

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 24-03-03

OA 107/2003

Ramji Lal s/o Shri Jai Narain r/o 294, Brij Bihar Colony, Jagatpura, Jaipur, Ex. Fireman-I, Loco Shed, Jaipur.

... Applicant

Versus

1. Union of India through General Manager, North-Western Railway, North-Western Zone, Jaipur.
2. Divisional Railway Manager, North-Western Railway, Jaipur.
3. Chief Mechanical Engineer, W/Rly, Churchgate, Mumbai.
4. Sr. Divisional Mechanical Engineer, North-Western Railway, Jaipur.

... Respondents

CORAM:

HON'BLE MR.H.O.GUPTA, ADM.MEMBER

HON'BLE MR.M.L.CHAUHAN, JUDL.MEMBER

For the Applicant

... Mr. Vikrant Gupta

For the Respondents

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O R D E R

PER HON'BLE MR.M.L.CHAUHAN, JUDL.MEMBER

The applicant, while working as Fireman-I, Loco Shed, Jaipur, was proceeded against in disciplinary proceedings by way of issuance of major penalty under SF-5 of the Railway Servants (Discipline & Appeal) Rules, 1968, on the ground that while performing his duty as Fireman-I with one Shri Ram Lal, Driver, on Train No.4737, he committed misconduct. The gravamen of charge against the applicant was that while driving the train he was under influence of liquor with the result the steam engine has to be replaced by diesel engine which cause resultant delay in running of the train. After conducting inquiry, the disciplinary authority vide its order dated 6.8.92 (Ann.A/10) imposed the penalty of removal from service. This order was affirmed by the appellate authority vide its order dated 30.11.92 (Ann.A/12). The revising authority also confirmed the order of removal vide its order dated 22.1.93 (Ann.A/14). Feeling aggrieved by these orders, passed by different authorities, the applicant filed an Original Application before the Principal Bench of this Tribunal, which was registered as OA 1043/93 and the said OA was dismissed vide order dated 9.10.2001 by observing that the punishment of removal from service has been reduced to compulsory retirement. Against this order, the applicant filed a Review Application, which was allowed on the ground that there was an error on the face of record, and the application was restored to its original number. The matter was again

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heard by the Principal Bench on merit and the Principal Bench vide its order dated 9.10.2001 remitted the case back to the revising authority for passing a detailed speaking order regarding the quantum of punishment in view of the decision taken by the Tribunal in Gajraj Singh's case. Copy of this decision has been annexed with this application as Ann.A/15. The revising authority, after taking into consideration the observations made by the Principal Bench vide its order dated 9.10.2001, has passed a fresh order dated 5.3.2002, which was communicated to the applicant by respondent No.2 by forwarding letter dated 14.3.2002 (Ann.A/1), thereby substituting the penalty of removal from service to that of compulsory retirement in consonance with the observations made by the Tribunal vide its order dated 9.10.2001. Feeling aggrieved by the aforesaid order (Ann.A/1), the applicant filed the present application thereby praying for quashing and setting aside the impugned order (Ann.A/1) with a further direction to the respondents to reinstate the applicant in service w.e.f. 6.8.92, the date of his removal from service, with all consequential benefits.

2. The applicant has challenged the impugned order not only on merit but also on the quantum of punishment as according to the applicant the revising authority has not passed the order in conformity with the order dated 9.10.2001 passed by the Principal Bench. When the matter was listed before this Bench on 12.3.2003, the learned counsel for the applicant was asked by the Bench as to how the present application is maintainable in view of the finding given by the Principal Bench vide its order dated 9.10.2001 while disposing of the OA on merit, and passed the following order :

"Heard the learned counsel for the applicant.

The fact of the case, as made out by the learned counsel for the applicant, is that the applicant having been aggrieved by the order of removal, agitated his grievance before the Principal Bench, New Delhi. The Principal Bench in its judgement observed that penalty of removal is harsh and suggested that possibly a penalty of compulsory retirement would be appropriate and the case was ordered to be remitted to the Revising Authority and the Revising Authority re-considered the case and amend the penalty of removal to compulsory retirement. During the course of arguments, the learned counsel for the applicant was asked to explain how the case is maintainable before this Bench, he submits that he may be given few days time to consult his client and to seek instructions to withdraw this case. Prayer granted.

List this case for orders on 20.3.2003."

When the matter was taken up for admission on 20.3.2003, the learned counsel for the applicant insisted that the matter may be disposed of on

3. We have heard the learned counsel for the applicant. His main contention is that the revising authority has failed to consider the case in right perspective. The case of Shri Gajraj Singh, Fireman-II, who died on 27.10.93, after passing the appellate order dated 27.7.93, cannot be equated with the applicant as the applicant is still alive and as such he could be reinstated in service, whereas said Shri Gajraj Singh, who has died, could not have been reinstated in service. He further argued that the punishing authority has imposed totally disproportionate penalty upon the applicant which cannot be justified and which is not commensurate as looking to the misconduct and misbehaviour alleged against the applicant.

4. We have considered the submissions made by the learned counsel for the applicant which, according to us, deserve outright rejection in view of the reasons given hereunder. As can be seen from the order dated 9.10.2001, passed by the Principal Bench in OA 1043/93, copy of which has been annexed as Ann.A/15 with the present application, the learned counsel for the applicant had argued the case only on the ground that in the case of co-defaulter of the applicant, Gajraj Singh, who was functioning in the same engine as Fireman-II and against whom the allegations of being intoxicated resulting in fire from the engine has been alleged and subsequently died during the pendency of the Review Petition, the penalty of removal from service has been modified and reduced to that of compulsory retirement and the case of the applicant is required to be remitted back to the respondents for reconsideration in the matter of quantum of punishment on the basis of law laid down by the Apex Court in the case of B.C.Chaturvedi v. Union of India & Ors., (JF 1995 (8) SC 65). This contention can be noticed from para-2 of the judgement rendered by the Principal Bench. On the basis of this averment, the Principal Bench while disposing of the OA, in para-4, held as under :

"4. We have carefully considered the rival contentions of the parties. The present OA is disposed of on the basis of the decision of the Hon'ble Apex Court in B.C.Chaturvedi's case (supra), wherein it has been observed that if Tribunal feels that the punishment is shockingly dis-proportionate, it should remand back to the respondents for reconsideration on quantum of punishment. We also find that the co-defaulter of the applicant, who has been charged for the same misconduct has been on revision by his widow awarded the punishment of compulsory retirement, entitling her widow of retiral benefits. Now meeting out similar treatment to the applicant, who is identically situated would offend the principles of equality enshrined in Article 14 of the Constitution of India. Applicant in the present case has already completed a qualifying service of 18 years. The respondents should reconsider the proportionality of punishment. As such the orders passed in revision are quashed and set aside. The matter

is remanded back to the Revisional Authority for passing a detailed and speaking order regarding the quantum of punishment in view of the decision taken by this Tribunal in Gajraj Singh's case (supra) as well as decision taken in the case of co-delinquent Gajraj Singh, within a period of three months from the date of receipt of a copy of this order. No costs."

From the portion, as quoted above, it can be seen that the applicant has argued the case only on the point of quantum of punishment and similar treatment to be meted out to him while awarding punishment as has been awarded in the case of Gajraj Singh. The Principal Bench while noticing this argument remitted the matter back to the revising authority for passing detailed and speaking order regarding quantum of punishment in conformity with the decision taken by the Bench in the case of Gajraj Singh. The revising authority has now passed the impugned order (Ann.A/1), which is in conformity with the observations made by the Principal Bench, as quoted above. This decision has attained finality. It is not permissible for us to reconsider the matter again on merit and also on the ground of penalty being disproportionate to the gravity of offence committed by the applicant. Thus, we are of the view that the present application is wholly misconceived and amounts to abuse of process of this court.

5. Accordingly, the present OA is dismissed at the admission stage with no order as to costs.


(M.L.CHAUHAN)

MEMBER (J)


(H.O.GUPTA)

MEMBER (A)