

**Central Administrative Tribunal
Jabalpur Bench**

OA No.34/05

Thursday this the 6th day of April, 2006.

C O R A M

Hon'ble Mr.M.A.Khan, Vice Chairman

Hon'ble Dr.G.C.Srivastava, Vice Chairman

C.L.Soni

Son of Shri Shyam Sunder Soni

R/o C/o B.K.Sharma

C.L.Pathak Ward

East Bhatta Katni

District Jabalpur.

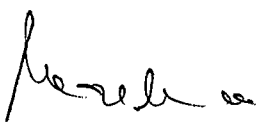
Applicant

(By advocate Mr.R.L.Gupta)

Versus

1. Union of India through
Secretary
Ministry of Railways
Railway Board
New Delhi.
2. The General Manager
West Central Railway
Jabalpur.
3. The Divisional Railway Manager
DAR Sec.
Jabalpur.Howbagh.
4. The Senior Divisional Operating
Manager, West Central Railway
Jabalpur.
5. Shri S.N.Gupta
Exs.AOM (Goods)
Divisional Operating Manager
Inquiry Officer
West Central Railway
Jabalpur.

Respondents



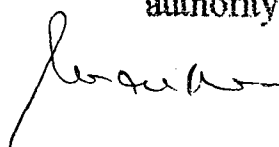
(By advocate Mr.N.S.Ruprah)

ORDER

By M.A.Khan, Vice Chairman

The applicant is challenging the order of the Disciplinary Authority whereby in a disciplinary proceedings under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 (hereinafter called the Rules 1968), a penalty of reduction in rank to the lower grade of Rs.1400-2300 for 3 years fixing his basic at Rs.1400 (RPS) on completion of 3 years has been imposed on the applicant.

2. The applicant joined the Railway Administration as Points Man w.e.f 10.10.1967 and in due course was promoted to the post of Chief Train Clerk on 1.10.92. Vide memo-dated 5.6.95, the respondents initiated disciplinary proceedings against the applicant for a major penalty under Rule 9 of the Rules, 1968. He was charged with serious misconduct, dereliction of duty, tampering of official records and causing huge revenue loss to the Railways. The applicant refuted the allegations and participated in the enquiry conducted against him. On conclusion of the proceedings, the enquiry officer submitted his report holding that the charges served on the applicant have been proved. The Disciplinary Authority agreed with the findings of the enquiry officer and vide order dated 8.5.1997 (Annexure A2) imposed the penalty aforementioned. The applicant preferred an appeal against the order, which was dismissed by the Appellate Authority by a cryptic order, "I find no reason for any change". Applicant filed an OA No.799/97 for setting aside the appellate order. The Tribunal allowed the OA and set aside the order of the appellate authority and remanded the appeal to the appellate authority for deciding it afresh by passing a reasoned and speaking order. The appellate authority in compliance of the order passed an order-dated 20.1.2003 (Annexure A5) again dismissing the appeal by a detailed, reasoned and speaking order. The applicant then filed a revision against the order of the appellate authority, which was not decided. Accordingly the applicant filed



another OA No.252/04 but during the pendency of the said OA, the revisional authority dismissed the revision by an order-dated 25.6.2004 (Annexure A6). The OA was dismissed as withdrawn by order-dated 2.11.2004 with liberty to the applicant to file a substantive petition, if still aggrieved by the order of the revisional authority. Applicant has thereafter filed the present OA. The orders of the Disciplinary, Appellate and Revisional authorities are now impugned in the present OA.

3. The applicant has assailed the order of the revisional authority on the ground that it is not a speaking and reasoned order and the points raised by the applicant have not been discussed in it. It is submitted that the applicant had contended in his appeal that it was not his duty to maintain the registers as well as determination of demurrage charges but the same was related to the officials of Commercial Branch, Acting Chief Goods Supervisor/Loading Clerk on duty and their records were also checked by an Auditor on 12.11.1994 at Goods Shed Office, who could not detect the criminal conspiracy.

4. The respondents contested the OA and have stated that the principles of natural justice have been followed by the enquiry officer during the course of the enquiry and the orders of the disciplinary, appellate and revisional authorities, which are challenged in the present OA, do not suffer from any legal infirmity. It is submitted that the order of the revisional authority showed that it was issued after due application of mind.

5. We have heard the learned counsel for the parties.

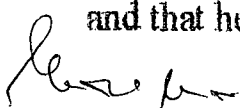
6. Before us, the arguments of the learned counsel for the applicant are two fold. Firstly, that the order of the revisional authority dated 25.6.2004 (A-6) is not a reasoned and speaking order and it shows that there was no application of mind on the facts which were stated by the applicant in the revision petition. Secondly, it was not the duty of the applicant to maintain the registers as well as determination of demurrage charges and that it was the duty and responsibility of the staff of the Commercial Branch, the Acting Chief

He is here

Goods Supervisor/Loading Clerk on duty and their records were also checked by an Auditor and therefore the applicant has been erroneously held responsible for the alleged misconduct.

7. It is by now settled by catena of judgments of the Hon'ble Supreme Court that the Tribunal in exercising the power of judicial review reviews the manner in which the decision has been arrived at and does not review the decision itself. The object of judicial review is to consider whether the delinquent has been given a fair hearing or not and not to decide that the decision of the administrative authority is necessarily correct in the eyes of the Court. The Tribunal does not act as an appellate authority and also does not appreciate or re-appreciate or consider the adequacy or inadequacy of evidence. The scope of the power of the Tribunal is very limited. It can interfere with the order of the disciplinary authority when the disciplinary proceedings and the order of the disciplinary authorities suffer from material irregularities which have resulted in serious prejudice to the delinquent in proving his defence in the case or when the order^{of} the disciplinary authority is based on no evidence or it may be called as perverse or where extraneous factors have been taken into consideration or the order has been passed on the dictates of the superior authorities (B.C.Chaturvedi Vs. Union of India) (1995) 6 SCC 749, (1996) 32 ATC 44.

8. In the background of the above principles of law, the facts of the present case can be examined. The applicant has stated that the finding of the enquiry officer and the disciplinary authority that it was the duty of the applicant to maintain the registers and records on the basis of which demurrage charges were levied is absolutely incorrect and that it was not the duty of the applicant. Learned counsel for the respondents controverted the arguments of the applicant and submitted that the finding of the disciplinary authority is that the applicant was mainly responsible for the maintenance of such records and that he had committed a grave and serious misconduct, dereliction



of duty, fabrication and falsification of the records, which had resulted in the railway administration suffering a huge revenue loss. It is submitted that the finding recorded by the enquiry officer and the disciplinary authority was based on the evidence and the Tribunal in its power of judicial review cannot reappreciate the evidence. It has not been denied on behalf of the applicant that the charges on which the enquiry was held were grave and serious misconducts committed by the applicant and the enquiry was conducted in accordance with the procedure laid down under Rules 1968. It is not stated that the finding of the enquiry officer or the disciplinary authority was not based on evidence or that it was perverse. The Tribunal does not exercise the power of judicial review to reappreciate the evidence recorded before the enquiry officer and records his own finding on the relevant question. Therefore the second argument of the counsel for the respondents is devoid of any merit and has to be rejected.

9. Reverting to the first argument advanced on behalf of the applicant that the order of the revisional authority dated 25.6.2004 (A-6) is bereft of any reasoning and it shows that there was no application of mind, we have carefully read the order. It is true that the order is very short but it does show that the revisional authority had considered the order of the appellate authority and the contentions raised by the applicant in his appeal and the revisional authority was of the view that there was no new material and proof submitted by the applicant to throw new light on the matter and that there was nothing which warranted any interference with the order of the appellate authority. So he agreed with the order of the appellate authority, copy of which dated 20.1.2003 has also been filed as A-5 giving the reasons. Of course, a revision being a second appeal, the revisional authority should have been a little more elaborate in discussing the contentions of the applicant and the decision thereon but the order does show application of mind by the revisional authority on the relevant material facts, which required to be considered in an appeal

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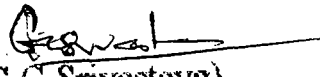
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as per Rule 25 of the Rules 1968. We therefore do not find merit in this argument also.

10. No other point has been urged before us for consideration.

11. The OA has no merit and is accordingly dismissed. No costs.


(Dr. G.C. Srivastava)
Vice Chairman


(M.A. Khan)
Vice Chairman

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पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....

प्रतिलिपि अद्योक्षित:-

- (1) सचिव, उच्च न्यायालय नगर एस.सि.एन, जबलपुर
- (2) अध्यक्ष, उच्च न्यायालय नगर एस.सि.एन, जबलपुर
- (3) प्रथम न्यायाधीश/न्यायाधीश, उच्च न्यायालय नगर एस.सि.एन, जबलपुर
- (4) न्यायाधीश, उच्च न्यायालय नगर एस.सि.एन, जबलपुर

सूचना एवं आवश्यक कार्यवाही हेतु

उप सचिव


R.L. Gupta D.D. 23/8
M.S. R. Gupta
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