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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 431 of 1997

Jabalpur, this the 5th day of February, 2003.

Hon'ble Mr. Justice N.N. Singh - Vice Chairman
Hon'ble Mr. R.K. Upadhyaya - Member (Admnv.)

Shri Shafiq Khan S/o Rehman Khan
Ex Gangman, adult, R/o Chhola Road,
Phuta Makbbara, Street No.1, House of
Hazizabi Subhash Nagar, Bhopal.

-APPLICANT

(By Advocate- Junior to Smt. S. Menon)

Versus

1. Union of India through the
General Manager, Central Railway,
Mumbai V.T.
2. The Divisional Engineer (South)
DRM Central Railways, Bhopal.
3. Shri DC Ahirwar, DEN (S)
Bhopal. DRM (W) Office, Bhopal.
4. Assistant Engineer (M)
Central Railways, Itarsi, Distt.
Hoshangabad.

-RESPONDENTS

(By Advocate- Shri A.K. Pathak)

ORDER

By R.K. Upadhyaya, Member (Admnv.):

In this application, the applicant has sought to quash the order of penalty dated 8.4.1989 (Annexure A/3) by which the Disciplinary Authority has imposed penalty of removal from service w.e.f. 18.4.1989 pursuant to issue of charge sheet dated 28.4.1987 (Annexure A/1). The applicant has also requested for quashing the appellate order dated 15.4.1997 (Annexure A/8) passed by the Appellate Authority pursuant to the direction of this Tribunal in OA No. 752/1991 dated 21.2.1997.

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2. The applicant while working as Gangman in Unit No. 4, Budhni, under the Path Way Inspector, Hoshangabad was charge sheeted as per memorandum dated 28.4.1987 (Annexure A/1). Article one of the charge related to the fact that the applicant did not take the complete Set of Gang Tools to work ~~abandoning~~ and assaulted the Gang Mate on 22.12.86 at K.M.773/13 on road. Second article was about fight and assault to the Gang Mate tampered with Rly. Track resulting in derailment of 138 UP Chhattisgarh Express in the night falling between 2nd January and 3rd January, 1987 and the third charge related to the applicant being of cantankerous temperament. Pursuant to the issue of charge sheet, Enquiry Officer and Presenting Officer were appointed and the impugned order of punishment was passed. Aggrieved by the order of punishment and appellate order thereon, the applicant had filed OA No.752/1991, which was disposed of by order dated 21.2.1997 as follows:-

"10. The other submission of the learned counsel for the applicant was that the appellate order does not give any reasons for maintaining the order passed by the disciplinary authority. The learned counsel has also stated that the applicant's defence was not considered. The learned counsel for the applicant has relied on the decision of the apex court in the case of S.N.Mukherjee Vs. Union of India, AIR 1990 SC 1984 stating that the order should disclose the reasons on the basis of which the order has been upheld. We do find that the appellate order dated 12.3.1991 does not contain any reason and is a laconic order. The question is whether the matter should be remitted back to the appellate authority for reconsideration of the appeal. The applicant's argument was that his defence was not considered, as such, the finding is vitiated. Neither the disciplinary authority nor the appellate authority has considered this aspect of the case. As such we are of the opinion that the matter should be remitted back to the appellate authority for consideration of question of fact, i.e., the consideration of defence evidence. As it is, there is evidence of the complainant. However, we find that the applicant's defence ought to have been considered. We send the matter back to the appellate authority for considering his defence evidence and passing a fresh speaking order within two months from today. The application is accordingly disposed of. The parties shall bear their own costs."

Ch. B. Agarwal
Pursuant to the direction of this Tribunal, the impugned order dated 15.4.1997 (Annexure A/8) has been passed.

3. In the written arguments filed on behalf of the applicant, it is stated that the impugned order dated 15.4.1997 passed by the Appellate Authority is based on the evidence of S/Shri Raghuvir Singh, Premal and Jalaluddin, which were not recorded during the course of departmental enquiry, but were recorded much before. Relying on the decision of Hon'ble Supreme Court in the case of Moti Singh Vs. State of Uttar Pradesh, 1964 AIR 900(SC) it has been stated that evidence recorded during preliminary enquiry cannot be looked into by the Enquiry Officer without affording an opportunity. It is stated on behalf of the applicant that the Appellate Authority has not properly appreciated the representation of the applicant dated 6.3./10.3.1997 (Annexure A/7) and the impugned order dated 15.4.1997 (Annexure A/8) is contrary to the direction of this Tribunal. Therefore, the same deserves to be set-aside. It is also stated on behalf of the applicant that the punishment being disproportionately harsh deserves to be interfered.

4. In the reply, it has been stated on behalf of the respondents that Disciplinary Authority has accepted the fact finding report of the Enquiry Officer and found him guilty of charge one alone. This has also been confirmed by the order of this Tribunal in OA No.752/1991. It is claimed by the respondents that the Appellate Authority reconsidered the entire matter afresh and vide letter dated 7.4.1997, the applicant was directed to appear for personal hearing on 15.4.1997. The present appellate order has been passed after considering the entire matter afresh and after giving opportunity of hearing to the applicant.



(4)

In view of the fact that the point was remitted back by this Tribunal to the Appellate Authority for consideration of defence evidence only, the respondents have not filed para-wise comments. At the time of hearing, the learned counsel for the respondents stated that other aspects of the case, which are raised in this O.A. ~~are~~ already stand concluded by the order of this Tribunal.

5. We have considered the written arguments as well as statements made by the learned counsel for the respondents. We have also perused the material available on record including the file of disciplinary proceedings as made available to us at the time of hearing.

6. In our opinion, the only issue for consideration is whether the Appellate Authority has complied with the direction of this Tribunal as per order dated 21.2.1997 (Annexure A/6). Various aspects of the arguments advanced in this O.A. are already covered by the order of the Tribunal in OA No.752/1991. For instance, paragraph 9 deals with the submissions of the applicant that punishment was not on the higher side. The only issue for consideration in this O.A. as pointed out earlier is whether the Appellate Authority in pursuance to the order of this Tribunal has considered the defence statement of the applicant. We find that the applicant had filed a representation and was also allowed opportunity of being heard. Therefore, it cannot be said that principles of natural justice ^{not} ~~not~~ have been complied with. Reference by the Appellate Authority to the statements of S/Shri Raghuvir, Premal and Jalaluddin of 22.12.1986, the date of incidence has been made in addition to the statements of the applicant. A copy of statement of these persons recorded before the Enquiry Officer in the presence of the applicant merely

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suggests that the deponents were trying to help the applicant. Therefore, the Disciplinary Authority has referred to the preliminary statement of these witnesses in the appellate order. In any case, there was enough evidence to prove the charge of the first part of charge one regarding not carrying the required tools as per directions of the Mate. The only other part of this charge relating to assault of the Gang Mate is not fully corroborated by the subsequent statements as recorded before the Enquiry Officer, but the complainant Gang Mate Shri Gangshu has stood firmly of the entire episode in his statement, even in the presence of the applicant and the applicant could not discredit his statement. Even the statements of defence witnesses S/Shri Tilak, Prakash, Rajaram and Kashiram recorded on 17.9.1988 before the Enquiry Officer indicate that the applicant did not carry the entire tools. Some of the witnesses even stated that the applicant was in the habit of calling names and his behaviour was unbecoming. Even in the appeal filed by the applicant on 23.5.1989, the applicant has admitted that he 'argued' with the Mate. Some copies of the statements of the prosecution witnesses as well as defence witnesses are available in the records of OA No.752/1991. On perusal of the entire facts of this case, leaves no scope for any doubt that there is atleast some evidence. This Tribunal cannot go into the realm of sufficiency or otherwise of the evidence for proving a charge. In any case, this is a case of no evidence. Therefore, merely reference to the statements of the prosecution witnesses recorded before the issue of charge sheet does not help the applicant's case. For all these reasons, we do not find any justification

to interfere with the impugned order of the Appellate Authority. Therefore, this application is rejected without any order as to costs.

Upadhyaya

(R.K.Upadhyaya)
Member (Admnv.)

Minh
(N.N.Singh)
Vice Chairman

'MA'

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पृष्ठांक सं ओ/न्या..... जबलपुर, दि.....
पत्रिलिपि अध्येधितः—

- (1) सचिव, उच्च न्यायालय एवं उच्च न्यायालय अधिकारी, जबलपुर
- (2) अधिकारी श्री/ मिस/डॉ/जू..... के काउंसल
- (3) प्रबंधी श्री/दीक्षिती/लु..... के काउंसल
- (4) विधायक, के प्रति, जबलपुर न्यायालय
सूचना एवं आवश्यक कार्यवाही हेतु

Smt S. Mehta, MLC
R. D. Pathak, MLC

File No. 51203
उप एजेंस्टर

Issued
En. 5/2/85