stated that the applicant did not make any request for holding inquiry in his reply to the chargesheet. After careful consideration of the rival submissions, we are inclined to subscribe to the stand of the respondents. The applicant has not cited any rule under which the conducting of the inquiry for imposing minor penalty is mandatory. On referring to

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Railway servants (Discipline and Appeal) Rules, 1968, we note that procedure for imposing minor penalties is laid down in Rule 11. As per Rule 11(b), holding of inquiry in the manner as laid down in Rule 9 is to be done if the same is considered necessary by the disciplinary authority. Railway Board's instructions dated 11.2.1986 under Rule 11 lay down that if the employee asks for holding of an inquiry, then the disciplinary authority will apply his mind and if the request is not accepted, then the same will be advised to the employee indicating the reasons. In the present case, we note that the applicant did not make any request for holding inquiry. In the absence of any such a request, the applicant cannot assume that the holding of the inquiry was mandatory. It is also noted that the applicant did not raise this issue in his appeal as brought out by the respondents and confirmed from the relevant file made available by the respondents. The applicant cannot take up this issue for the first time before the Tribunal in the OA. for which the Appellate authority had no occasion to consider. With this background, this ground advanced by the applicant deserves to be rejected.

8. The third ground is that alleged misconduct for which chargesheet dated 13.5.1994 had been issued and is under challenge, penalty had been earlier imposed and has been again included. Thus, the applicant contends that the impugned punishment is a case of double jeopardy. It is also contended that the disciplinary authority was influenced by the earlier punishment order. We note that the applicant has not given the details of the earlier chargesheet and punishment imposed. However, during the inquiry, the applicant's counsel referred to one of the dates for which

applicant had been earlier imposed penalty. Considering the nature of allegations, we do not consider that inclusion of one earlier order in the chargesheet under challenge makes a case of double jeopardy. Even if the order for which the punishment had been imposed earlier has been cited along with a large number of orders, then it only shows that applicant has not shown improvement and continued to disobey orders of the superiors. We also do not find merit in the contention of the applicant that the earlier punishment influenced the present punishment since, on several occasions subsequently, the misconduct was committed and this inference is far fetched.

9. The fourth and the last ground is that the order of disciplinary and the appellate authorities do not reflect the application of mind. On going through the impugned orders, we do not find any merit in this contention of the applicant. The orders are speaking and indicate the application of mind.

10. As regards the relief of payment of full wages for the suspension period, the applicant has not made any supporting averments as to how he is entitled for full wages. In the absence of any averments, we are unable to go into the merits of this relief.

11. As a result of the above deliberations, we do not find any merit in any of the grounds advanced in assailing the impugned orders. The OA. accordingly deserves to be dismissed and is dismissed. No order as to costs.

(S.L.JAIN)
MEMBER (J)

(D.S.BAWEJA)
MEMBER (A)

mrj.