

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

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Original Application No. 596/01

Jabalpur, this the 24th day of June, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Member (J)

Sh. Mohd. Sanim Khan,
s/o Shri Naseem Khan,
Aged 53 years,
R/o Near National School,
Mohalla Ghasipura,
Guna (M.P.)

...Applicant

(By Advocate: Smt. S.Menon through Sh. P.L.Shrivastava)

-versus-

1. Union of India through
General Manager,
Central Railway,
Mumbai.
2. Additional Divisional Railway Manager,
Central Railway,
Bhusawal.
3. Divisional Commercial Manager,
Central Railway,
Bhusawal.

...Respondents

(By Advocate: Shri M.N.Banerjee)

O R D E R

By Madan Mohan, Member (Judicial) -


By filing the present Original Application, the applicant has sought the following main relief:

- 1) to quash the Memorandum of charges as also the proceedings thereof, resulting in the issuance of order of penalty dated 2.8.2000 (A-7) as also the order dated 17.1.2001 passed by respondent no. 2 (A-9). Further to direct the respondents to reinstate the applicant with full back wages with all other ancillary and consequential service benefits.
2. The brief facts of the case are that at the relevant time, the applicant was functioning on the post of T.T.E. He was issued with a Memorandum of Chargesheet dated 6.3.1996, alleging therein that the applicant while performing his duty on 4.11.1995 committed serious misconduct. On the receipt of the said Memorandum of Chargesheet, he demanded

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certain documents but were not supplied to him. The enquiry officer conducted the enquiry in a most whimsical manner contrary to the conduct rules applicable to the railway servants. The applicant was asked to submit his written defence which he accordingly did on 10.6.1999. He was deprived of an opportunity to present his defence. The enquiry officer submitted his enquiry report holding all the charges proved except charge no. 2. The enquiry officer has not been able to appreciate the contentions of the applicant and, therefore, findings are wholly perverse and lopsided. The applicant submitted a detailed representation dated nil (A/6). The respondent no. 3 without proper appreciation of the material on record came to the conclusion that the guilt has brought home against the applicant and imposed a penalty of compulsory retirement from the Railway service, vide its order dated 2.8.2000(A/7). Aggrieved by the said order of the disciplinary authority the applicant preferred an appeal to the appellate authority contending that no Presenting Officer was appointed and the enquiry officer was under the influence of the management. It was further submitted that no opportunity of defence was granted to him. On the contrary, the enquiry officer directly asked the applicant to submit the written brief. Before imposing a major penalty, it is incumbent upon the authority concerned to follow the procedure envisaged under Part IV of the Railway Servants(Discipline & Appeal) Rules. Hence, the enquiry cannot be said to be in accordance with the rules. The disciplinary authority has not assigned any cogent reason for drawing the conclusion of imposition of major penalty. The respondent no. 2 vide its order dated 17.1.2001 has drawn a conclusion that the penalty that has come to be imposed upon the applicant is perfectly justified and no interference is called for. The manner in which the departmental enquiry was conducted is not only illegal, improper but wholly unjustified. Hence the present Original Application has been filed seeking the aforesaid reliefs.



3. Heard the learned counsel for both the parties and carefully perused the material available on record.

4. It is argued on behalf of the applicant that the report of the Enquiry officer is against the material on record and the same has not been conducted in accordance with rules prescribed therefor. Shri Ashok Kumar Sharma was not produced while he was the main witness. Relevant documents were also not supplied to the applicant and he was also not given opportunity to cross-examine the material witnesses. It is further argued that no presenting officer was appointed. He could not file his defence properly for want of required documents which were not supplied to him. The charges levelled against the applicants are not proved and, therefore, the orders passed by the disciplinary authority and that of the appellate authority are non-speaking orders and deserve to be set aside.

5. In reply, learned counsel for the respondents argued that all the charges levelled against the applicant were well established except charge no. 2. The charges levelled against the applicant are very serious in nature and pertains to moral purpitude and by these acts and commission the applicant failed to maintain absolute integrity, devotion to the duty and acted in a manner unbecoming of a railway servant and thereby contravened the provisions of Railway Service Conduct Rules, 1966. It is further argued that the applicant had hidden Rs. 210/- in the socks of his right foot which had been earned by him illegally while on duty and the applicant could not explain this fact. The applicant was given opportunity of hearing as he submitted representation against the enquiry report and preferred an appeal against the orders passed by the disciplinary authority. He also attended the enquiry proceedings on several dates fixed for the same. It is further argued that relevant documents were supplied to him as has been mentioned in para 9 of the reply. Hence, principles of natural justice have been



properly followed. The applicant was also given personal hearing on 2.3.2000 and thereafter careful examination of the case file related relevant documents, enquiry report, defence note and representation to D.E., passed a detailed and reasoned order on 29.7.2000 imposing the penalty of compulsory retirement which was conveyed to the applicant on 2.8.2000 (A/7). This is not a case of 'no evidence'. As out of four charges, three stood proved, hence no irregularity and illegality has been committed by the respondents in passing the impugned orders and also there is no violation of principle of natural justice.

6. After hearing the learned counsel for both the parties and careful perusal of the record, we find that due opportunity of hearing was given to the applicant as he has submitted his representation against the enquiry report and also filed an appeal against the order of the disciplinary authority before the appellate authority and the concerned authorities after due consideration of the contentions of the applicant passed the impugned orders. We have seen A/5 which shows that 24 days were fixed during the enquiry and the applicant attended on all the occasions except 2-3 occasions. Hence, it cannot be said that no opportunity was given to the applicant and that the departmental enquiry was conducted in a very whimsical manner. Relevant documents were also supplied to the applicant. We have also gone through the orders passed by the disciplinary authority and the appellate authority and found that these are speaking orders. We have also seen that the charge "he had hidden Rs. 210/- under the socks of his right foot which had been earned by him illegally while on duty" is very serious relating to moral turpitude and which stood proved as the applicant could not explain about the said money. This is also not a case of 'no evidence'. In view of the settled position of law, the Tribunals/Courts cannot re-appraise the evidence and also cannot go into the



quantum of punishment.

7. In the light of the observations made above we do not find any infirmity in the impugned orders passed by the concerned authorities and therefore the O.A. fails and is accordingly dismissed. No costs.



(Madan Mohan)
Member (Judicial)



(M.P. Singh)
Vice Chairman

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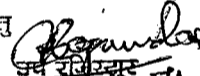
पृष्ठांकन सं ओ/व्या.....जबलपुर, दि.....

प्रतिनिधि अद्योषित:-

- (1) सचिव, उच्च न्यायालय दार एसोसिएशन, जबलपुर
- (2) आवेदक श्री/श्रीमती/व्यु.....के काउंसल
- (3) प्रत्यर्थी श्री/श्रीमती/व्यु.....के काउंसल
- (4) वंशपाल, को.प्र.ओ., जबलपुर न्यायपीठ सूचना एवं आवश्यक कार्यवाही हेतु

Sud. S. Menon
M.N. Banerjee

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