

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 19-11-96.

OA 302/94

Babulal, Shop Messenger at Loco Workshop, Western Railway, Ajmer.

... Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Bombay.
2. Chief Workshop Manager (E), Loco Workshop, Western Railway, Ajmer.
3. Dy.Chief Mechanical Engineer, Loco Workshop, Western Railway, Ajmer.
4. Dy.Chief Personnel Officer (L), Workshop, Western Railway, Ajmer.

... Respondents

CORAM:

HON'BLE MR.GOPAL TRISHNIA, VICE CHAIRMAN

HON'BLE MR.O.P.SHAHMA, ADMINISTRATIVE MEMBER

For the Applicant

... In person

For the Respondents

... Mr.Manish Bhandari

O R D E R

PER HON'BLE MR.GOPAL TRISHNIA, VICE CHAIRMAN

Applicant, Babulal, has filed this application u/s 19 of the Administrative Tribunals Act, 1985, for setting aside the order dated 24.4.92, by which the penalty of dismissal from service was imposed upon him vide Ann.A-2 by the disciplinary authority as also for a direction for his reinstatement in service. He has also claimed full payment for the period of suspension from 27.3.84 to 17.4.85 and from 23.12.91 to 24.4.92.

2. The facts giving rise to this application may be shortly stated as follows. During the posting of the applicant as an Artisan Phalasi in the Loco Workshop, Ajmer, Shri Kailash Chand Sharma, a Peon in the same Workshop, lodged a report with the Police at Alwar Gate, Ajmer, stating therein that on 26.3.84, at about 7.30 AM, while he was going to the Production Engineer's Office, the applicant stopped him and attacked him with a Katar. The informant sustained injuries. A case was registered at the Alwar Gate Police Station, Ajmer, under Sections 323, 324 and 341 of the Indian Penal Code and Section 4/25 of the Arms Act. The applicant was placed under suspension and the suspension order was revoked later. A charge-sheet vide Ann.A-1 dated 28.4.84 was served upon the applicant for breach of discipline as he had attacked Shri Kailash Chand Sharma, Peon, in the Time Office, Loco Workshop, Ajmer, inside the Workshop. The applicant submitted his written statement of defence and an enquiry was conducted by the Enquiry Officer into the charges.

Cd/11/11

The enquiry was concluded on 14.9.85 but a copy of the enquiry report was not furnished to the applicant despite his demand. So far as the trial of the applicant for the criminal offences against him is concerned, the applicant was acquitted of the charges under Sections 323, 324 and 341 of the Indian Penal Code on the basis of a compromise but he was convicted for the offence under Section 4/25 of the Arms Act and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.200/- thereunder. The disciplinary authority, considering the seriousness of the charge under Section 4/25 of the Arms Act, imposed the penalty of removal from service upon the applicant in accordance with Rule 14(i) of the Railway Servants (Discipline and Appeal) Rules, 1968 (for short, the Rules). The appeal against that order was rejected by the appellate authority on 19.9.89. The applicant was subsequently acquitted of the charge under the Arms Act by the learned District & Sessions Judge vide his judgement dated 11.7.90. The applicant thereafter requested for review of the earlier orders regarding his suspension and removal from service on the plea that since he has been acquitted of the charges in the criminal case, on the basis of which he was removed from service, the order of removal should now be set aside. An order putting the applicant on duty was issued on 23.12.91, wherein it was provided that on resumption of duty he should be placed under suspension and the competent authority may deal with the departmental enquiry against the applicant on merits and that the period from the date of removal to the date of his resumption is to be treated as under suspension. The disciplinary authority, by order dated 24.4.92, imposed upon the applicant the penalty of dismissal from service. The applicant appealed against the order of dismissal to the appellate authority but the appeal was disposed of in a vague manner, as stated by the applicant. It is pleaded by the applicant that before issuing the order dated 24.4.92, dismissing him from service, no show-cause notice was issued to him and that the enquiry has been conducted against the applicant twice on the same charges and once he was acquitted by the Sessions Court, he could not have been held guilty in the departmental enquiry for the same offences.

3. On the other hand, the respondents have stated in their reply that on completion of the enquiry no immediate action was taken against the applicant due to the pendency of a criminal case against him under the Arms Act, in which the applicant was finally convicted by the Additional Chief Judicial Magistrate and thereafter he was removed from service in accordance with the provisions contained in Rule 14(i) of the Rules on the ground of conduct which has led to his conviction on a criminal charge. It is stated that after receiving a copy of the judgement of the learned Sessions Judge, the

applicant was under an obligation to report for duty immediately but he failed to join his duties when he was asked to do so vide order dated 23.12.91. The applicant was acquitted by the learned District & Sessions Judge for the offence under the Arms Act by giving him the benefit of doubt. However, the disciplinary enquiry against the applicant had been completed, wherein the charge of indiscipline and assault upon a co-employee had been proved and the applicant was served with a copy of the enquiry report vide letter dated 21.12.92 with a receipt dated 9.3.92 (Ann.R-1). The applicant suppressed this fact and he has made misleading averments in regard to these facts which shows that he has not approached this Tribunal with clean hands. The applicant's appeal was duly considered in terms of the directions of the Tribunal and by an order dated 8.2.94 the appeal preferred by the applicant was rejected by the appellate authority and the order passed by the disciplinary authority was maintained. The applicant has failed to give any justification regarding not joining his duties after his acquittal when the order of reinstatement was passed and as such he is not entitled for any benefit for the period in question. It is categorically stated that the applicant was not only served with the letter dated 21.2.92 but after considering the applicant's representation/reply the impugned order of punishment was issued on 24.4.92.

4. We have heard the applicant and the learned counsel for the respondents. We have carefully gone through the records of the case.

5. The first contention of the applicant is that before imposing the penalty of dismissal from service, vide Ann.A-2 dated 24.4.92, a show-cause notice ought to have been issued to him and failure to do so before imposing the aforesaid penalty vitiates the order of punishment. The letter dated 21.2.92 (Ann.A-10), addressed to the applicant, shows that a copy of the enquiry report was enclosed to it and the applicant was asked to make a representation, if any, against the same before the penalty of dismissal was imposed upon him by order dated 24.4.92. The aforesaid argument of the applicant, therefore, does not hold good.

6. The second contention of the applicant is that the alleged occurrence had not taken place and the Katar, which is said to be the weapon of offence, was not even examined by the enquiry officer during the course of enquiry and as such the evidence ^{adduced} ~~adduced~~ during the enquiry should not be relied upon. It is true that the offences under Sections 303, 304 and 341 of the Indian Penal Code were compounded between the complainant/injured, Kailash Chand Sharma, and the applicant in the court of Additional Chief Judicial Magistrate No.2,

C. K. M. N.

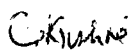
Ajmer) and the applicant was, therefore, acquitted of the offences punishable under Sections 323, 324 and 341 of the Indian Penal Code. The enquiry officer had recorded the statements of three witnesses namely S/Shri Nailash Chandra Sharma, Senior Clerk, Suresh Chand Sharma, Machineman, and Nailash Chand Sharma, Peon, who was assaulted by the applicant with a Katar and had sustained injury at the hands of the applicant as a result of the assault. The injured has spoken about it in his statements. The three witnesses, named above, had given evidence against the applicant, who was given opportunity to cross-examine them. A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt. We do not find that any prejudice was caused to the accused during the course of enquiry. The disciplinary authority on a consideration of the entire report, the evidence on record and the representation of the applicant, had imposed the penalty of dismissal from service. The nature and scope of a criminal case are different from those of a departmental disciplinary proceeding and an order of acquittal cannot conclude the departmental proceeding. The adequacy of evidence recorded during the course of enquiry is not a matter which can be permitted to be canvassed before the Tribunal. We are of the view that the finding of the DAF enquiry cannot be characterised as perverse or unsupported by any relevant material. The second contention of the applicant, is therefore, also not tenable.

7. The third contention of the applicant is that the appellate authority while disposing of the appeal vide Ann.A-16 dated 8.2.94 had not dealt with the grounds raised in appeal and, therefore, the appellate order deserves to be set aside. A perusal of the appellate order dated 8.2.94 (Ann.A-16) reveals that all the three ingredients, as envisaged by Rule 22(2) of the Rules, were considered by the appellate authority while deciding the appeal and the appellate authority was of the view that the decision taken by the disciplinary authority in awarding the penalty was in conformity with the extant rules of procedure and it did not warrant any interference. We do not find any defect whatsoever in the process of decision making.

8. There is no substance in this application and it is, therefore, dismissed with no order as to costs.


(O.P. SHAPMA)

ADMINISTRATIVE MEMBER


(GOPAL KRISHNA)
VICE CHAIRMAN