

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR.

O.A.NO.431/2003

December 22, 2004.

CORAM : HON'BLE MR.KUIDIP SINGH, VICE CHAIRMAN &
HON'BLE MR.A.K.BHANDARI, MEMBER (ADM.)

Sujan son of Shri Joharia, aged about 55 years, resident of Gang Chall, Nagda and presently working as Gangman Unit No.1, Nagda, West-Central Railway, Kota Division, Kota.

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Applicant

By : Mr.C.B.Sharma, Advocate.

Versus

1. Union of India through General Manager, West-Central Railway, Jabalpur.
2. Additional Divisional Railway Manager, West-Central Railway, Kota Division, Kota.
3. Sr.Divisional Engineer (South) West-Central Railway, Kota.
4. Assistant Engineer (South) West-Central Railway, Shamgarh (Kota).

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Respondents

By : Mr.N.C.Goyal, Advocate.

O R D E R(ORAL)

KUIDIP SINGH, VC

The applicant who is working as Gangman in the Railways was proceeded departmentally by charge sheet dated 19.1.1999 (Annexure A-4) on the allegations that on 9.1.1999, the applicant was doing the work of through packing of the sleepers, his superior Shri R.C.Tomar, reached the site for checking the work. On being pointed out some defect, the applicant instead of removing the same, behaved in a unmannered way and he indulged in abusing and indecent behaviour with his superior i.e. when he was checking the work of the other Ga gmans, the applicant came from ~~the~~ behind and hit ^{with a} ~~the~~ spade on the head of Shri Tomar and a severe injury was caused on the hand of Shri Tomar. Thereafter the applicant ran away from the side. Shri Tomar

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was taken to Hospital where he was medically examined and he was given 5 stitches on his head. Thus, the applicant was alleged to have violated rule 3 (I)(i)(ii)&(ii) of the Railway Servants (Conduct) Rules, 1966. Enquiry was held against the applicant. During the enquiry the applicant was found guilty of the charges and consequently the disciplinary authority passed the order of removal from service, against the applicant. However, on appeal the appellate authority passed an order modifying the order of penalty and the applicant was ordered to be imposed the penalty of reduction of pay of the applicant at the minimum stage for 5 years with cumulative effect as per rule 6 of the Railway Servant (Discipline & Appeal) Rules, 1968 and he was ordered to join his duties.

2. The applicant has challenged the impugned order pleading that he has not committed any misconduct. It has not been proved that he assaulted Shri Tomar. He has been denied opportunity for Defence Assistant and to cross the witnesses which is against the principles of natural justice and also against the procedure for conducting enquiries. There is no evidence against him in support of charges and he has been punished inspite of the fact that he cleared his position from time to time before the competent authorities.

3. The respondents who are contesting the O.A. submit that the applicant had committed misconduct and after serving him with charge sheet and after following due procedure, he has been held guilty of the charge and stands rightly punished. Earlier the applicant was imposed the punishment of removal from service, though this was modified by the appellate authority and the applicant was ordered to be fixed in the minimum of the pay scale of the post with minimum pay for a period of five years. It is denied that it is a case of no evidence. It is also denied that the applicant was not granted any opportunity to engage his defence counsel. It is further stated that it is also not a case of no evidence at all. There is sufficient evidence on record which justifies the finding recorded against the applicant of guilty of misconduct.

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

5. From the perusal of Annexure R-1, we find that during the ~~conduct of~~^{the} enquiry, the enquiry officer had specifically put a question as to why, in response to the notice, the applicant had not brought his defence assistant, the applicant categorically replied that he does not want any defence assistant and he will fight his case himself. Thus, it is clear that an opportunity was provided to the applicant to engage his defence assistant but the applicant chose not to avail of such chance and thus he cannot be allowed to turn around and raise a grievance that he was not provided with defence assistant.

6. In so far as the plea of the applicant that it is a case of no evidence, the learned counsel for the applicant tried to convince that in the charge sheet issued to the applicant, the witnesses cited were only Shri Ram Ratan and Ganga Ram but in the enquiry report, besides them there are two more witnesses namely Hem Raj and Kailash Chander who have been examined and similarly medical report of R.C. Tomar, which is not a relied upon document in the charge sheet, has also been taken into consideration. All these goes to show that the enquiry officer has taken into consideration ~~extraneous~~ material to prove the charges against the applicant and thus the proceedings stand vitiated. As far as this aspect of the matter is concerned, we find from the enquiry report placed at page No.26, Annexure A-8, that S/Shri Hem Raj and Kailash Shri Chandra had been examined besides two witnesses namely Ram Ratan and Ganga Ram. Witnesses Hem Raj and Kailash S.Chandra are the witnesses who were produced in defence evidenc by the applicant himself so, the applicant cannot say that ~~these~~ witnesses have been examined by the prosecution. The only objection can be taken to the statement of Shri J.K.Gupta and the medica-1 report. But as regards the statement of Ram Ratan and Ganga Ram are concerned, Shri Ram Ratan has categorically stated that Shri Tomar was assaulted with the spade. Shri Ganga Ram says that he had seen blood oozing out of

head of Shri Tomar. It is but essential that Shri Tomar must have been taken to the Hospital and medically examined. So, the reliance of enquiry officer on the medical report does not cause any prejudice to the defence of the applicant as after factum of actual assault, there is enough material against the applicant in the form of statements of the witnesses including statement of Shri Ram Ratan. Thus, we find that it cannot be said that present is a case of no evidence or any extraneous ~~material/into consideration~~ ^{has been taken} to the prejudice of the applicant. So, the plea taken by the applicant on this aspect is not sustainable.

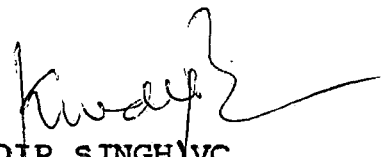
7. Besides the above, learned counsel for the applicant submitted that the pay scale of the Gangman is Rs.2610-4000. The applicant has been awarded punishment where by he has been reduced to a lower rank and his increments have also been reduced for a period of 5 years and he has been fixed at the stage of Rs.2,500/-. Even though, there is nothing on record to prove that the applicant pay of the applicant has been fixed in the pay scale of Rs.2,500/-, the order passed by the appellate authority only says that the applicant be fixed in the minimum of the pay scale and at minimum pay. Learned counsel for the applicant submits that this minimum pay scale has been interpreted by the department as if the minimum pay scale for a Group 'D' post whereas the post of Gangman, ~~whereas~~ ^{whereas} ~~xx~~ has been placed in the pay scale of Rs.2610-4000, ~~whereas~~ ^{whereas} the applicant has been reduced at the lowest of the pay scale of Gangman itself. On this, learned counsel for the respondents submitted that if the order has been interpreted by the Department erroneously, he shall see that it is rectified and the pay of the applicant is fixed on the minimum of the pay scale of the post of Gangman and not below that. So, in view of the statement made by the learned counsel for the respondents, we find that this case cannot be termed to be a case of double jeopardy or awarding double punishment to the applicant. It is only a case of interpretation of the operative portion of the appellate order passed by the appellate authority and since

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the learned counsel for the respondents has made a statement at the bar that applicant shall be fixed at the minimum of the pay in the pay scale meant for the post of Gangman which the applicant is drawing, so nothing remains in the O.A. So, this O.A. is disposed of with a direction that if there is any mis-interpretation of the operative portion of the order of the appellate authority in fixing the pay of the applicant, on account of which the applicant has been fixed in the lower pay scale, such mistake shall be rectified within a period of three months from the date of receipt of copy of this order.

8. Thus, while holding that there is no merits in the Original Application ^{O.A. stands disposed of} and the same is dismissed, ~~and~~ with the above mentioned directions. No costs.


(A.K. BHANDARI) AM


(KULDIP SINGH) VC

December 22, 2004.

HC*