

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.165/97

Date of order: 20/12/2007

Hari Lal, S/o Shri Cheta, R/o village Rasulpur,
Distt.Mathura, employed as Gangman, PWI, Bharatpur,
Western Rly, Kota Division.

...Applicant.

Vs.

1. Union of India through General Manager, Western Rly,
Churchgate, Bombay.
2. Asstt.Engineer, W.Rly, Bharatpur, Kota Division.
3. Sr.Divisional Engineer (N), W.Rly, Kota Division, Kota.

...Respondents.

Mr.Shivkumar - Counsel for the applicant.

Mr.T.P.Sharma - Counsel for respondents.

CORAM:

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

Hon'ble Mr.A.P.Nagrath, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application filed under Sec.19 of the
Administrative Tribunals Act, 1985, the applicant makes the
following prayer:

- i) to quash and set aside the charge sheet dated 16.9.94;
- ii) to quash and set aside the order of punishment dated
30.9.95 and 9.10.95 imposed upon the applicant by Annx.A2 and
Annx.A3 and
- iii) to quash and set aside the order dated 18.9.96 by which
the appeal filed by the applicant was rejected.

2. In brief facts of the case as stated by the applicant
are that while ~~he~~ working on the post of Sr.Gangman a
memorandum of charge sheet was issued and the following
charges were levelled against him:

- i) The applicant disobeyed the order of Shri Jummuan
Jamadar and

ii) On exciting by Shri Vibhushan ^{Applicant} alongwith other colleagues has attempted to assault with Shri Kakaria.

The applicant denied the charges. Enquiry was conducted and Enquiry Officer submitted report and on the basis of that report the disciplinary authority imposed the punishment vide order dated 30.9.95 by down grading the applicant to scale Rs.775-1025 and was fixed on the initial pay of Rs.775/- w.e.f. 1.10.95. The applicant preferred an appeal which was also dismissed by the appellate authority vide order dated 18.9.96. It is stated that the charges levelled against the applicant are vague and during the course of enquiry proceedings no evidence was produced before the enquiry to sustain the charges. Therefore, it is a case of no evidence and

On the basis of such enquiry report, the punishment imposed upon the applicant is illegal, arbitrary and liable to be set aside. It is also stated that the enquiry report is illegal, arbitrary and against the provisions of Rule 9(25)(1) of the Railway Servants (D&A) rules, 1968, therefore, the enquiry report deserves to be set aside being in violation of Rule 9(25)(1) of the aforesaid rules. The order of the appellate authority is nonspeaking and has been passed without any application of mind, therefore, the order passed by the appellate authority is also liable to be set aside. Therefore, the applicant filed the O.A for the relief as mentioned above.

3. Reply was filed. In the reply, it is stated that the charges levelled against the applicant are not vague and the Enquiry Officer has conducted the enquiry in accordance with the Rules and the applicant was held guilty on the basis of evidence available on record. Therefore, the order imposing the penalty is not perverse. It is also stated that the appellate authority has passed the order in accordance with the rules and this O.A devoid of any merit is liable to be

dismissed.

4. Heard the learned counsel for the parties and also perused the whole record.

5. The Enquiry Officer did not hold the applicant guilty for charge No.1. According to the Enquiry Officer, charge No.1 could not be established that the applicant has disobeyed the order of Shri Jummahan Jamadar. As regards the second charge, the findings of the Enquiry Officer appears to be perverse. The Enquiry Officer held that

गैंगमैने स्व. श्री विजयभूषण का कड़ियाँ से.प.नि.
भरतपुर के बीच गाली मलौच स्व. हायापई हुई है।

But charge against the applicant is that the applicant along with others has misbehaved and assulted Shri B.B.Kakaria. On a perusal of evidence as discussed in the enquiry report, it can be safely said that the charge levelled against the applicant is not at all proved. There is no evidence on record to sustain the charge against the applicant rather it has come in evidence that Shri Kakaria has assulted Shri Vibhushan and hit on the nose of Bachu but no witness has stated that the applicant has assulted Shri Kakaria. Even the witnesses have not made it clear that who has assulted Shri Kakaria and the witnesses have also refused to identify the persons who are alleged to have assulted Shri Kakaria. On a perusal of the whole enquiry proceedings, it does not appear that charge No.2 levelled against the applicant was at all proved and the finding of the enquiry Officer are perverse as there is no evidence to sustain the charge against the applicant.

6. In Kuldeep Singh Vs. Commissioner of Police & Ors, 1999(1) SLR 283, Hon'ble 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

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finding and would be amenable to judicial scrutiny. the findings recorded in domestic enquiry can be characterised as perverse 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.'

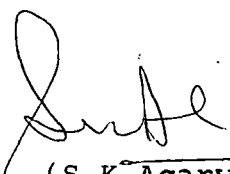
7. In Apparel Export Promotion Council Vs. A.K.Chopra, 1999(2) ATJ SC 327, Hon'ble Dr.A.S.Anand, Chief Justice, observed that High Court cannot substitute its own conclusion with regards to the guilt of the delinquent for that of departmental authorities unless the punishment imposed by the authorities is either impermissible or such that it shocks the conscience of the High Court.

8. On the basis of the above settled legal position and facts and circumstances of this case, we are of the considered opinion that the applicant has been held guilty of charge No.2 without any evidence, therefore, the finding of the Enquiry Officer are perverse and in pursuance of such finding, the order of the disciplinary authority to impose the punishment upon the applicant is also illegal, arbitrary and liable to be set aside. Not only this, in this case the appellate authority failed to appreciate each and every point raised by the applicant in his appeal rather he has passed a nonspeaking order in violation of the rules meant for this purpose, therefore, the order of the appellate authority is also laible to be set aside.

9. In view of above all, we allow the O.A and set aside the impugned orders Annx.A1, Annx.A2, Annx.A3, Annx.A4 and Annx.A5. The applicant shall be entitled to all consequential benefits.

10. No order as to costs.


(A.P.Nagrath)
Member (A).


(S.K.Agarwal)
Member (J).