

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO.: 10/2003

Date of order: 11.10.2004

HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN
HON'BLE MR. M.K. MISRA, ADMINISTRATIVE MEMBER

Ami Chand S/o Bhorilal Ji, aged about 53 years, R/o Plot No. G.G. 376, Rajiv Gandhi Marg, Santosh Nagar, Kacchi Basti, Hasanpura, Jaipur, presently posted as Goods Driver in Jaipur Division, Jaipur. ...Applicant.

None present for the applicant.

V E R S U S

1. The Union of India through General Manager, North Western Railway, Jaipur.
2. The Divisional Railway Manager, North Western Railway, Jaipur Division, Jaipur
3. Sr. Divisional Mechanical Engineer, North Western Railway, Jaipur Division, Jaipur.

...Respondents.

None present for the respondents.

O R D E R

BY THE COURT:

We are proceeding to decide this O.A. under Rule 16 of the C.A.T. (Procedure) Rules, 1987, after going through the pleadings.

2. The applicant was issued a charge-sheet on 9.12.1999, while holding the post of Passenger Driver ^{on the allegations} ~~on the allegation that~~ he was found on duty under intoxication. We may mention that it is second round of litigation. The applicant had earlier filed an O.A. No. 14/2001 challenging the orders passed by the disciplinary authority and appellate authority but in the said O.A. he had taken a plea that his revision petition filed before the competent authority had not been decided so the Court while deciding the O.A. passed an order directing "the respondents to decide the revision petition within a period of four weeks from the date of the order i.e. 7.2.02." It was also directed that the reviewing authority shall consider the revision petition keeping in view the contentions of the learned counsel for the applicant as stated in para 5 in the revision petition.

3. In pursuance to the order of the Tribunal, the revising authority passed an order Annexure A/1, whereby the revision petition of the applicant has been rejected as the revising

authority found that the order passed by the disciplinary authority is in order but still taking as an act of mercy the revising authority modified the order of disciplinary authority and ordered that the employee is reduced to the post of Goods Driver in grade Rs. 5000-8000 (RS) for a period of three years without future effect and his basic pay may be fixed at Rs. 5000/-.

4. In the present O.A., the applicant has challenged the same, the only ground taken by him is that the revising authority has not considered the case and appreciated the submission made in the revision petition filed in compliance of the order passed by the Tribunal. The other ground taken by the applicant is that the respondents have not considered the revision petition while conducting a regular departmental enquiry that the applicant was never examined medically to ascertain the facts that the applicant was actually intoxicated on the fateful day but using a breath analyzer which is not a genuine and authentic instrument *found him guilty.* But the respondents had not got the applicant medically examined. The applicant is challenging the finding recorded by the disciplinary authority and the revising authority which have been given on the basis of evidence and facts as recorded but did not allege any procedural lapse on the part of the ~~disciplinary~~ disciplinary authority or the revising authority while conducting the departmental proceedings.

5. After going through the pleadings, we find that the scope before the revising authority was limited one and more so before the Tribunal, we are exercising the power of judicial review only. We have to see whether the decision arrived at by the disciplinary authority had been arrived at by giving full opportunity to the applicant or not. It is seen from the records *that the same was done per* and by following the procedure prescribed under the relevant rules, there is no complaint about the action of the respondents. Finding of facts as recorded and the decision taken by the enquiry officer is not to be reappreciated by this Tribunal as this Tribunal is not to sit ^{as} an appellate Court as far as the position of law with regard to judicial review, is concerned.

6. In the grounds to challenge the impugned order, the applicant has not stated anything about the non-providing of fair hearing or following the principle of natural justice. Nor did he say that any rule have been violated. His only contention is about breath analyzer test and non-conducting medical test but in our view, since the strict rule of evidence do not apply and only rule of preponderance of probability is to be seen. So even if following the breath analyzer ~~test~~ system if the applicant was found intoxicated, the respondents are justified to hold him guilty. Hence, we do not find that there is any fault with the order passed by the revising authority and there is no scope to interfere with the impugned order. Therefore, Original Application sans merit and is dismissed with no order as to costs.

(M.K. MISRA)
Adm. Member

(KULDIP SINGH)
Vice Chairman

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After dictating of the order Mr. Vinod Goyal, Counsel for the applicant as well as Mr. Anupam Agarwal, counsel for the respondents, ^{appeared and worked} present.

(M.K. MISRA)
Adm. Member

(KULDIP SINGH)
Vice Chairman

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