IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JABALPUR BENCH

CIRCUIT AT INDORE

Date of Decision :2.9.2003

O.A. No. 105/2000.

Subhash Bhagwandas Agarwal, Senior Technician (PSI),
S. Divl. Elect. Engineer (TRD), Ratlam.

... Applicant.

v e r s u s

1. Union of India, through General Manager, Western Rly., Churchgate - Bombay.
2. Chief Electrical Engineer, Western Rly., H. Qrs. Office, Churchgate, Station Bldg. Churchgate - Bombay.
3. Divl. Rly. Manager, Western Rly., Do-Batti, Ratlam.

... Respondents.

Shri S. L. Vishwakarma counsel for the applicant.
Shri Y.I. Gupta, counsel for the respondents.

CORAM

Hon'ble Mr. V. K. Majotra, Administrative Member.
Hon'ble Mr. J. K. Kaushik, Judicial Member.

: O R D E R :

(per Hon'ble Mr. J. K. Kaushik)

Shri Subhash Bhagwandas Agarwal has assailed the impugned orders dated 15.04.1999 (Annexure A-1), 01.09.1992 (Annexure A-2) and order dated 24.12.1999 (Annexure A-3), wherein the applicant has been imposed a penalty of withholding the increment for a period of 3 years without cumulative effect, ~~imposed~~ by the Disciplinary Authority and the same have been confirmed by the Appellate Authority. and the Revising Authority.

2. Filtering out the superfluities, the necessary facts relevant to resolve the controvery involved in this case as depicted from the pleadings are that the applicant while working on the post of Senior Technician under Senior DEE (TRD), Ratlam, was issued with a charge sheet on 08.12.1998 (Annexure A-6). The applicant submitted the statement of defence to the same stating clearly that the so called complaint dated 02.11.1998 was a false and fabricated complaint. The allegation against the applicant was that he was found gambling and caught red handed along with his colleagues. He has also threatened Shri Verma, J.E., for making a report against him. The Disciplinary Authority vide order dated 15.04.1999 has imposed the penalty of withholding of the increment for a period of 3 years without cumulative effect.

3. The further case of the applicant is that he had submitted exhaustive appeal to the Appellate Authority as well as filed a Revision Petition but the same have been rejected vide Annexure A-2 and Annexure A-3. The OA has been filed on multiple grounds and we are refraining from narrating all of them here and would be dealing with the grounds which have been stressed during the arguments by the learned counsel for the applicant in the later part of this order.

4. The respondents have contested the case and have filed an exhaustive reply to the OA. It has been averred that the applicant's letter dated 29.10.1998 was received by the AEE and the enclosure therein do not reveal that any false complaints were made against him. The other documents filed by the applicant are subsequent and they are also written explanation called and submitted about routine work. The

incident was immediately reported on phone to the concerned officer. The concerned officer was not satisfied with the explanation and found the charges as proved and, therefore, the Disciplinary Authority after considering the explanation imposed the penalty by passing a speaking order, which has been upheld by the Appellate Authority as well as by the Revising Authority. Other facts and grounds have been generally denied.

5. A short rejoinder has also been filed on behalf of the applicant.

6. We have heard the learned counsel for the parties and have bestowed our earnest consideration to the pleadings and the records of this case.

7. The respondents have been fair enough to make available the original records relevant to the disciplinary case at the time of hearing.

8. The Learned Counsel for the applicant has straneously stressed only on the ground that it is a case of no evidence and the applicant has not committed any mis-conduct. He has also submitted that he submitted the explanation and with the explanation he had submitted his proof that no incident whatsoever had taken place and even the persons who are alleged to be gambling along with the applicant were not present at the place of the alleged incident. Despite this, his representation has been thrown overboard and none of his contentions have been taken into consideration. Similar is the position in respect of the orders which have been passed by the Appellate and the Revising Authority.

9. On the contrary, learned counsel for the respondents has reiterated their defence as set out in the reply and have submitted that the applicant had committed a serious mis-conduct and he has been rightly penalised after following the due process established by law. All the authorities have applied their mind and passed the impugned orders. There is absolutely no illegality or impropriety in their action.

10. We have considered the rival contentions submitted on behalf of both the parties. As regards the interference in the matter of disciplinary proceedings, the scope of judicial review is well settled by now. The judicial review is not an appeal from a decision but a review of the manner in which a decision is made. The power of judicial review is meant to ensure that proper procedure was followed and not to ensure that the conclusion which the authority reaches necessarily correct as per the Court. The Disciplinary Authority is the soldier of facts. While accelerating the power of the judicial review the High Court or Tribunal does not act like a Court of appeal. It does not have the power to appreciate or reappreciate the actual aspect and substitute its own judgement for that Competent Authority. It is only when the conclusion by the consideration of evidence, reached by the authority concerned is purverse or suffers from patent error on the fact of record or is based on no evidence at all that the intervention of the Court may be warranted. Keeping in this principle, we would advert to the facts of this case.

11. We have carefully perused the order passed by the Disciplinary Authority. The order no doubt makes a mention that the Disciplinary Authority has mentioned that he has

carefully seen the evidence and the representation of the applicant and has held that the applicant has guilty of the charges. But this order does not discuss or give any specific reason as to whether he accepts the defence version or rejects the same. The Disciplinary Authority has not at all considered the exhaustive statement of defence which was submitted by him. We were also taken to the very defence statement by the learned counsel for the applicant and certain Annexures which have been annexed thereto were got perused clearly indicate that the persons who are said to be playing gambling with the applicant were not available at the very sight. The so called speaking order passed by the Disciplinary Authority does not disclose any evidence in support of the charges levelled against the applicant. It only talks about the representation and the statements annexed thereto but is silent on the point as to what was the evidence against the applicant in support of the charges. The prosecution is required to prove the charges and stand on its own legs and it is not for the defence to disprove the charges. In the present case, we find that the prosecution has totally failed to discharge his pious duty. The irrestible conclusion would be that there is no evidence in support of the charges, levelled against the applicant. Thus, we can safely conclude that the Disciplinary Authority has acted with a close mind and we do not find that there is any evidence in support of the charges levelled against the applicant and, therefore, the contention of the learned counsel for the applicant that it is a case of no evidence is well founded and has our concurrence. Otherwise also, the orders while imposing the minor penalty in cases of Rule 11 of Railway Servants (Disciplinary & Appeal) Rules, 1965, the Disciplinary Authorities are required to pass a speaking order and this

proposition of law has been laid down by one of the Bench of this Tribunal in the case of Sanjay Kumar Bagchi vs. UOI & Ors., SLJ 2003 (2) CAT 392.

12. In the cases of no evidence the law is well settled by a judgement of a Constitution Bench of the Supreme Court in the case of Union of India v. H. C. Goel AIR 1964 SC 364, wherein their Lordships has held that in case of no evidence no case can be said to be made out for punishing the delinquent employee and it has also been held that a writ of certiorari can be issued in such cases. Para 20 of the relevant observation is as under :-

> " Although the order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order, nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charges framed against him are in the nature of quasi-judicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings, which is the basis of his dismissal, is based on no evidence."

13. Taking a comprehensive view in the matter, the order passed by the Disciplinary Authority cannot be sustained and the same deserves to be quashed. Once we have come to the conclusion that the very initial order is bad in law, the subsequent orders passed by Appellate and Revisioning Authority also cannot stand since such authorities cannot legalise an illegal order by passing a legal order inasmuch as an illegal order does not exist in the eye of law in view of the verdict of Supreme Court in AIR 1976 SC 1899.

14. In view of what has been said and discussed above, the OA merits acceptance and the same stands allowed. The impugned orders dated 15.04.1999 (Annexure A-1), 01.09.92 (Annexure A-2) and 24.12.1999 (Annexure A-3) are hereby quashed and the applicant shall be entitled to all the consequential benefits, as if, such orders were never in existence. However, in the facts and circumstances, of this case, the parties are directed to bear their own costs.

(J. K. KAUSHIK)
MEMBER (J)

(V. K. MAJOTRA)
MEMBER (A)

पृष्ठांकन सं ओ/न्या......................जबलपुर, दि................
प्रतिलिपि अग्रेषित :–
(1) सचिव, उच्च न्यायालय बार एसोसिएशन, जबलपुर
(2) आवेदक श्री/श्रीमती/कु. .... के काउंसल S L Vishwakarma Adv. Ratlam
(3) प्रत्यर्थी श्री/श्रीमती/कु .... के काउंसल Y I Mehta Adv. Indore
(4) ग्रंथपाल, के.प्र.अ., जबलपुर न्यायपीठ
सूचना एवं आवश्यक कार्यवाही हेतु

Srivastava
उप रजिस्ट्रार 16/9/03

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