IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

(9)

OA No.960/1992 Date of order 17-2-97.

Sobran Singh Avasthi, last employed on the post of Ticket Collector, Western Railway, Agra Fort.

..Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. Divisional Railway Manager, Western Railway, Kota Division, Kota.
3. Senior Divisional Commercial Superintendent, Western Railway, Kota Division, Kota.

.. Respondents

Mr. Shiv Kumar, counsel for the applicant

Mr. Manish Bhandari, counsel for the respondents.

CORAM:

Hon'ble Mr. Gopal Krishna, Vice Chairman

Hon'ble Mr. O.P.Sharma, Administrative Member

O R D E R

Per Hon'ble Mr. O.P.Sharma, Administrative Member

In this application under Section 19 of the Administrative Tribunals Act, 1985, Shri Sobran Singh has prayed that the Memorandum dated 4-7-1984 (Ann.A1) being the chargesheet issued to the applicant, the order dated 8.8.1991 (Ann.A2) being the order of penalty of removal from service imposed on the applicant and the order dated 18-11-1991 (Ann.A3) passed by the appellate authority dismissing the appeal of the applicant may all be quashed and the applicantion may be allowed with all consequential benefits.

2. The facts of the case, as stated by the applicant, are that while working on the post of Ticket Collector, he was served with a chargesheet dated 4.7.1984 (Ann.A1) containing charges to the effect that he, while on duty on 22.7.1983 as Ticket Collector at Agra Fort at

(10)

the time of arrival of 6 DN, detained a bonafide passenger at the MG (Meter Gauge) exit and demanded undue excess fare and excess charge without examining the tickets held by the passenger. The applicant was further charged with threatening the passenger to send him to jail if he failed to pay the charges demanded by the applicant illegally. The applicant was also charged with taking an amount of Rs. 50 from the passenger as excess fare and excess charge, issuing EFT for Rs. 19 only and thus pocketing Rs. 31. The applicant is thereby alleged to have violated the provisions of Rules 3(1)(i) and 3(1)(ii) of the Railway Service (Conduct) Rules, 1966. The applicant denied the charges and thereafter an enquiry was ordered to be held. Two witnesses, one Shri S.K. Gupta, CVI (Chief Vigilance Inspector), who had investigated the complaint and Shri Mahavir Mehila Sharma, the passenger with whom the applicant had allegely misbehaved and from whom he was alleged to have demanded and accepted bribe etc., were examined during the enquiry (Ann.A4 and Ann.A5 respectively). The applicant submitted his defence brief on 28.5.1985 but it was not taken into consideration by the enquiry officer. An order dated 31-7-1985 was passed imposing penalty of removal from service on him. The applicant was, however, not given a copy of the enquiry report. He filed a suit in the Court of Munsif, Kota against the order of removal from service and it was transferred to the Tribunal and registered as TA No. 235/86, Sobran Singh Vs. Union of India and others, which was disposed of by order dated 21.3.1991 (Ann.A6) by this Bench of the Tribunal. By this order, the order of removal from service was quashed but the respondents were not precluded from reviving the proceedings and continuing these in accordance with law from the stage of supply of the enquiry report to the applicant. Thereafter, the applicant was taken back in service and placed under suspension. A copy of the enquiry report was issued to him vide letter dated 10.6.1991 (Ann.A7). The applicant submitted a detailed representation against the findings of the enquiry officer (Ann.A8) dated 26.6.1985 . Respondent No.3, the Senior Divisional Commercial Superintendent, Kota Division, thereafter passed a fresh order dated

(11)

8.8.1991 (Ann.A2) once again imposing a penalty of removal from service on the applicant. The applicant's case is that his defence was not taken into account while passing the aforesaid order. The applicant submitted an appeal dated 10.9.1991 (Ann.A9) against the order imposing penalty but it, according to him, has been rejected abruptly by the appellate authority without passing a speaking order and none of the points raised by the applicant were considered by the appellate authority. (The appellate authority's order dated 18-11-1991 is at Ann.A3).

3. The grounds of the applicant's challenge to the action taken against him are that he had not committed any misconduct and even the passenger concerned had not lodged any complaint, the proceedings conducted were arbitrary, the enquiry officer had held the charges as proved on the basis of conjuctures and surmises, the appellate authority had not taken note of the provisions of rule 22(2) of the Railway Servants (Discipline and Appeal) Rules and had abruptly rejected the appeal without passing a speaking order and without considering the contentions raised by the applicant.

4. The respondents in their reply have stated that the enquiry was held in accorance with the prescribed procedure. The defence of the applicant was duly considered, as seen from the perusal of Ann.A2 being the order passed by the disciplinary authority. The appeal submitted by the applicant had been duly considered by the appellate authority and thereafter order Ann.A3 dismissing the appeal was passed. They have maintained that the action of the respondents was strictly in accordance with law. The applicant had indeed committed a misconduct and the charges against him were duly proved by the documentary and oral evidences led before the enquiry officer. The provisions of Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules were also duly complied with by the appellate authority while passing the order of penalty. They have, therefore, stated that the applicant is not entitled to any relief as claimed by him.

5. During the oral arguments the learned counsel for the

(12)

applicant stated that the disciplinary authority's order suffered from non-application of mind inasmuch as he had straightway accepted the findings of the enquiry officer. He referred to a circular dated 20.12.1955 issued by the Railway Board which provides that the concerned authority should pass a speaking order while imposing penalty. In this connection he referred to the judgment of the Hon'ble Supreme Court in The State of Punjab etc. Vs. Bakhtawar Singh and Ors. etc., AIR 1972 SC 2083, in para 12 of which it had been observed that the order of the Minister removing the respondents did not disclose that he had applied his mind to the material on record. The Hon'ble Supreme Court accordingly held that this order could not be said to be a speaking order. He also referred to paragraphs 5 and 6 of the judgment of the Hon'ble Supreme Court in Anil Kumar Vs. Presiding Officer and Ors., 1985 SCC (L&S) 815, wherein more or less the same point had been affirmed by the Hon'ble Supreme Court. He then relied upon the judgment of the Principal Bench of the Tribunal in Ram Mehar Vs. Commissioner of Police, Delhi, ATR 1993(1) CAT 819, in which it was held that mere recovery of money by itself cannot prove the charge of accepting bribe in the absence of any other corborating evidence. He also relied upon the judgment of the Hon'ble Supreme Court in Ram Chander Vs. Union of India and Ors., ATR 1986 (2) SC 252, in which the Hon'ble Supreme Court held, interalia, that the appellate authority was required to give its finding in terms of provisions of Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules and specifically findings on the three ingredients thereof. Since no specific findings had been given by the appellate authority on the three ingredients of Rule 22(2) as aforesaid, the order of the appellate authority was not sustainable.

6. The learned counsel for the respondents stated that adequate reasons, however brief, had been given by the disciplinary authority and the appellate authority while passing their respective orders. He added that where the appellate authority agreed with the disciplinary authority or where the disciplinary authority agreed with the enquiry

(13)

officer, no detailed reasons were required to be given in the orders of the appellate authority or disciplinary authority. He further stated that the jurisdiction of the Tribunal in such matters is limited and it can interfere only where there is absolutely no evidence at all to sustain the charge. According to him, however, there was adequate evidence, both documentary and oral, to sustain the charge against the applicant and, therefore, the order passed by the disciplinary and appellate authorities cannot be interfered with by the Tribunal.

7. We have heard the learned counsel for the parties, have perused the material on record and have also gone through the judgments cited before us.

8. The charge against the applicant has been very clearly stated in the chargesheet. The complaint in this case was lodged by the father of the passenger from whom money has been allegely charged/overcharged and who was reportedly harassed. We have perused the testimony of the passenger and we find that it was given in a very natural way with no contradictions therein. He also remained unshaken during the cross examination on behalf of the applicant. We have also perused the testimony of the Chief Vigilance Inspector who investigated the complaint and there are no contradictions or inconsistency in his testimony either. Although a copy of the complaint is not part of the listed documents, yet a copy was made available to the applicant during the enquiry, at his request, as is evident from the record of the proceedings of the enquiry officer (Ann.A4, page 18 of the paper book). The conclusion that the applicant committed the misconduct, as alleged against him in the chargesheet, is based on evidence adduced during the enquiry. The penalty finally imposed on the applicant (after the Tribunal had quashed the earlier order imposing penalty) was after a copy of the enquiry report had been supplied to him and his representation thereon considered by the disciplinary authority. The disciplinary authority had taken into account the final defence brief submitted by the applicant before imposing the penalty on him. Thus we find that the conclusion that the applicant committed the misconduct

(14)

attributed to him in the chargesheet is based on evidence adduced during the enquiry.

10. The objections of the learned counsel for the applicant to the orders of the disciplinary authority and appellate authority are largely technical in nature. However, the judgment of the Hon'ble Supreme Court in Bakhtawar Singh's case has no applicability here because we find that reasons have been given by the disciplinary authority while coming to the conclusion that the applicant committed the misconduct as alleged against him and he has not merely relied upon the enquiry officer's report while giving the finding as aforesaid. In these circumstances, the Railway Board's circular dated 20-12-1955 will also have no applicability. As regards the judgment of the Hon'ble Supreme Court in Anil Kumar's case it has also no applicability in the present case for the same reasons as discussed above. On a perusal of the order of the disciplinary authority one cannot say that there was no application of mind by him and there was a mere mechanical acceptance of the enquiry officer's report. As regards the order passed by the appellate authotiy, it is no doubt very brief but also contains the appellate authority's findings on the essential ingredients of Rules 22(2) of the Railway Servants (Discipline and Appeal) Rules. The three ingredients of the aforesaid rule are whether the procedure laid down in these rules has been complied with, whether the findings of the disciplinary authority are warranted by the evidence on record and whether the panalty imposed is adequate, inadequate or severe. The disciplinary authority's order is at Ann.A3 dated 18.11.1991. The order which is in Hindi would read as follows in a rather loose translation in English:

> "I have carefully studied the appeal filed by the employee and other documents. There is no new fact in the appeal but all the facts given therein have been fully considered by the disciplinary authority. The employee has been found guilty of a serious misconduct, therefore the penalty imposed on him is proper".

(15)

Atleast in respect of the last two ingredients of Rule 22(2), there is clear-cut finding by the appellate authority, although there is no specific finding on whether the procedure laid down in the Rules has been complied with or not. But during the hearing of the OA we found that there was no infirmity in the procedure followed by the enquiry officer in conducting the disciplinary proceedings and in the disciplinary authoritiy's passing the final order. Therefore, we are not inclined to interfere with the appellate authority's order even in view of what has been stated in the Hon'ble Supreme Court's judgment in Ram Chander's case. The Tribunal's judgment in Ram Mehar's case, also relied upon by the learned counsel for the applicant, has no applicability whatsoever to the facts of the present case because the penalty in this case did not hinge on recovery of any money from the applicant.

11. On a careful consideration of all the facts and circumstances of the case and the averments and arguments of the applicant, we find no merit in this OA. It is, therefore dismissed with no order as to costs.

(O.P.Sharma)
Administrative Member

(Gopal Krishna)
Vice Chairman