

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

O.A.No.228/1998

Jaipur, this 25th day of May, 2002

Hon'ble Shri M.P. Singh, Member(A)
Hon'ble Shri J.K. Kaushik, Member(J)

Arjun Das Ainani
Head Booking Clerk
Vikramgarh Alot (Western Railway) .. Applicant
(Shri S.K.Vyas, Advocate)

Versus

Union of India, through

1. General Manager
Western Railway
Churchgate, Mumbai
2. Senior Divisional Commercial Manager
Western Railway, Kota
3. Additional Divisional Railway Manager
Western Railway, Kota .. Respondents

(Shri U.D. Sharma, Advocate)

ORDER

Shri M.P. Singh, Member(A)

Heard the learned counsel for the parties and perused the records.

2. The admitted facts of the case are that the applicant, Head Booking Clerk, was sent to the Zonal Training School, Udaipur for pre-selection course of ACO session from 2.3.92 to 14.3.92 and it was alleged that he had used filthy language and accosted Shri V.K. Shukla, Senior CMI, Kota and threatened him. He was issued charge-sheet dated 16.6.93 (A-3). Applicant vide his letter dated 18.11.93 insisted for supply of a copy of the complaint of Shri Shukla but it was not supplied. By letter dated 18.4.94 he was informed that departmental enquiry (DE) was set up and Shri P.K. Verma, ACM II was appointed as Inquiry Officer (IO). Since he did not conclude the enquiry, another IO namely Shri K.R. Meena was appointed as IO in March, 1996. Shri Meena closed the hearing on 28.10.96 and submitted his report to the disciplinary authority on 28.12.96. However, the DA ordered for

de novo enquiry vide letter dated 23.5.97. Thereafter, applicant was issued show cause notice on 8.7.97 and he submitted his reply on 8.9.97. Thereupon the DA passed the order dated 24.10.97 imposing upon the applicant the punishment of reduction to the minimum pay of time scale Rs.1400-2300 @ Rs.1400 PM with immediate effect for a period of two years without future effect for the offences mentioned in SF-5 dated 16.6.93. Applicant submitted an appeal against the punishment order which was rejected by the appellate authority by its order dated 9.1.1998.

3. The main ground taken by the learned counsel for the applicant during the course of the arguments in support of his claim for quashing and setting aside the impugned orders dated 24.10.97 and 9.1.1998 is that the order to conduct de novo enquiry passed by DA is without assigning any reason and therefore the same is bad in law and has vitiates the proceedings.

4. On our direction, the learned counsel for the respondents has furnished the original record of the DE. On perusal of the record, we find that the IO vide its report dated 28.12.96 has given the finding to the effect that charges are not proved. The DA on receipt of the report of IO has recorded the following note:

"In order to find out the facts, it is obligatory that the complainant should have been examined although his name has not been mentioned in the articles of charges. Then only the clear picture would emerge, but in this case the EO has not made any efforts in this regard.

In view of the finding is infructuous and need de novo proceedings.

The E.O. should intimate de novo proceedings and submit his finding early as the case has already been delayed abnormally."



5. From the above facts, it is clear that DA did not agree with the finding of IO. Instead of recording a note of disagreement, the DA has ordered de novo enquiry and has also ordered that the complainant who was not cited as a witness in the list of witnesses in respect of the charge had to be examined by the IO. This action of DA is in violation of Railway Servants (Disciplinary & Appeal) Rules, 1968. Moreover, the aforesaid Rules do not provide for conducting de novo enquiry.

6. The learned counsel for the applicant has cited a variety of judgements decided by various Benches of this Tribunal as also of the Hon'ble Supreme Court in Punjab National Bank & Ors. vs. Kunj Behari Mishra 1998 SCC (L&S) 1783.

7. We have considered all aspects of the matter and we find force in the contention of the learned counsel for the applicant.

8. The learned counsel for the respondents has drawn our attention of the Hon'ble Supreme Court's judgements in UOI vs. P. Thyagarajan 1999 SCC(L&S) 384, Director General, ICMR vs. Dr. Anil Kumar Ghosh & Ors. 1998 SCC (L&S) and State of Tamil Nadu vs. M.A. Waheed Khan 1999 SCC(L&S) 257. On perusal, we find that these judgements are not applicable to the present case.

9. In view of this position, de novo enquiry is vitiated and deserves to be rejected. Pursuant to this, the order of punishment passed by DA and rejection of appeal by the appellate authority also deserve to be dismissed.

10. Therefore, for the reasons recorded above, the OA is allowed and orders dated 24.10.97 and 9.1.98 are quashed and set aside. No costs.

J. K. Kaushik

(J.K. Kaushik)
Member(J)

M.P. Singh

(M.P. Singh)
Member(A)

/gtv/