

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

O.A. NO. 855 / 2000

Hon'ble Mr. R.K. Upadhyaya, Administrative Member :-

For consideration please.

Reportable

I agree
C. B. Singh
6.5.03

DK Chauhan

(J.K. KAUSHIK)
JUDICIAL MEMBER

06/05/2013

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

O.A. NO. 855 / 2000

DATE OF DECISION 07/05/2003

A.K.Mishra

APPLICANT (s)

Shri Sanjay Yadav

Advocate for the Applicant (s)

VERSUS

UDI & Any.

RESPONDENTS

Shri M.N.Banerjee

Advocate for the Respondents

CORAM :

Hon'ble Shri R.K. Upadhyaya -- Administrative Member
Hon'ble Shri J.K. Kaushik -- Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgments ? - YES / NO
2. To be referred to the Reporter or not ? YES / NO
3. Whether it needs to be circulated to the Principal Bench of the Tribunal ? YES / NO

J.K. Kaushik
(J.K. Kaushik)
Judicial Member
07/05/2003

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 855 of 2000

Jabalpur, this the 7th day of May 2003

Hon'ble Shri R.K. Upadhyaya -- Administrative Member.
Hon'ble Shri J.K. Kaushik -- Judicial Member.

A.K. Mishra, Ex Train Ticket
Examiner, Central Railway, Amla,
District Betul, Resident of Railway
Colony, Amla.

... Applicant

(By Advocate - Shri Sanjay Yadav)

V e r s u s

1. Union of India, Through its
General Manager, Central Railway,
CST, Mumbai.

2. Divisional Railway Manager,
Central Railway, Nagpur.

... Respondents

(By Advocate - Shri M.N. Banerjee)

O R D E R

By J.K. Kaushik, Judicial Member :-

Shri A.K. Mishra has filed this original application under Section 19 of the Administrative Tribunals Act praying therein as under :

"8.1 The applicant respectfully pray that this Hon'ble Tribunal be pleased to set-aside the order dated 11.1.2000 passed by the Disciplinary Authority and further be pleased to set-aside the Appellate Order dated 15.3.2000 and further be pleased to quashed the charges being without substance.

8.2 The Hon'ble Tribunal be further pleased to direct the respondents to reinstate the applicant into service with all consequential benefits and also be pleased to award the cost of the litigation."

2. The brief facts of the case are that while working on the post of Train Ticket Examiner, at Amla he was served with a charge sheet on 03/08/1998 (Annexure A/1) alleging violation of provisions of Rule 3(1) (i)(ii) & (iii) of Railway Services (Conduct) Rules, 1966. The applicant denied the charges and submitted that no such incident has taken



place and he submitted that entire charges were cooked up behind the back of the applicant. The enquiry officer was appointed in the matter and a ~~detailed~~ enquiry was conducted. ^{held} The enquiry officer has that substantially ~~the~~ the charges are not proved. However in the final finding he has given that the alleged charges has not been proved, beyond doubt by the evidence of PW's. However, that the ~~applicant~~ subject occasion took place in 14/05/1998, is accountable as it led to the DAR enquiries that extent the DE's responsible as there would be no smoke without fire and for giving evidence not in tune with their original statement.

3. Further case of the applicant is that a detailed reply was made against the findings of the enquiry officer and it was stated that the applicant was not given the opportunity to examine the witnesses. The disciplinary authority without appreciating the evidence on record and without recording the dissent finding and without affording an opportunity to the applicant imposed the penalty of removal from service, vide Annexure A/4. The applicant preferred an appeal and the appellate authority decided the appeal and modified the penalty of removal to that of compulsory retirement vide Annexure A/6. The appellate authority has completely ignored ~~the basic principles~~ of the service jurisprudence and hence the impugned orders are liable to be set-aside.

4. The respondents have filed the counter reply and have submitted that the order of the appellate authority was also confirmed by the revising authority. The enquiry officer has accorded him every opportunity to prove his side. There is no flaw in the enquiry proceedings and after going through the enquiry report the disciplinary authority has passed a detailed penalty of removal from service. The same was reduced to compulsory retirement by the appellate authority

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and it was confirmed by the revising authority. They have further submitted that though the enquiry officer has not given any clear cut finding against the applicant, but the disciplinary authority has passed a reasoned and detailed order on the basis of evidence available on record. As per Rule 10(3) ^{of} D&A Rules, the disciplinary authority if disagrees with the finding of the enquiry officer on any articles of charges, record its reasons for such disagreement and records its own findings on such charge, if the evidence on record, is sufficient for the purpose. As such the disciplinary authority has considered various facts available on record and drawn its own findings and considering the gravity of charges, correctly imposed the penalty of removal from service. It is also submitted that in the present case it is the disciplinary authority which did not fully agree with the enquiry officer and drawn its own findings and imposed the penalty of removal from service. It is also submitted that the appellate authority i.e. Sr. DCM observed that the enquiry had not been conducted properly but he fully agreed with the findings of Disciplinary authority and actual evidence on record. The appellate authority has sympathetically considered his appeal and modified the penalty of removal from service to that of compulsory retirement so that he can get pensionary benefits for maintaining his family.

5. A short rejoinder has been filed and the averments made in the reply have been contradicted and it has been submitted that the statements recorded in the preliminary enquiry cannot be basis for inflicting penalty.

6. We have heard the learned counsel for the parties at a considerable length and have bestowed our consideration to the submissions, pleadings and the records of this case.

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7. The learned counsel for the applicant has pointed out from the findings of the enquiry officer at page 16 of the paper book, wherein Item No. 1 the allegation has been said to be not proved. Thereafter he has pointed out at page 18 that the passenger appear to have lodged false fictitious complaint out of a bad intention to teach a lesson to Railway staff for being hurt due to charging and harrasment. At page 19 it is stated that the TTE appears to be responsible that such unpleasant occassion arose and allowed to happen, which could have avoided by them and to this extent, I feel that human correct behaviours they are liable to taken up. Lastly as regards the findings it has been submitted that the allegation against the applicant were not proved beyond doubt by the evidence of PW's. He has also pointed out that the enquiry officer has stated that there could be no smoke without fire but there is no base for this and the complete finding is based on conjectures and surmises.

8. Thereafter the learned counsel for the applicant has pointed out that the disciplinary authority has dis-agreed with the findings of the enquiry officer as is evident from the impugned order of penalty dated 11/01/2000 (Annexure A/4). He has held that prima-facie there is specific evidence available on record to prove that both the TTE's Shri A.K. Mishra and Shri A.R. Ahirwar had taken the Railway administration for granted. However the learned counsel for the applicant has submitted that prior to dis-agreeing with the findings of the enquiry officer he was not given any opportunity of hearing in the matter. He was also not communicated with the point of difference and there has been denial of the principle of natural justice as per the verdict of the Hon'ble Supreme Court in the case of Punjab National Bank Versus Kunj Bihari Mishra reported at AIR 1998 SC 2713. That as per the

 learned counsel for the applicant it is a case of no evidence

and none of the charges have infact been proved in the enquiry.

9. The learned counsel for the applicant has nextly submitted that the appellate authority has also passed the order in stereo-type manner without considering the grounds raised in the appeal. One side he has specifically observed that the enquiry was not properly held and another side he has agreed with the findings of the disciplinary authority. Thus there is no application of the mind.

10. On the contrary the learned counsel for the respondents has submitted that as per the provisions of the Rules at 10(iii) of Railway Service Disciplinary & Appeal Rules it is only that for the reasons for dis-agreement are required to be recorded and there is no necessity or requirement of informing the points of difference to the delinquent employee or for giving an opportunity to make representation on the point of dis-agreement. Thus the action of the Disciplinary authority cannot be faulted on this ground. As regards the other points he has emphatically submitted that it is not a case of no evidence as there has been a complaint in the matter and no one makes a complaint as a fancy. In this way the impugned orders have been very much passed by due application of mind and this Tribunal will not assess the sufficiency or adequacy of the evidence and no interference is called for.

11. We have considered the rival contentions raised on behalf of the parties. As regards the law position in case where the disciplinary authority dis-agrees with the findings of the enquiry officer the position is well settled by now and as per verdict of the Hon'ble Supreme

 Court in the case of Punjab National Bank and others Versus

Kunj Bihari Mishra reported at AIR 1998 SC 2713, it is essential that the applicant should be informed of the point of dis-agreement and given an opportunity to make a representation against them and in the present case such course of action has not been adhered to, despite the admitted position of this case that the disciplinary authority has dis-agreed with the findings of the enquiry officer in un-equivocal terms. Thus in such cases the normal practice is to remand the case to the disciplinary authority for proceeding with the matter from the stage of informing the point of dis-agreement with the findings of the enquiry officer, but for the reason enunciated in succeeding paragraphs we are not inclined to grant such liberty to the respondents.

12. Now as regards the primary contention raised on behalf of the applicant that it is a case of no evidence. This position is clear from the perusal of the enquiry report and it has been held that none of the charges infact proved. We also observed that certain half-hearted findings have been given by the enquiry officer which have no basis and rather could be aptly said to be passed on conjectures and surmises. Otherwise also the enquiry officer says that the delinquent employees are required to be taken up for human correct behaviours which was not the charge against them. In this view of the matter, we can safely conclude that this is a case of no evidence. It has not been possible for the learned counsel for the respondents to satisfy us as to what was the evidence against the applicant so as to justify their contentions that the enquiry officer had sufficient evidence in support of his findings.

13. On the other hand, there is nothing on the record to show that any other evidence became available to the disciplinary authority so as to come to different conclusion.

 The learned counsel for the respondents pointed out that

this Tribunal cannot convert itself into a court of appeal and assess the sufficiency or adequacy of the evidence in support of the findings of facts reached by a quasi-judicial authority. It is well established that there is a difference between a finding based on sufficiency or adequacy of evidence and a finding of fact based on no evidence. But it is a case of no evidence and the Court/Tribunal have full powers to quash orders if based on no evidence.

14. As regards the powers of the courts to set-aside the quasi-judicial orders on the ground of no evidence, the position of the law is settled in the case of *Union of India Vs. H.C. Goyal AIR 1984 SC 364*, by the Hon'ble Supreme Court, para 20 is relevant and the relevant portion is extracted below :

"In dealing with a writ petition filed by public servants who have been dismissed, or otherwise dealt with so as to attract Art. 311(2), the High Court under Art. 226 has jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. 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."

Thus the impugned order is not sustainable in the eye of law and deserves to be quashed on the ground of no evidence alone.

15. The upshot of the aforesaid discussion is that the original application has ample force and the same deserves to be allowed. The same is hereby allowed and the impugned orders dated 11/01/2000 (Annexure A/4) and 15/03/2000 (Annexure A/6) are hereby quashed. The applicant shall be

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entitled to all consequential benefits as if the impugned orders were never in existence. This order shall be complied with within a period of three months from the date of receipt of copy of this order. However, there shall be no order as to costs.

DKA

(J.K. KAUSHIK)
JUDICIAL MEMBER

RKU

(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER

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

(1) शिवाय, दि..... दिव्याधन, जबलपुर
(2) अमरा, दि..... के काउंसल S. Yawar, Adm.
(3) धनियाल, दि..... के काउंसल MN Banjara, Adm.
(4) विनोद, दि.....

सूचना दिव्याधन काउंसल के द्वारा

DKA
अधिकारी
12/5/03

Issued
on 12/5/03
by
S.A.

"SA"