

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

(1)

ORDERS OF THE BENCH

20.10.2011

OA No. 335/2010

None present for the parties.

Put up the matter on 29.11.2011 for hearing.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K. S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

*2005
/98*

29-11-2011 [OA No. 335/2010]

Mr. Ramesh Chand, Counsel for applicant
Mr. V. S. Purjor, Counsel for respondents.

Heard. O.A. is disposed of by
a separate order on the separate
Sheets for the reasons recorded
therein.

Anil Kumar
[Anil Kumar]
Member (A)

K. S. Rathore
[Justice K.S. Rathore]
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 335/2010

DATE OF ORDER: 29.11.2011

CORAM

**HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

Gajanand Sarawata S/o Shri Mahadev Sarawata, aged about 42 years, R/o House No. 101/48, Akata Nagar, Naka Madar, Ajmer and at present working on the post of Assistant Account in the office of Dy. CAO (TA), Ajmer.

...Applicant
Mr. Ramesh Chand, counsel for applicant.

VERSUS

1. Union of India through General Manager, Western Railway, Church Gate, Mumbai.
2. Deputy Chief Accounts Officer (Traffic Accounts), N.W. Railway, Ajmer.
3. Senior Assistant Financial Advisor, Traffic Accounts Office, N.W. Railway, Ajmer.
4. Assistant Statistical Officer Compilation Office, W.R. Ajmer.

...Respondents
Mr. V.S. Gurjar, counsel for respondents.

ORDER (ORAL)

The brief facts of the case are that on 04.10.2004, at the time of demonstration, Shri D.P. Sharma, Sr. AFA/TA/Aii was present in the chamber of Dy. CAO (TA) Aii, who issued charge memorandum dated 07.10.2004 to the applicant, and the same was served to the applicant, but it is alleged that copies of listed documents of Annexure III of charge memorandum were not furnished along with the charge memorandum. The applicant vide his application dated 29.10.2004, 28.01.2005, 28.02.2005 and 14.03.2005 made requests to the Disciplinary Authority and



the Inquiry Authority to supply the copies of statements of prosecution witnesses. The Inquiry Officer was appointed and conducted the enquiry. The applicant also made a request to the Inquiry Officer to supply the copies of statement or prosecution witnesses, but the same were not supplied to him. The Inquiry Officer conducted the enquiry and submitted his enquiry report to the Disciplinary Authority.

2. Having considered the enquiry report submitted by the Inquiry Officer, the Disciplinary Authority vide his order dated 11.08.2009 (Annex. A/1) imposed the penalty of stoppage of two years' increments without future effect, against which the applicant preferred appeal dated 17.11.2009 but the same has been rejected by the appellate authority vide his order dated 06.04.2010 (Annex. A/2) and upheld the penalty awarded by the disciplinary authority. The applicant preferred a revision petition before the reviewing authority, which admittedly at the time of filing this O.A. was pending consideration.

3. Without waiting the decision of the reviewing authority on the revision petition, the present O.A. is directed against the impugned order of the disciplinary authority dated 11.08.2009 (Annex. A/1), impugned order dated 06.04.2010 (Annex. A/2) passed by the appellate authority and the enquiry report dated 22.06.2009 (Annex. A/3).

4. We have gone through the memorandum of charges dated 07.10.2004 (Annex. A/5). The applicant while working as A.A. in the office of Accounts Office, Western Railway, Ajmer on 04.10.2004 has committed a serious misconduct, as such he



assembled with a mob of around 100 people at 17.30 hrs. and made *Gherao* of Gazetted Officers of Traffic Accounts Office Ajmer. He started in the shouting of indecent slogans against the officers by name and kept them wrongfully confined within the chamber of Dy. CAO (TA) AII after office hours till 22.45 hrs. The above act on the part of the applicant violates public order and morality and tantamount to serious misconduct which is in violation of Rules 3.1 (iii) and 7 of the Railway Service Conduct Rules, 1966. This incident was also flashed in largely circulated newspapers namely Rajasthan Patrika, Dainik Bhaskar, Dainik Navjyoti and Punjab Kesari on the next day i.e. on 05.10.2004. As many as 12 witnesses were examined, and the enquiry in the affairs of the applicant has been conducted.

5. Looking to the misconduct of the applicant, keeping in view of the peculiar facts and circumstances of the case and material available on record, the respondents has rightly initiated the disciplinary action against the applicant in accordance with the rules of the Railway Servants (Discipline and Appeal) Rules, 1968 and imposed a penalty of withholding of two years' increments without future effect, and in our considered view, it cannot be said to be excessive, as it is admitted fact that the applicant participated in the demonstration whereby the 'mob' with slippers and shoes in hand, staged the demonstration which continued till late night. The penalty has been imposed for violation of Rule 3 (1) (ii) and 7 of Railway Service (Conduct) Rules, 1966 and, thus, the penalty of stoppage of two years' increments without future effect has been imposed, and the



order passed by the disciplinary authority has been upheld by the appellate authority.

6. It is admitted by the applicant that at the time of filing of the present O.A., revision petition filed by him was pending consideration before the reviewing authority. As per settled preposition of law, since the revision petition filed by the applicant is still pending consideration with the reviewing authority, the present O.A. deserves to be dismissed as being premature.

7. Even otherwise on the merit also, the present O.A. does not survive as we have considered the allegations alleged against the applicant and the enquiry report submitted by the Inquiry Officer, and found that the penalty awarded by the disciplinary authority and upheld the same by the appellate authority cannot be said to be excessive.

8. As held by the Hon'ble Supreme Court in the case of Union of India vs. Parma Nanda reported in (1989) 2 Supreme Court Cases 177, the Tribunal has ordinarily no power to interfere with punishment awarded by the competent authority in departmental proceedings on ground of the penalty being excessive or disproportionate to the misconduct proved, if the punishment is based on evidence and is not arbitrary, mala fide or perverse, but the Tribunal can interfere with the apparently unreasonable punishment where it is imposed on the basis of conviction by criminal court dispensing with departmental enquiry under second proviso (a) to Article 311 (2) of the Constitution of India.



9. We have examined the matter in the light of the judgment of the Hon'ble Supreme Court in the case of Union of India vs. Parma Nanda (supra) and are of the view that the penalty which has been imposed by the disciplinary authority is imposed lawfully on the proved misconduct of the applicant, as discussed hereinabove, therefore, this Tribunal does not want to interfere with the penalty order dated 11.08.2009 (Annex. A/1) and appellate order dated 06.04.2010 (Annex. A/2) as no interference is called for.

10. Consequently, the Original Application being bereft of merit deserves to be dismissed, and as such the same stands dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K.S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

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