

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.532/91

Dt. of order: 7.10.'94

G.S.Gahlot

: Applicant

Vs.

Union of India & Ors.

: Respondents

Mr.J.K.Kaushik

: Counsel for applicant

Mr.Manish Bhandari

: Counsel for respondents

CORAMP

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

Hon'ble Mr.O.P.Sharma, Member(Adm.)

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

Applicant G.S.Gahlot has in this application under Sec.19 of the Administrative Tribunals Act, 1985, prayed that the Railway Servants (Discipline & Appeal) Rules may be declared as ultra vires of the Indian Railways Act and the Constitution of India and may accordingly be struck down. He has further prayed that the being order dated 7.4.'88 (Annx.A1)/the charge sheet issued to the applicant, order dated 14.2.91 (Annx.A2) being the order of penalty of dismissal from service imposed on the applicant and the order dated 30.9.91 (Annx.A3) being the order of the Appellate Authority confirming the penalty imposed on the applicant, all be declared as illegal and be quashed with all consequential benefits.

2. During the arguments, the learned counsel for the applicant stated that the applicant is not interested in pressing the ground regarding the Railway Servants (Discipline & Appeal) Rules being declared as ultra vires of the Indian Railways Act and the Constitution of India.

3. A charge sheet dated 7.4.88 (Annx.A1) was issued to the applicant when he was working as Chief Goods Clerk, Bharatpur. The charge sheet related to the period when he was earlier working as Inward Goods Clerk at Bharatpur and the alleged misconduct was occurred on 7.7.'87. The applicant/alleged to have shown removal of 3 consignments of certain goods booked for Bharatpur, when actually the goods were physically removed on 27.7.87. It was further alleged that if Shri Nathu Singh, Traffic Inspector

(Accounts), Bharatpur, had not detected the said false recording of the date of removal of these goods, there would have been a loss of wharfage of Rs.51,323/- to the Railways. Thereafter an enquiry was held and the Inquiry Officer vide his report forwarded on 22.10.90 (Annex.A7) held the applicant as guilty of the charges framed against him. The Disciplinary Authority vide order dated 14.7.91 (Annex.A2) agreed with the findings of the Inquiry Officer, held the applicant responsible for the misconduct alleged against him and imposed on him the penalty of dismissal from service. The applicant's appeal against the said order of penalty was rejected by the Appellate Authority vide Annex.A3 dated 30.9.91.

4. The applicant has stated that he has not actually committed any misconduct and he was not given a reasonable opportunity to defend himself and any opportunity to cross examine the prosecution witnesses. Further according to him, even the statements given at the back of the applicant were relied upon by the Inquiry Officer without any cross examination. He has also stated that the respondent No.3, the Sr.Divisional Commercial Superintendent, who imposed on him the penalty of dismissal from service is actually not competent to impose the penalty because the applicant was appointed by the General Manager of the Railways. Further, the Disciplinary Authority has not considered the applicant's representation against the enquiry report and has held the applicant guilty on extraneous matters and has drawn illogical inferences. The Appellate Authority ~~was~~ rejected the appeal by a nonspeaking order and in particular has not followed the provisions of Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules.

5. The respondents in their reply have stated that while the applicant had mentioned 7.7.87 as the date of removal of the impugned consignments, the goods were actually removed on 27.7.87. They have added that the enquiry was conducted by the Inquiry Officer as per rules and no irregularity was committed therein. The Appellate Authority had considered the entire matter on merit and thereafter passed order in appeal. The applicant was given opportunity to cross examine the witnesses on behalf of the ..3.

prosecution. They have denied that General Manager is the appointing authority of the applicant and therefore, the order passed by a subordinate authority, the Sr. Divisional Superintendent is not maintainable.

6. We have heard the learned counsel for the parties and have gone through the records. The averments of the applicant regarding the enquiry not being conducted in a proper manner and opportunity of proper defence not being given to him are vague. The applicant has not shown that the General Manager had actually appointed ~~to~~ him and therefore he alone was competent to impose on him the penalty of dismissal from service. However, we find that Shri Nathu Singh, Traffic Inspector (Accounts) who had carried out the inspection on the basis of which charge sheet was framed against the applicant was a crucial witness during the enquiry. He had appeared as a witness during the enquiry. He was examined during the enquiry on 7.12.89. His testimony is at pages 43 to 47 of the O.A. It appears on a perusal (of) the statement that actually this consists of replies to questions put to him on behalf of the defence. In reply to question No.13, the witness had stated that he could not give any reply at this stage as he will have to "trace from the old record". In conclusion, the Inquiry Officer stated that the enquiry is adjourned and the next date will be advised in due course. The plea of the learned counsel for the applicant is that thereafter the examination of this witness was never completed and still the Inquiry Officer submitted his report on the basis of the incomplete examination of the witness and further proceedings as aforesaid followed culminating the dismissal of the applicant from service. In para 6 of their reply, the respondents have stated that the statement of Shri Nathu Singh was recorded on 7.12.89. However, in absence of certain ~~records~~ records the witness could not remember the exact position about a particular matter and therefore another date was given. But later on the said witness did not turn up though he was called for the enquiry. Thus the position that emerges is that this witness whose evidence was crucial for proving the charges against the

applicant was not fully examined as per the desire of the defence. Submission of report of the enquiry, holding the charges ^{against} the applicant as proved in spite of the incomplete examination of this witness was unjustified. Either the Inquiry Officer could have altogether ignored the testimony of this witness or he could have insisted on this witness appearing before him for further examination/cross examination by asking the Controlling Officer of this witness for making him available for appearance in the enquiry. Since neither of these courses of action was followed by the Inquiry Officer, his holding the charges against the applicant as proved after taking into account and relying upon the incomplete testimony of Shri Nathu Singh was unjustified and in violation of the rules of enquiry. It was also in violation of the principles of natural justice. In these circumstances the finding of the Inquiry Officer are vitiated. The orders of the Disciplinary Authority and the Appellate Authority are also based upon the findings of the Inquiry Officer. These also, therefore, cannot be sustained. Accordingly, Annexures A-2 dated 14.2.91, imposing penalty on the applicant and Annex A-3 dated 30.9.91, upholding the penalty are quashed.

7. ^{however} The respondents are free to take further action after following the prescribed procedure. One course of action open to them is to appraise the evidence recorded by the Inquiry Officer, after excluding the incomplete statement of Shri Nathu Singh and thereafter come to an appropriate conclusion. The other course of action open to them is to order resumption of enquiry from the ~~stage of recording of the remaining statement of Shri Nathu Singh~~ stage of recording of the remaining statement of Shri Nathu Singh and thereafter take such follow-up action as may be appropriate in the circumstances of the case.

8. The O.A. is disposed of accordingly with no order as to costs.


(O.P. Sharma)
Member (A).


(Gopal Krishna)
Member (J).