IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 283/1999 199
~~T.A. No.~~

DATE OF DECISION 20-11-2002

Kalyan Singh Petitioner

Miss.Shalini Shearon Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent

Mr. R.G. Gupta Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. G.C. Srivastava, Member (A)

The Hon'ble Mr. M.L. Chauhan, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A.No. 283/1999

Date: 20-11-2002

Hon'ble Mr. G.C. Srivastava, Member (A)
Hon'ble Mr. M.L. Chauhan, Member (J)

Kalyan Singh son of Shri Pratap Singh,
aged 50 years, resident of Quarter No.27-A,
Workshop Colony, Kota Junction, Kota,
Working as a additional Fitter Grade-II
Ticket No. 8821, Kota.

Applicant

(By Advocate: Miss. Shalini Shearon)

VERSUS

1. Union of India, through General Manager,
Headquarter Office, Western Railway,
Churchgate, Mumbai.
2. The Deputy Chief Mechanical Engineer (R&M)
Office of Chief Workshop Manager, Western Railway,
Kota.
3. The Works Manager, Wagon Repair Workshop,
Western Railway, Kota.
4. The Assistant Works Manager (R), Wagon Repair
Workshop, Western Railway, Kota.

Respondents

(By Advocate: Mr. R.G. Gupta)

O R D E R

Hon'ble Mr. G.C. Srivastava, Member (A)

The applicant who was working as Fitter Grade-II under the respondents has challenged the penalty imposed on him by the Disciplinary Authority (D.A) vide order dated 7.5.1998, upheld by the Appellate Authority (A.A) vide order dated 4.7.98 and modified by the Revisional Authority (R.A) vide order dated 19.11.98 and has prayed

that the aforesaid orders be quashed and set aside.

2. The applicant's case in brief is that while he was working as Fitter Grade-II a charge sheet was issued to him vide memo dated 19.3.96 (Annexure A-4) for violation of Rule 3 (1) of the Railway Servants (Conduct) Rules, 1966 for alleged misconduct of punching cards of some employees who did not come on duty. An enquiry was conducted and a penalty of stoppage of annual increment for three years with cumulative effect was imposed on him by the D.A vide order dated 7.5.98 (Annexure A-3). He filed an appeal vide his letter dated 19.6.98 and the same was rejected by the A.A vide order dated 4.7.98 (Annexure A-2). He filed a revision vide his letters dated 7.10.98 and 20.8.98 and the R.A modified the penalty to stoppage of annual increments for two years with future effect vide order dated 19.11.98. Aggrieved by the above orders he has approached this Tribunal.

3. The respondents have contested the OA and have filed a detailed reply stating inter alia that the impugned orders have been passed after due consideration of the facts and circumstances of the case.

4. We have heard Miss. Shalini Shaeron, learned counsel for the applicant and Mr. R.G. Gupta, learned counsel for the respondents respectively and have carefully examined the pleadings and have also perused the departmental enquiry file made available by Mr. R.G. Gupta, learned counsel for the respondents.

5. The first contention advanced by Miss. Shalini Shaeron for the applicant is that the documents relied upon by the respondents in the charge sheet were not supplied to the applicant and hence the orders based

on such disciplinary proceeding cannot be sustained in the eye of law. Mr. Gupta for the respondents has, on the other hand, submitted that the documents as desired by the applicant and as listed in the charge sheet issued to him were furnished to him as per his acknowledgement dated 19.3.96. The applicant has not rebutted the reply of the respondents in regard to supply of the documents and therefore, we have no reason to doubt that the documents were not furnished to the applicant. Accordingly the first contention that the documents were not supplied to the applicant is untenable.

6. The next contention advanced by the applicant is that the impugned orders are against the provisions of law and in violation of the provisions of Railway Servants (D&A) Rules, 1968. In support of this he has contended that as against the three witnesses listed in the charge sheet the I.O had examined six witnesses. According to him, the I.O had examined three additional new witnesses first before examining other witnesses listed in the charge sheet which is contrary to the provisions of Rule 9(18) of the Railway Servants (D&A) Rules. On the other hand the respondents have stated that if I.O feels in the interest of fair enquiry to be more clear in connection with any fact he is competent to examine any other witnesses in the presence of the delinquent employee. He has therefore, contended that there is nothing wrong on the part of the I.O in examining the additional witnesses in the presence of the applicant who had also been given an opportunity to examine and cross examine them. Rule 9(18) of the Railway Servants (D&A) Rules provides as under:

"(18) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer, if any, to produce evidence not included in the list given to the Railway servant or may itself call for new evidence or recall and re-examine any witness and in such cases the Railway servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusiv of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Railway servant an opportunity of inspectin such documents before they are taken on the record. The inquiring authority may also allow the Railway servant to produce new evidence if it is of the opinion that the production of such evidence is necessary in the interest of justice."

7. It would be seen from the above that the I.O has been given the discretion to allow additional witnesses/ documents to be re-examined on behalf of the Department as also the delinquent employee will have right to examine/ cross examine/re-examine the witnesses. In the instant case no plea has been taken by the applicant that he was deprived of the opportunity to cross examine the above witnesses. The inquiry file reveals that these witnesses were c ross examined on behalf of the applicant. In view of this we do not find anything wrong on the part of the I.O to have examined the witnesses other than those listed in the charge sheet. Accordingly the above contention is also rejected.

8. Another contention raised by the learned counsel for the applicant is that the D.A has proceeded to get the matter enquired into without enquiring into his written defence to the charge sheet. The respondents have however denied this and have stated that the written statement of defence was duly considered by the D.A and based on the

material including the written statement of defence, the D.A had thought it necessary to conduct an enquiry. No rebuttal of this stand has been filed by the applicant and therefore, we are not in a position to accept this contention and accordingly the same is rejected.

9. Another contention raised by the applicant is that no personal hearing was given by the D.A, A.A & R.A regarding the quantum of punishment nor was it mentioned that the penalty is warranted. The respondents have however, denied this and have stated that the delinquent did not pray for personal hearing and therefore, there is no question of denial of opportunity of personal hearing when no such request was made. The applicant has chosen not to file any rebuttal to this and therefore, this contention also fails. The learned counsel for the applicant has not been able to show any rule or authority under which it was necessary to give an opportunity of personal hearing to the delinquent employee before the final order is passed and particularly regarding the quantum of punishment. What is required as per rules is that after the delinquent employee furnishes his written defence with reference to the charge sheet as well as the report of the I.O, the D.A is required to apply his mind and keeping in view the evidence on record as also the defence of the delinquent employee pass an appropriate order There is no requirement that the D.A should give the Government servant another opportunity before imposing the penalty. Under the circumstances, this contention also fail

10. Another contention of the applicant is that no prosecution witnesses including Mr. Kishan Singh, who is his subordinate of the D.A has supported prosecution story that they saw the applicant punching the cards. According to him, there is no eye witness to support the charge and even the complainant Mr. Jagdish Chandra was not present

at the location of the booth nor did he see the applicant punching the cards. According to the letter of Mr.Jagdish Chandra, the complainant on 5/6-2-96 he had attended the night duty for conducting the grade test and when he reached the Box Shop Time Booth he did not find anybody present except one person who was punching the cards when he called him out he did not respond and continued punching the cards. Thereafter he asked Mr. Kishan Singh Meena, Shop Superintendent, nigh shift to collect the card but that person continued punching the cards. Mr. Kishan Singh Meena took away the cards at about 1.33 hrs. and by that time already 82 cards had been punched. On being enquired that person told him that he was Kalyan Singh, Fitter Grade-II (the applicant in this OA) and stated that he was in the night shift. Mr. Jagdish Chandra got the numbers of the card noted in the Register and asked Mr. Rajendra Kumar to count the cards which were found to be punched; thereafter Mr. Mahipal, Muccadam Shop came to call him and all the cards were kept in the Board by Kalyan Singh and the Register of attendance was called for and missing noting was made. Mr. Kishan Singh signed all the register, thereafter Mr.Mahipal, Rajendra Kumar, Mr.Kishan Singh & Mr. Kalyan Singh all left and went to Mr. B.S.Rav and narrated the incident to him. Thereupon Mr. Kalyan Singh admitted his mistake of having punched the cards and appologised for the same. While issuing the order of penalty the D.A has stated that he has sympathetically considered the defence of the applicant and has observed that due to lapse of such a long period there could be slight change in the language of the statement but the fact is that though the applicant was not on duty on that particular day he was present in the punching booth and unauthorisedly punched the cards of other persons accordingly he has found him guilty of the charge and has imposed the aforesaid penalty. Apart from

this the statement of other witnesses points out the involvement of the applicant in the unauthorised punching of the card of the relevant date. As per the settled position of law judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to re-appreciate the evidence and would come to its own conclusion on the proof of the charge. The only consideration of the Court/Tribunal in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. (State of Tamil Nadu & Anr. Vs. Subramaniam) 1996(1) SC SLJ 232. In the case of Rai Bareli Kshetriya Gramin Bank Vs. Bhola Nath Singh & Ors. 1997(1) SC SLJ 461, it has been held that the object of judicial review is not to act as an appellate authority but to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. In the above case the High Court had examined the evidence as if it is a Court of first appeal and reversed the finding of fact recorded by the enquiry officer and accepted by the D.A. Accordingly the Hon'ble Supreme Court held that the order of the High Court is illegal and not sustainable. In another case of R.S. Saini Vs. State of Punjab & Ors., 1999(2) SC SLJ 212, it has been held that the enquiring authority is the sole judge of the facts so long as there is some legal evidence to substantiate the finding. Adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court. If there is some evidence to reasonably support the

conclusion of enquiring authority, it is not the function of the court to review the evidence and arrive at its own independent finding. In the instant case the enquiry has been conducted as per the rule and the learned counsel for the applicant has not taken any plea that the enquiry has been conducted in violation of the departmental rules or principles of natural justice and the only ground taken by the learned counsel for the applicant is that this is a case of no evidence. As discussed above, the impugned orders have been passed based on the evidence produced during the course of enquiry which is accepted by the D.A A perusal of the inquiry proceedings clearly reveals that the inquiry is based on evidence leading to the establishment of charge and therefore, we are unable to accept the contention that this is a case of no evidence.

11. We have also examined the impugned orders passed by the DA, AA & RA. The D.A has considered the defence reply of the applicant sympathetically and has stated that though it is true that with the lapse of such a long period there is possibility of some changes in the statements but in fact the delinquent employee has been found to be present in the punching booth despite the fact that he was not on duty. Accordingly he has imposed the penalty based on the report of the I.O as also on the defence reply of the applicant. Similarly the A.A has considered the appeal submitted by the applicant and has also taken into account the proceedings of the I.O as also the penalty imposed by the D.A. He has stated in the order that even if the statement of the delinquent employee is taken to be true that he had gone to the punching booth with a view to call somebody else, he should have followed the procedure for entering into the booth as he was not on duty. He has also stated that the action of the delinquent employee of punching the card

inspite of not being on duty is a serious matter and accordingly he had upheld the penalty imposed by the D.A. The R.A has vide his order dated 9.11.98 considered the revision petition filed by the applicant and has found that no new points have been raised in the petition. He has also found the allegations made by the applicant against the other employees and officers and staff as baseless. He has also observed that he agrees with the finding of the I.O and the charges as mentioned in the charge sheet stand proved. However, considering the revision petition of the applicant sympathetically he has reduced the penalty of stoppage of increment for three years to stoppage of increment for two years. Under the circumstances, the R.A has passed a reasoned order and we are unable to find any justification to interfere in the order passed by him.

12. As is well settled, the Tribunal can interfere in disciplinary matters only in cases where the departmental proceedings have been conducted in violation of the statutory rules or provisions of natural justice or there is no evidence or the punishment is disproportionate to the charge. In the instant case the main contention of the applicant that this is a case of no evidence has already been discussed in detail in para 10 (supra) and has been found to be untenable. Accordingly, we are of the considered view that the O.A has no merit and deserves to be dismissed.

13. The O.A is accordingly dismissed with no order as to costs.

(M.L. Chauhan)
Member (J)

(G.C. Srivastava)
Member (A)

vtc.