

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH
JAIPUR.

T.A.No.776/86

Date of order: 23.9.92

A.N. Bhargava

: Applicant

Versus

Union of India & Anr.

: Respondents

Mr.M.S. Gupta

: Counsel for the applicant

Mr.Anil Mehta

: Counsel for the respondents

CORAM

Hon'ble Mr.B.B. Mahajan, Member (Adm.).

Hon'ble Mr.Gopal Krishna, Member (Judl.).

PER HON'BLE MR.B.B. MAHAJAN, MEMBER (ADM.).

A.N. Bhargava had filed a civil suit in the Court of Jpper Munsif Magistrate Jaipur West, Jaipur for quashing of the order of reversion from the post of Station Master to Assistant Station Master. The suit has been transferred to the Tribunal under Sec.29 of the ATs Act, 1985.

2. The applicant while he was working as Station Master at Todarai Singh in the scale of Rs.425-640 was issued a memorandum of charges on 6.7.79 as under:

"Serious misconduct" in that he pocketed Rs.18/- from Shri Ram Karan Bairwa, a passenger travelling by 253UP, who wanted 3 bags wheat booked at luggage with him to Durgapura but who was not issued any Luggage Ticket. He thus violated Rule No.3 of the Railway Service (Conduct) Rules, 1966".

The Enquiry Officer found him guilty of the charges. After considering the enquiry report, the Divisional Safety Officer, vide his impugned order dated 26.10.80 imposed punishment of his reduction in rank to the post of Assistant Station Master in the pay scale of Rs.330-560. This order was conveyed to the applicant on 15.11.80. The order was stayed by the Civil Court.

3. We have heard the counsel for the parties. The learned counsel for the applicant has stressed on two points. Firstly, that the Inquiry Officer and the Disciplinary Authority had held the applicant guilty on no evidence as the complainants S/Shri Ram Karan Bairwa and Gopi Lal Bairwa, have not been produced in the enquiry. Secondly, the order of punishment has been imposed by an authority lower in rank than the appointing authority. So far as the first plea is concerned, we find from the enquiry report and the order of the disciplinary authority that the complainant had been called for evidence during enquiry vide letters dated 21.1.80, 2.2.80, 20.2.80 and 25.2.80, but they did not appear. It is not unusual for passengers who make the complaint against a railway official not to appear in the subsequent departmental proceedings. They were the witnesses of the prosecution and their failure to appear would not have prejudiced the defence of the applicant. The Inquiry Officer and the punishing authority have discussed the evidence in detail. Apart from the statement of the applicant himself, a slip of paper written by him was also produced during the enquiry and the applicant was duly confronted with the same. He did not deny the writing of the slip. This is not the case of finding based on no evidence. It is settled law that so far as the questions of fact are concerned, the findings of the Inquiry Officer and the Disciplinary Authority should not be interfered with unless they are perverse. This plea thus does not have any force. So far as the second plea is concerned, the applicant had stated in para 11 of the suit that he had been promoted to the post of Station Master by Divisional Supdt., since re-designated as DRM, and that the respondent No.2 viz. Divisional Safety Officer was not competent authority for imposing the punishment. This fact had also been

reiterated in para 12 of the suit. The respondents in their reply had categorically stated that the order of punishment had been passed by the Competent Authority. Under Article 311(i) of the Constitution, no person who holds a civil post shall be dismissed or removed by an authority subordinate to that by which he was appointed. This protection is however, available only in the case of dismissal or removal and not in the case of reduction in the rank. The learned counsel for the applicant has referred to the judgment of the Hon'ble Supreme Court in AIR 1979 SC 1912 Krishna Kumar Vs. Divisional Asstt.E.E.Central Railway. This was, however, a case of removal from service. He has cited no authority to show that this protection has also been extended to a case of reduction in rank. He has also not shown by reference to any order or rule that the Divisional Safety Officer was not competent to impose the punishment of reduction in rank.

4. In view of the above discussions, there is no merit in the T.A, which is accordingly dismissed. The learned counsel for the applicant has stated that the applicant has already retired from service and that he had continued in service on the post of Station Master till his retirement in view of the stay order granted by the Civil Court. Since the applicant had worked on the post of Station Master, there is no question of any recovery being made from him on account of his reversion which had been stayed. The misconduct may however be taken into account while sanctioning the pensionary benefits. Parties to bear their own costs.

G. Krishna 23/9/92
(Gopal Krishna)
Member (Judl.).

B.B. Mahajan
Member (Adm.).