IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 31.08.2000

OA No.116/94

Prem Narain Gurjar S/o Shri Bishan Lal Gurjar, IInd Fireman, Locoshed Gangapurcity, Western Railway, Kota Division.

.. Applicant

V e r s u s

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Senior DEE(TRO), Western Railway, Kota Division, Kota.
3. Divisional Rail Manager, DRM's Office, Western Railway, Kota Division, Kota.

.. Respondents

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

Mr. Manish Bhandari, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

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

ORDER

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

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant prays that the dismissal order dated 16.10.1992 (Ann.A1) passed against him and confirmed in appeal vide order dated 15.6.1993 (Ann.A2) be declared null and void and further that the applicant be declared in service, with the period between 27.3.1989 till reinstatement being treated as duty with payment of full salary etc.

2. We have heard the learned counsel for the parties at

length and have also carefully gone through all the material on record.

3. Shorn of details, the material fact of the case are that the applicant was issued with a chargesheet dated 6.11.1987 (Ann.A3) alleging on his part serious misconduct and violation of rule No.3(III) which required every railway servant shall at all times do nothing which is unbecoming of a Railway Servant. As can be seen from the statement/allegation of charges at annexure to Ann.A3, four charges were slapped on him. An enquiry was got conducted under Railway Servants (Discipline and Appeal) Rules, 1968 (for short, Rules) and the Enquiry Officer found charges mentioned at para 1 and 3 to have been proved against him. Thereupon, the Disciplinary Authority imposed the penalty of dismissal vide impugned order (Ann.A1) and the Appellate Authority vide order dated 15.6.1993 (Ann.A2) rejected the appeal.

4. On going through the entire pleadings and after hearing the arguments advanced before us by the learned counsel for the applicant, we find that the order of dismissal has essentially been assailed on the following grounds which have material impact on the sustainability of the impugned orders:-

(a) The Enquiry Officer (for short EO) was changed vide order dated 4/8.7.1988 and the new EO was biased against him, being of the same caste as that of the complainant, K.M.Mahawar, the Loco Foreman and both were members of Scheduled Caste Association.

(b) The EO acted as a prosecutor, cross-examining the

witnesses at length, putting leading question and filling up the gaps in the prosecution case, which by itself is enough to vitiate the entire enquiry.

(c) The findings of the EO have been perverse because he had tempered with the evidence which will be evident from the over-writing done by him with respect to the date of incident in the statement of Nasir Khan, the crown witness as described by the EO. This had also vitiated the enquiry and also because the EO had relied upon the unlisted statements of witness as recorded as far back as 19.6.1986 by the complainant himself at the back of the applicant and thus the applicant was not prepared to put forward his defence and this had resulted in violation of principles of natural justice. Further, the applicant had never admitted that he had misbehaved with the Loco Foreman or hit him with 'danda' and all that had come out of the evidence was that he had entered the office room of the Loco Foreman and there was heated exchange of words, which on account of the applicant also being a Union worker was only a heated discussions with the Loco Foreman regarding the demands of the Union.

(d) The Disciplinary Authority declared the applicant guilty of allegation No.4 about which no evidence was recorded in enquiry as well as before him and has listed 9 criminal cases which are not shown in the chargesheet and, therefore, his findings are also perverse. The Disciplinary Authority also did not consider that there was no sick certificate or

inquiry report in respect of K.M.Mahawar and Nasir Khan.

(e) The Appellate Authority has not considered the grounds taken in appeal and has passed the appeallate order in a routine manner, has failed to pursue even the enquiry report and declared allegation No.4 proved in the absence of oral or documentary evidence or FIR on record. The applicant was also not given the opportunity of personal hearing.

5. The respondents, in their reply, have denied the case put forward by the applicant and the learned counsel for respondents has controverted the arguments put forward by the learned counsel for the applicant. It has been stated on behalf of the respondents that the charge of serious misconduct was duly proved during the enquiry on the basis of preponderance of evidence, the bais alleged was just an afterthought plea with absolutely no subtantiation; there were no procedural lapses and, therefore, an appropriate penalty has been imposed on the applicant and consequently this is not a fit case for intervention by the Hon'ble Tribunal.

6. With regard to the specific arguments advanced by the learned counsel for the applicant, it has been stated on behalf of the respondents that the EO was changed because the earlier officer was promoted and such change was, therefore, nothing but a routine change. The applicant never made any application for change of EO and has now come up with the plea of bias which in the circumstances is patently an afterthought. The applicant has sought to introduce a casteist and a union issue in this regard

but against the background of the applicant having not even made an applicantion for change of EO, such plea have no ground to stand.

7. As regards the allegation that EO acted as prosecutor, it has been stated that since no Presenting Officer was appointed, it was the duty of the EO to ask clarificatory questions and the applicant or his Defence Assistant had ample opportunities to cross examine the witnesses or seek clarifications. It is also stated that the Rules have specific provision enabling EO to put questions as he deems necessary. Learned counsel for the respondents also referred to the judgment of the Apex Court in the case of Buckingham and Carnatic Mills, reported in 1970 (1) LLJ 26 in support of his contention that in the absence of the Presenting Officer, the EO can even cross-examine the delinquent official.

8. The learned counsel for the respondents has emphatically denied that the findings of the EO are perverse, as alleged by the applicant. The EO had based his findings on the analysis of the evidence produced before him. There was no violation of principles of natural justice and no objection as to any difficulty by the applicant was made during the enquiry. The learned counsel for the applicant stressed that it is well settled in law that proceedings in the departmental enquiry, the standsards of evidence cannot be comparable to those in the criminal case and if there is some evidence to support the charge (s), the Court/Tribunal is prevented from appreciating or reappreciating the evidence. He also explained that the learned counsel for the applicant had made much ado about just a correction of the date in the statement of the

witness, Nasir Khan B but it was just a correction and as can be seen from the recorded statement, it was nothing like tempering of evidence as alleged. The findings of the EO cannot, therefore, be considered perverse.

9. As regards the allegation that the Disciplinary Authority had declared the applicant guilty of charge No.4 without there being any evidence (sub-para (d) para 4 ante), it has been argued by the learned counsel for the respondents that a plain reading of the statement of charges and allegation annexed to the charge sheet will reveal that against item 4 all that was mentioned was that there are other cases also which have been registered by SHO/GRP/Gangapur City against the applicant for violation of Section 120/121 of Indian Railway Act and 323 IPC and as such this was really not a substantive charge, but only a background factual information, and, therefore, there was nothing wrong in the Disciplinary Authority mentioning that in some of those cases, investigation were going and in few cases the applicant was released on probation with a condition to have good conduct and the fact of the cases being registered was proved. In the real sense it was not listed as a specific charge and it had no material impact on the specific allegations which were enquired into by the EO.

10. The learned counsel for the respondents has also denied the allegation that the Appellate Authority had not considered the grounds taken in the appeal and had not given the applicant a chance of personal hearing. He stated that a reading of the order of the Appellate Authority will show that it is a speaking order and was recorded after going through the appeal preferred and also other relevant documents. He has

agreed with the findings of the EO also. It was also stated that a perusal of the appeal petition, copy of which has been annexed at Ann.A19, will show that the applicant had not requested for personal hearing and he cannot, now raise this as a ground for challenge.

11. The learned counsel for the applicant has cited following judgments in support of his contentions:

i) 1981 (1) SLR 454
ii) 1994(1) SLJ 54
iii) 1989 (6) SLR 720
iv) 1980 (1) SLR 324
v) 1988 (2) SLJ 177 (CAT)
vi) 1994 (28) ATC 750
vii) 2000 (3) SCC 450
viii) 1990 (7) SLR 198
ix) 1997 WLC (UC) 658

In the case at (i) above, the EO declared a witness hostile and cross-examined him and another defence witness made a suggestion that they were giving false evidence. In the case at (ii) the penalty was imposed on convictions in criminal charges but no enquiry was made on a charge which had not led to any conviction. In the case at (iii) above, it was held that omission to attend office by an office-bearer of Staff Association on a day during agitation cannot amount to misconduct leading to removal of service. In respect of the case at Sl.No. (iv), it was held that asking a Constable concerned to explain satisfactorily for not reporting on duty on a particular day after a lapse of 1½ years amounted to denial of resonable opportunity. In case at Sl.No. (v), it was

found that the impugned order of removal from service was based only on omnibus conclusions without considering the evidence and held to be liable to be quashed. In the case at Sl.No. (vi), the Principal who was made a member of the Enquiry Committee was found to be having a strong and hostile bias against the delinquent teacher. In the case at Sl.No. (vii), the case was decided just on the report of the Traffic Inspector inspite of availability of sufficient evidence. In case at Sl.No. (viii), examination of two non-listed prosecution witnesses without any notice and in the absence of Defence Assistant, among other infirmities, was held to have deprived the applicant of sufficient opportunity to defend himself. In the case at Sl.No.(ix) the punishment of removal from service on the charge of a constable being drunk and beating his colleague was found to be disproportionate to his misconduct.

We have given our respectful consideration to the decisions given in the above cases cited by the learned counsel for the applicant. We find that each of the cases had its own facts and circumstances and considering the background of the facts and the circumstances of the case in hand, we find these cases distinguishable.

12. Before we proceed any further it might be useful to take note of the law as it has developed over the years as far as the role of Courts/Tribunals is concerned vis-a-vis the disciplinary proceedings. By their vary nature, these are proceedings to enquire into departmentally into the misconduct of the employees and can, in no way, be compared with proceedings in a criminal Court.

13. In B.C.Chaturvedi v. UOI, (1995) 6 SCC 750, it was

held that the Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where conclusion or finding reached by the departmental enquiry is based on no evidence.

14. In Kuldeep Singh v. Commissioner of Police and ors., 1999 (1) SLR 283, Hon'ble the Supreme Court held that normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of guilt is based on no evidence it would be perverse finding and would be amenable to judicial scrutiny. The findings recorded in domestic enquiry can be characterized as purverse if it is shown that such a finding is not supported by any evidence on record or is not based on any evidence on record or no reasonable person could have come to such findings on the basis of that evidence.

15. In Apparel Export Promotion Council v. A.K.Chopra 1999 (2) ATJ SC 227, it was held that once the finding of fact based on appreciation of evidence are recorded, High Court in writ jurisdiction may not normally interfere with those findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and or legally untenable.

16. In its one of the latest judgments a Three Judges Bench of Hon'ble the Supreme Court in Civil Appeal No.1656 of 1998, The High Court of Judicature of Bombay v. Shashikant S.Patil and anr., decided on 28.10.1999, has held that interference under Atricle 226 of the Constitution of India is permitted only when the authority has held proceedings in

violation of principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence or merits of the case or if the conclusions made by the authority, on the very face of it, is wholly arbitrary so that no reasonable person could have arrived at such a conclusion on grounds very similar to above.

17. We have given our serious consideration to the rival contentions. In view of the fact that the applicant himself had not even applied for change of EO and the clarification given by the respondents that the change was necessiated because of the promotion and transfer of the officer nominated as EO earlier as also the fact of his having participated in the enquiry without any objection at any stage, we feel that the change of EO had not vitiated the enquiry proceedings in any manner. The allegation of bias raised by the applicant against the EO as well as Disciplinary Authority cannot be said to have been established in the circumstances of this case. We also find that the enquiry was conducted as per the prescribed procedure, which, inter alia, provides for questions to be put by the EO under Rule 9 (17) of the Rules. We are also of the opinion that this is not a case of no evidence and although we are not required to appreciate or reappreciate the evidence, we find that there was adequate evidence for EO to arrive at a finding that the allegations at Sl.No. 1 and 3 were established. The findings of the EO cannot, therefore, be called perverse. We also tend to agree with the learned counsel for the respondents that the mention of the allegation No.4 by the Disciplinary Authority has no impact on the case in the special circumstances and also being in the manner of the palin statement of fact relating to the

institution of nine criminal cases against the applicant. We also note that the order of the Appellate Authority is a speaking order and having agreed with the finding of the EO, he has adequately dealt with the issues raised by the applicant in his appeal.

18. On the perusal of the whole record and carefully considering the rival contentions, we are of the opinion that in the present case, there was no violation of any statutory rules, no bias on the part of the EO or the Disciplinary Authority could be established, enquiry was held as per the precribed procedure, findings were based on preponderance of evidence against the charged official and cannot be said to be wholly perverse or legally untenable and the principlies of natural justice were not violated. In view of this and the law laid down by the Apex Court as discussed hereinbefore, we find no justification for any interference with the impugned order dated 16.10.1992 (Ann.A1) and 15.6.1993 (Ann.A2).

19. In the result, we hold that the Original Application has no merit and we accordingly dismiss it with no order as to costs.

(N.P.NAWANI)
Adm. Member

(S.K.AGARWAL)
Judl.Member