

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 24-10-1997

OA 173/97 with MAs 159 & 228/97

Surendra Mohan Gaur, Assistant Station Master, Railway Station Indra Garh, Kota Division, Western Railway, Kota.

... Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Bombay.
2. Divisional Security Officer, Western Railway, Kota Division, Kota.
3. Shri Chotelal Verma, T.I./Enquiry Officer, Western Railway, Gangapurcity.

... Respondents

CORAM:

HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN

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

For the Applicant

... Mr. S.K. Jain

For the Respondents

... Mr. T.P. Sharma

O R D E R

PER HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN

Applicant, Surendra Mohan Gaur, has filed this application u/s 19 of the Administrative Tribunals Act, 1985 (for short, the Act), praying for quashing the impugned order of punishment of removal from service dated 8.4.97, at Ann.A-1, and the charge-sheet dated 7.10.96, at Ann.A-2, as also the disciplinary enquiry.

2. The applicant's case is that while he was working as Assistant Station Master at Indra Garh, he was served with a charge-sheet issued by respondent No.2 since he was responsible for the derailment of wagon No.CR 4321 Tank. An enquiry officer was appointed by respondent No.2 and it is stated by the applicant that the enquiry officer put the entire responsibility upon him by cross examining him or putting such questions to him which amounted to his cross-examination. The enquiry officer had issued a letter dated 23.12.96 asking the applicant to give his defence within 10 days from 23.12.96 and since no defence could be given, the enquiry report was submitted by the enquiry officer on 23.12.96 itself and respondent No.2 thereafter asked the applicant to give his written representation against the enquiry report. The applicant submitted his written statement on 21.3.97 vide Ann.A-8. Respondent No.2 thereupon issued the order of removal from service vide order dated 8.4.97, at Ann.A-1. It is contended by the applicant that the enquiry is vitiated because it has been held contrary to the provisions of Railway Servants (Discipline & Appeal) Rules, 1968 (For short, the Rules). It is also stated that neither the

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statement of imputation of misconduct has been given nor was the list of documents or witnesses relied upon furnished to the applicant. It is, therefore, contended that the charge-sheet is in violation of Rule-9 (6) of the Rules. It is also stated that the charges framed against the applicant have not been admitted by him and yet neither any oral evidence nor any documentary evidence has been produced to prove the charges. It is further stated that the enquiry officer had examined the applicant directly without examining the prosecution witnesses and in such a situation the procedure adopted by the enquiry officer was contrary to rules. It is further stated that the enquiry officer did not comply with the provisions contained in Rule-9, sub rules (21) and (22), of the Rules.

3. On the other hand, the respondents have raised a preliminary objection that in terms of the provisions contained in Section 20 of the Act, a Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. It is categorically stated by the respondents that since the statutory provision of appeal, contained in Rule-18 of the Rules, has not been availed of by the applicant before approaching this Tribunal, the present application is premature and is not entertainable. It is also stated by the respondents that the charge-sheet dated 7.10.96 has been served upon the applicant and the list of statement of allegations and the list of witnesses were also supplied to him. It is contended by the respondents that the enquiry officer had conducted the enquiry fairly after affording reasonable opportunity to the applicant and that there was full compliance with the principles of natural justice. The applicant has been given full opportunity to defend his case.

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

5. The learned counsel for the applicant relied on 1986 (4) SLR 108, Charan Singh v. Union of India and others, wherein it was observed, as follows :-

"All that Section 20 says is that "ordinarily" this tribunal would not entertain all application unless it is satisfied that the applicant has availed of all the remedies available to him under the relevant service rules. Where the service rules do not empower the Authorities to stay the order howsoever just the case may be and howsoever erroneous the order under appeal or review may be illegal, that may, in the circumstances of the particular case, constitute a valid ground for entertaining an application under Section 19 without insisting upon the applicant to avail of all the remedies of appeal or review provided under

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the Service Rules."

Reliance has also been placed on 1987 (4) SLJ (CAT) 414, Shri Kishore Chandra Pattanayak v. Shri R.N.Das, IAS, wherein the Cuttack Bench of the Central Administrative Tribunal observed, at page-422, as follows :-

"Legislature has also vested discretion with the Tribunal while using the word 'ordinarily' in section 20 of the Act. The Legislature has intended that as a general rule every case cannot be thrown out merely on the ground that other remedies have not been exhausted. There might be cases where emergent situation may need immediate interference and therefore the Parliament in its wisdom has intentionally used the word 'ordinarily' having in its mind that there may be cases in which an aggrieved person should not wait to exhaust other remedies but should immediately seek for the interference and protection of a Court. Therefore each case has to be decided according to its own facts and circumstances."

The learned counsel for the applicant further relied on 1990 (1) SLJ 108, Karnal Leather Karamchari Sangathan (Regd) v. Liberty Footwear Company (Regd) and others, wherein it was held by their Lordships of Hon'ble the Supreme Court, at page-111, as follows :-

"The employees' union without preferring Letters Patent Appeal before the High Court against the judgement of learned single judge has directly appealed to this Court by obtaining special leave. Ordinarily, we would have revoked the leave since the party has not exhausted the remedy available by way of appeal. But in view of the importance of the question raised and the need to decide it promptly in the interest of industrial adjudication, we proceed to consider the appeal on merits."

The learned counsel for the applicant also cited (1993) 23 ATJ 89, B.Appa Rao v. Additional Collector of Customs, Visakhapatnam, wherein the Hyderabad Bench of the Central Administrative Tribunal observed as follows :-

"We have examined the case and heard rival sides. Sri Jagan Mohan Reddy raised a preliminary objection that the applicant had not represented against the termination order. As can be seen from the subsequent paragraph, the action of the respondent is ex facie illegal and against an ex facie illegal order no representation lies."

6. It is strongly urged on behalf of the applicant that the facts and circumstances of the present case are such that the present application can be entertained without insisting on exhaustion of the statutory remedy of appeal.

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It is pertinent to note that each case has to be judged in the context of its own facts. We are of the view that the importance of the questions/pleas raised in the present application is not such as to warrant dispensation with the requirement of Section-20 of the Act. All the pleas raised in this application can very well be agitated before the appellate authority by way of filing an appeal. There appears to be no exceptional ground justifying dispensation with the requirement of the provisions contained in Section-20 of the Act. Since the applicant has not exhausted the statutory remedy of appeal, as provided in Rule-18 of the Rules, before approaching this Tribunal, we are of the view that the present application is premature and is not maintainable. However, if the applicant prefers an appeal within a month of this order, the same shall be entertained and disposed of by the appellate authority through a detailed speaking order on merits meeting all the points raised therein, as expeditiously as possible. The interim direction issued on 16.5.97 is vacated. Since the interim direction issued on 16.5.97 has already been vacated while disposing of the OA, MA 159/97 for vacation of the aforesaid order stands dismissed as having become infructuous. MA 228/97 has also become infructuous and it stands dismissed as such.

7. OA and the connected MAs 159/97 and 228/97 stand disposed of accordingly with no order as to costs.

(O.P. SHARMA)

ADM. MEMBER

(GOPAL KRISHNA)

VICE CHAIRMAN

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