

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH.

CIRCUIT COURT SITTING AT BILASPUR (CHHATTISGARH)

Original Application No. 17 of 1999

Bilaspur, this the 24th day of September, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri Anand Kumar Bhatt, Administrative Member

Prakash, S/o. Late Gajadhar,
aged 35 years, last employed as
Safaiwala/Khalasi Helper under
Loco Foreman, S.E. Railway, Shahdol
(MP), resident of Ambedkar Colony,
Near Kiran Talkies, Shahdol
(M.P.). 484001.

... Applicant

(By Advocate - Shri V. Tripathi)

Versus

1. Union of India represented through the General Manager, South Eastern Railway, Garden Reach, Calcutta-43.
2. Divisional Railway Manager, S.E. Railway, Bilaspur-RS, (MP).
3. Senior Divisional Mechanical Engineer, S.E. Railway, Bilaspur-RS. (M.P.).

... Respondents

(By Advocate - Shri M.N. Banerjee)

O R D E R (Oral)

Justice V.S. Aggarwal -

The applicant was a Safaiwala working with South Eastern Railway, Bilaspur. The statements of imputation of misconduct against the applicant are -

"That the said Sri Prakash at around 15.30 Hrs. on 13-9-97 while ASTE/SDL and ARM/SDL were discussing the matter at residence of the ASTE for negotiation with the union representative and officers for blockade, for non-provision of telephone to the Loco Foreman, Sri Prakash Safaiwala came in the residence of ASTE in taxicated(sic) condition and began abusing and threatened the ASTE/SDL.

By this act Sri Prakash S/Wala L/SDL contravened the provision of Rules 3(i)(ii)(iii) of R.S.(Conduct) Rules, 1966 and thereby rendered himself liable for disciplinary action under RS(D&A)Rules, 1968 amended from time to time".

2. The enquiry has been held and in pursuance thereto

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the enquiry officer ^{recorded} written a finding that (a) the applicant was in an intoxicated condition when he went to the house of the officer, and (b) he used abusive language. The disciplinary authority keeping in view the said finding passed an order removing the applicant from service. In appeal the said order has been upheld. Hence the present application seeking quashing of the orders passed by the disciplinary as well as the appellate authorities.

3. The learned counsel of the applicant has raised the following pertinent arguments - (a) the applicant was not allowed sufficient time to engage a defence assistant; (b) the enquiry officer had discharged the role of a prosecutor as well as the enquiry officer and this has caused prejudice to the applicant; (c) it is a case of no evidence; and finally (d) that the penalty awarded is disproportionate to the alleged dereliction of duty on the part of the applicant. Needless to state that the respondents have contested the petition.

4. So far as the first plea of the applicant is concerned that he was not allowed to have the facility of defence assistant is concerned, during the course of submission, we were informed that there is ^{precious little on record} precisely a ^{take} ~~rebuttal~~ in regard to the fact that the applicant has asked for assistance of defence assistant or that thereupon the said request was not allowed. When the applicant himself had not asked for the defence assistant, it is too late in the day for the applicant to ^{take} ~~rebuttal~~ up as a ground to assail the impugned order.

5. Reverting to the second argument that the enquiry officer had discharged the functions of the prosecutor and the enquiry officer, we deem it necessary at the out set to mention that if the enquiry officer does take up the case as if he is a presenting officer and the prosecutor, in that event this Tribunal may interfere. What is the position

Ms Ag

herein? An appraisal of the statements recorded by the enquiry officer clearly indicates that he was not indulged in any ~~excessive~~ cross-examination, much less to state excessive cross-examination. When answers were given straight forward, there was nothing for the enquiry officer to cross-examine the witnesses. In this process, no prejudice is caused to the applicant to press for the said plea.

6. Our attention has been drawn by the learned counsel to the decision of this Tribunal in OA 463 of 1996 decided on 30.4.2002 in the case of Sattar Khan Vs. Union of India. A perusal of the said decision shows therein the enquiry officer had cross-examined the witnesses at length. It was this fact which prompted this Tribunal at Jabalpur to hold that he had discharged the functions of both enquiry as well as the presenting officer, and proceedings were quashed. We have already referred to above certain basic facts, keeping in view that, in the present case, the plea of the applicant on that ground must fail.

7. In that event, the third ground referred to above was pressed that it is a matter of no evidence. According to the learned counsel, the complainant who appeared had refused to identify the applicant and, therefore, it must be taken that there were no material before the enquiry officer. However, a perusal of the record reveals that Shri Satpathy who was also there, at the relevant time, present had specifically identified the applicant. Once there is evidence on the record and it happens to be a departmental enquiry, a decision need not be on proof beyond reasonable doubt. Result is that we have no hesitation in holding that it was not a case of no evidence.

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8. As regards the contention that the applicant has not been shown to be in intoxicated state, the contention ~~can~~ ^{must} be accepted in the facts of the present case. The applicant had not been subjected to any ^{medical} test, nor is there any material to indicate that the applicant was behaving as if he was indeed in ^{a state of} intoxication, to hold that such a charge has been proved. But with respect to other aspect of the matter that he had gone to the house of Shri S.R.Nandi and used abusive language, we have least hesitation in concluding that the said assertion has been proved.

9. In this backdrop the last submission as to whether the penalty awarded is disproportionate to the alleged dereliction of duty can be considered. Indiscipline in the Government service has not to be tolerated. However, facts of each case has to be examined on their own merits. If the penalty awarded is unconscionable and shocks, in that event this Tribunal would certainly remit the matter to the disciplinary authority for passing appropriate order.

10. In the present case we have held that it is not established that the applicant was in a state of intoxication at the relevant time. We are also not aware of the precise loose language that the applicant hurled. In this view of the matter it appears that the penalty of removal from service is disproportionate to the alleged dereliction of duty.

11. In the result, we quash the impugned orders and direct the disciplinary authority to pass a fresh order as may be deemed appropriate in the facts of the case imposing penalties other than dismissal or removal from service. The said order may be passed within four months from the receipt of certified copy of this order, but the applicant will not

M. A. J.

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be entitled to any arrears. The O.A. is disposed of.

Anand
(Anand Kumar Bhatt)
Administrative Member

V.S Ag
(V.S Aggarwal)
Chairman

rkv.

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....
प्रतिनिधि दालो दिनाः—

(1) रामेश, रामेश शंकर शर्मा, जबलपुर
(2) अमर, अमर कुमार, जबलपुर
(3) रमेश, रमेश कुमार, जबलपुर
(4) चंद्रशेखर, चंद्रशेखर कुमार, जबलपुर

सूचना ८५ उत्तरार्थक क.प्रक्रिया द्वारा

*S. Paul, A.O.C.C
Mr. Banerjee, A.O.C.C*

*Shastava
6/10/13*

*Received
3/10/13*