

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 2/11.2000

OA No.287/1998

Lallu Ram S/o Shri Harkay, r/o Loco Hasanpura-A, Jaipur at present employed on the post of Group-D in the office of Divisional Pay Office, Jaipur.

.. Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Financial Adviser and Chief Administrative Officer, Western Railway, Churchgate, Mumbai.
3. Senior Divisional Accounts Officer, Western Railway, Jaipur
4. Divisional Accounts Officer, Western Railway, Jaipur.

.. Respondents

Mr.J.K.Kaushik, counsel for the applicant

Mr. U.D.Sharma, counsel for the respondents

CORAM:

Hon'ble Mr. Justice B.S.Baikote, Vice Chairmen

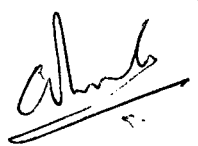
Hon'ble Mr. N.P.Nawani, Administrative Member

Order

Per Hon'ble Mr. N.P.Nawani, Administrative Member

The applicant is aggrieved with the chargesheet dated 2.6.97 (Ann.A1); order dated 22.7.1997 (Ann.A2) imposing on him the penalty of withholding of increment for two years without future effect; order dated 4.2.98 (Ann.A3) rejecting his appeal and order dated 29.4.98 (Ann.A4) rejecting his revision petition and prays that all these orders be quashed and he be given all consequential benefits.

2. We have heard the learned counsel for the parties and perused all the material on record.



3. The allegation against the applicant, as given the chargesheet, are that he, a Grade-IV employee, came to attend the office at 9:25 AM on 12.5.1997 when he should have attended the office at 9 AM. When the Divisional Pay Master put a cross mark against his name, he got agitated and used unparliamentary language against a woman employee, Smt. Manjulata Sharma in the presence of Shri G.L. Dogra, the Divisional Pay Master. Thus the applicant not only used unparliamentary language against Smt. Manjulata Sharma but also misbehaved with his superior (appropriate translation from Hindi).

3. Disciplinary proceedings were thereafter initiated against the applicant under Rule 11 of the Railway Servants (Discipline and Appeal) Rules, 1968 (for short, DA Rules) and as per the prescribed procedure, the applicant was informed in writing about the proposal to take action against him indicating the imputation of misconduct or misbehaviour and giving him reasonable opportunity of making such representation as he may wish to make against the proposal to impose a minor penalty on him. The Disciplinary Authority (for short, DA) taking into consideration all the material on record, imposed the penalty as mentioned in para 1 above and it was upheld by the Appellate Authority and the Revisional Authority.

4. The learned counsel for the applicant has challenged the penalty basically on three grounds. First, that the impugned chargesheet deserves to be quashed being without jurisdiction since the Divisional Accounts officer (respondent No.4) was not his controlling authority but it was Chief Cashier, Churchgate, Mumbai. The respondents have, however, placed on record a copy of the letter No.CP/Adm/A 6464/E179/1513 dated 1.9.1975 (Ann.R1) issued by the headquarters, Western Railway, Mumbai categorically stipulating

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that it is the senior scale rank Divisional Accounts Officer to whom disciplinary powers have been delegated for imposition of all penalties, both minor and major, in respect of Class IV and III staff. This being so, there is no force in the first contention of the applicant and he cannot derive any benefit on this count.

5. The second ground advanced by the learned counsel for the applicant is that even though the applicant had requested for a detailed enquiry but it was turned down and the material, which was prepared at his back, has been relied upon. ^{documents were also} ~~These~~ ^{not} ~~proved by~~ ^{examining} ~~their authors~~ and no opportunity to cross-examine the witnesses was afforded to him and thus he was denied a reasonable opportunity to defend him. The respondents have in reply, asserted that as the chargesheet was for minor penalty, the procedure laid down in Rule 11 of the DA Rules was properly followed and there is no requirement of holding a detailed enquiry in the manner laid down in sub-rules (6) to (25) of Rule 9 and it is required only in such cases in which the DA forms an opinion that such enquiry is necessary. The DA had accordingly taken into consideration all the facts and circumstances of the case and not accepted the request for holding an oral/detailed enquiry. It is further contended that the material on record was sufficient for consideration of the DA, who had taken the same, as well as the representation submitted by the applicant, to arrive at a conclusion about the penalty to be imposed. It is also stated that the statement of imputation of allegation as contained in the chargesheet itself was complete and sufficient to enable the applicant in preparing his defence.

6. The third ground taken on behalf of the applicant is that the appeal as well as revision petition have been rejected without meeting the points raised by him and he was also not given personal hearing as required by him and further that these authorities did not follow Rule 22(2) and Rule 25 of the DA Rules and have not

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given specific findings on the three mandatory points. In reply, the respondents have contended that both the authorities have duly and properly considered the appeal and revision and issued proper and speaking orders and the Revisional Authority has given specific findings on three mandatory points. It has also been contended that since it was a case of imposition of a minor penalty, there was no requirement of giving a personal hearing.

7. We have carefully considered the rival contentions. The challenge regarding incompetency of the DA no longer survives in view of the clarification given by the respondents and Ann.Rl. We are also satisfied that an oral/detailed enquiry is not necessary in minor penalty proceedings, unless the DA decides to hold one. If the DA after considering the facts and situations of the case decides not to hold an oral/detailed enquiry as stated by the respondents, we do not think it becomes necessary for us to interfere with the disciplinary proceedings for minor penalties on this count alone. We also find that no exception can be taken as far as the procedure followed in the present case relating to imposition of only a minor penalty. The law makers have devised two different classes of penalties in their wisdom, keeping in mind the need to harmonise the interests of employees as also the administration. These two classes have to be taken as different classes and it is only in exceptional cases that a DA is required to adopt a procedure for major penalties while dealing with cases of imposition of minor penalties. It is precisely for this reason that the DA Rules have two sets of procedures, one under Rule 9 for proceedings related to major penalties and the other under Rule 11 for minor penalties. We do not find the present case as having any exceptional characteristics which should have made the Disciplinary Authority go in for the procedure which is more or less prescribed for major penalties. We, therefore, find that the second ground put

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forward by the applicant also does not succeed. As regards the third ground, we find from the orders issued by the Appellate and Revisional Authorities that these adequately taken care of the point made by the applicant and the order of the Revisional Authority has taken care of all the three points mentioned in Rule 22(2) of the DA Rules and, therefore, we do not find enough justification for quashing the impugned orders at Ann.A1 and A4. We do not find any force in the defence of the applicant that since the Railway Board has allowed 10 minutes grace time, his reporting for duties at 9:25 instead of 9:00 AM is no lapse. Moreover, the charge that the applicant used unparliamentary language against a lady employee is not something that can be easily ignored, especially when he used such an extremely filthy word as 'रूँड' (guzdard) against her. Simply because the applicant alleges that this particular lady employee had complained against him earlier and the complaint was dropped does not, in any way, lessen the misconduct on the part of the applicant. In fact, it is also possible to presume that the applicant was in the habit of using unparliamentary language.

7. The learned counsel for the applicant has cited the judgment of the Supreme Court in the case of Ram Chander v. Union of India and ors., AIR 1986 SC 1173 in support of his contentions but we are of the opinion that it is distinguishable from the facts and circumstances of the case in hand.

8. As the law has developed over the years, the powers of the Court/Tribunal in interfering with the disciplinary proceedings and punishment imposed are quite limited. In the well known case of Union of India v. Parma Hand reported in AIR 1989 SC 1185, Hon'ble the Supreme Court had held that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction and as long as the enquiry


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has been done as per rules and principles of natural justice have been followed, there is no cause for interference by the Tribunal. In a recent case, Mahendra Nissan Allwyn Ltd. v. M.P.Sidappa and anr., 1999 SC (L&S) 1067, the Apex Court observed that use of filthy language, threatening etc. is serious misconduct and held that punishment of removal should remain unaltered.

9. In view of the facts and circumstances of the case and the legal position as discussed, we find no justification for interfering with the impugned orders at Ann.A1 dated 2.6.1997, Ann.A2 dated 22.7.1997 and Ann.A3 dated 4.2.1998.

10. The Original Application is, therefore, dismissed as having no merits with no order as to costs.



(N.F.NAWANI)

Adm. Member



(B.S.RAIKOTE)

Vice Chairman