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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH : JAIPUR

Date of order : 08.09.2000

O.A. No. 157/93

AbdulHameed Son of Shri Nattha Khan EGT Crane Driver
T.NO. 5171, Wagon Repair Workshop, Kota, resident of
Quarter No. 47/F, Railway Work Shop Colony, Kota Jn.,
Rajasthan.

... Applicant.

versus

1. Union of India through the General Manager, Western Railway, Churchgate, Bombay.
2. Chief Work-Shop Manager, Wagon Repair Workshop, Western Western Railway, Kota Division, Kota.

... Respondents.

Mr. S.C. Sethi, Counsel for the applicant.

Mr. R.G. Gupta, Counsel for the respondents.

CORAM :

Hon'ble Mr. Justice B.S. Faikote, Vice Chairman.

Hon'ble Mr. N.P. Nawani, Administrative Member.

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Faikote)

This application is filed under Section 19 of the Administrative Tribunals Act, 1985, being aggrieved by the order of dismissal vide Annexure A/1 dated 17.04.1992, and also the order of Appellate Authority dated 8.7.1992 vide Annexure A/2, by which the appeal filed by the applicant was dismissed, confirming the order of the disciplinary authority.

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2. The learned counsel appearing for the applicant contended that the impugned orders Annexures A/1 and A/2, are illegal and without jurisdiction. He contended that the disciplinary authority has no power or authority to pass the impugned order of dismissal. He stated that Mr. R. K. Duggal was examined as eye witness but not listed/in the chargesheet, therefore, the applicant was prejudiced by his examination. His further argument was that in the list of witnesses, Nathu Lal, Machinist, Grade-II, was shown whereas, the witness examined was Shri Nathu Lal Meena, Chargeeman 'B'. Due to this irregularity and illegality, the impugned orders are liable to be set aside.

3. By filing reply, the respondents have denied the case of the applicant. They have supported the impugned orders. The learned counsel appearing for the respondents stated that all these objections now raised before the Tribunal, were already raised before the appellate authority and the appellate authority has already considered those contentions and rejected the same. In these circumstances, these findings do not call for any interference by this Tribunal. He further submitted that this Tribunal does not function as a second appeal Court. Under its supervisory jurisdiction, it has to see if there is an error, apparent on the face of the record. It is not a case of any error apparent on the face of the record, therefore, the impugned orders do not call for any interference. Accordingly, he prays for dismissal of this application.

4. In order to understand the case, we have to note the substance of the charge framed against the applicant. The charge is to the effect that, on 15.6.90 at 7.45 A.M., the applicant was physically absent from the Wheel Shop and

the same was communicated to the time office. At 10.45 A.M., the applicant entered into the Roller Section of the Wheelshop with a stick, where the SS, Wheelshop, was performing his duties, and attempted to assault him, but the employees present, prevented him from assaulting the SS, Wheelshop. This incident was reported by filing a Complaint by one Mr R. K.Duggal, who was present at the time of the incident and on that basis, after framing charges, certain witnesses were examined in support of the charges. The enquiry officer, held that the charges are proved and by accepting those findings of the said enquiry officer, the disciplinary authority passed the impugned order of dismissal vide Annexure A-1 and the same is confirmed by the appellate authority vide Annex. A/2.

5. The contention of the learned counsel for the applicant is that Shri R.K.Duggal, is not mentioned as witness, therefore, he should not have been examined. This point was raised before the disciplinary authority, and the disciplinary authority held that the said Shri Duggal himself was complainant, therefore, not showing Shri Duggal, as witness in the list of witnesses in chargesheet, would not be material and accordingly, his contention was rejected. The said findings of the disciplinary authority has been confirmed by the appellate authority. But, in our opinion, when Shri Duggal himself was complainant, not showing his name in the list of witnesses in that charge-sheet, would not be material. The complaint is made as a part of the record alongwith the charge-sheet. Therefore, not showing his name in the list of witnesses, cannot prejudice to the applicant.

6. The second contention of the applicant is that the applicant was not absent on 15.6.90 at 7.45 A.M. It is

further contended that punching card has been crossed showing that the applicant was absent at 7.45 A.M., but the same has not been signed by any person. The fact remains that if the applicant had punched the Card at 7.45 A.M. on 15.6.90, definitely the punching card should have shown that the applicant was present and punched at 7.45 A.M. on that day. Whether the person who made a cross in the punching card signed or not, would not be relevant. The disciplinary authority pointed-out that such contention does not have any merit in the facts and circumstances of the case. The appellate authority also held that it does not affect the merits of the case. In these circumstances, we do not find any reason to interfere with those findings.

7. The next contention of the applicant is that Shri Nathu Lal Meena, Machinist, Grade-II, was shown as one of the witnesses, but the witness that was examined was different Meena. The Department has pointed-out that there was some confusion regarding the name of the person. The person who was examined, was the same Meena, who was present when the incident took place. The said witness has also stated so, in his evidence. The appellate authority has also noted this aspect and stated that the witness examined was the very person who was present when the incident took place. Therefore, we do not find any substance in this argument. Accordingly, the same is rejected.

8. All these contentions were urged before the disciplinary authority as well as the appellate authority and the authorities considered those points and in these circumstances, we do not find any justification to interfere the findings arrived at by the authorities below.

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9. The other contention of the learned counsel for the applicant is that the disciplinary authority had no power or jurisdiction to issue the present chargesheet and to impose this penalty. He had not explained as to who was competent authority on the basis of the appointment order of the applicant and the rules applicable. When this very point was urged before the appellate authority, the appellate authority stated that, if the disciplinary authority was not competent to issue the chargesheet and to impose the punishment of removal from service, the applicant should have approached the higher authority at that time and now, it is not open to the applicant to agitate that point in appeal. Even the applicant did not place before us his order of appointment or any rules/notification, to show that the authority, who issued the chargesheet and imposed the punishment, was not competent. Therefore, we do not find any reason to differ from the findings recorded by the appellate authority.

10. Lastly, the learned counsel for the applicant submitted the punishment awarded is, harsh, un-conscionable and disproportionate to the charges held proved. He further contended that the applicant had put in 27 years of service and the order of dismissal would cause great hardship to him.

11. From the findings of the appellate authority, it is clear that the applicant had grievances against the S.S. of Wheel Shop, regarding Bonus. The appellate authority pointed out that even if the applicant had any grievance against the S.S., Wheel Shop, the applicant could have approached the competent Court instead of taking the law into his own hands so as to try to assault the person, and this act is an unbecoming of a civil servant. Accordingly, the appellate

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authority held that the punishment awarded is proper. The learned counsel for the applicant has brought to our notice that even earlier to 15.6.90, he made representation to the superior authority, complaining that the S.S., Wheel Shop, was harassing him. The applicant has brought to our notice, a few representations in that behalf vide Annexures A/5, A/6 and A/7. The Representation (Annexure A/7), is said to have been received by the concerned officer at about 7.40 hrs. on 15.6.90. From these circumstances, it is clear that the relationship between the S.S., Wheelshop, and the applicant must have been very much strained and in these circumstances, the applicant must have tried to assault the S.S., Wheel Shop. When the applicant was called for, to attend his duties by the S.S., Wheelshop, there must have been exchange of words between the applicant and the S.S., Wheel Shop, and the applicant must have lost his temperament and must have tried to assault the S.S. of Wheel Shop, but such assault was prevented by the intervention of Co-workers. In these circumstances, it is difficult for us to take lenient view in the matter regarding punishment. If such incidents are encouraged, it would give rise indiscipline in the office. However, taking into consideration the applicant has served for nearly 27 years and there is no record to show that he had suffered any punishment earlier, keeping in view of judgment of Hon'ble the Supreme Court in Hussaini Vs The Chief Justice of Judicature at Allahabad and Ors., reported in AIR 1985 SC 75, we think it appropriate to modify the punishment to one of compulsory retirement.

12. For the above reasons, we allow this application in

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part. Accordingly, we pass the order as under :-

The application is partly allowed and the impugned punishment of dismissal is modified to one of compulsory retirement, with all consequential benefits. No costs.



(N.P. NAWANI)
Adm. Member



(B.S. RAIKOTE)
Vice Chairman

cvr.