

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI-5.

D.A. NO. 137 of 1994
T.A. NO.

DATE OF DECISION 10th 6-96.

Shri Brajalal Mazumder

(PETITIONER(S))

Shri R. Dutta

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India and others

RESPONDENT (S)

Shri B.K. Sharma, Railway Counsel

ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE SHRI G.L. SANGLYINE MEMBER (A)

THE HON'BLE SHRI D.C. VERMA, MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble MEMBER (J) 10/6/96.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.137 of 1994

Date of decision: This the 10th day of June 1996

The Hon'ble Shri G.L. Sanglyine, Member (Administrative)

The Hon'ble Shri D.C. Verma, Member (Judicial)

Shri Brajalal Mazumdar,
Resident of Sripuria, P.O. Sripuria, Distt. Tinsukia,
Assam. Applicant

By Advocate Shri R. Dutta.

- versus -

1. The Union of India,
Represented by the General Manager,
N.F. Railway, Maligaon,
Guwahati.
2. The Divisional Railway Manager (P),
N.F. Railway, Tinsukia,
Assam.
3. The Senior Divisional Manager,
N.F. Railway, Tinsukia,
Assam.
4. The Divisional Engineer,
N.F. Railway, Tinsukia,
Assam.

..... Respondents

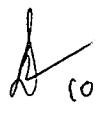
By Advocate Shri B.K. Sharma, Railway Counsel.

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O_R_D_E_R

D.C. VERMA, MEMBER(J)

This original application by Brajalal Mazumdar is to quash the enquiry proceedings (Annexure A/3), the enquiry report (Annexure A/4), the penalty order (Annexure A/5), the order of the Appellate Authority (Annexure A/9) and the consequential order of fixing the pay of the applicant (Annexure A/7).

2. The brief facts of the case is that the applicant was functioning as Head Clerk under PWI/NAM. While working as such the applicant committed gross misconduct in respect of four items which was detected


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at the time of Preventive check conducted by the Vigilance organisation. The applicant was given a charge memo which contains three articles. Article I is in respect of non-debitting of the LAP and LHAP in respect of D. Kamraj, a gangman; Article II was for non-debitting of commuted LHAP out of which some period has not been regularised in respect of Dudnath, Gangman; and Article III was for non-maintaining of correct leave account of Pardeshi Harijan and Sreekanta Singh.

3. The applicant submitted a statement of defence and explained that all the leave applications were kept in the Service Book for Posting. A Enquiry Officer was, however, appointed and after enquiry the Enquiry Officer found the charge proved against the applicant. The Disciplinary Authority agreed with the findings of the Enquiry Officer and imposed the penalty of reduction to Jr. Clerk in bottom seniority with cumulative effect. The applicant preferred an appeal (Annexure A/8), but the same was rejected by the Appellate Authority vide order dated 3.1.1994 (Annexure A/9).

4. The applicant filed a suit in the Court of Assistant District Judge, Tinsukia, which was numbered as 64 of 1993 and ad-interim injunction staying the operation of the applicant's reduction in rank and consequent pay cut was passed by the said court. Subsequently, it was, however, found that the Civil Court had no jurisdiction in the service matter of the applicant in view of the provisions of the Administrative Tribunals Act. Therefore, the applicant was allowed to withdraw the suit vide order dated 14.4.1994 (Annexure A/10). The applicant consequently filed this O.A. in the Tribunal.

5. The respondents have filed counter reply.

6. The learned counsel for the applicant vehemently argued that there are some procedural defects. To this end he submitted that the copies of documents were not furnished, list of witnesses was not given, the Enquiry Officer put 17 questions to the applicant in the nature of cross-examination and the Appellate Authority did not give personal hearing. The learned counsel further pointed out that in the article of charges Annexure-I, on the top is prefixed by the word "Draft" which shows that



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the application of mind is not there.

7. It is, however, found that by addition of the word "Draft" in the article of charges there is no miscarriage of justice. Admittedly, the applicant was served with documents and he was quite aware of the article of charges to which he made a reply. The list of documents were also supplied which is annexed to the memorandum. In reply to the memorandum the applicant made no mention of any shortcoming nor he indicated for copies of any document or examination of any document which may be necessary to defend the case. It is also not shown that any personal hearing of the guilty officer is required by the Appellate Authority. It is seen that even in the grounds of appeal, Annexure A/8, no ground, as submitted before this Bench, was taken by the applicant. After discussing various decisions cited at the Bar and going through sub-rules of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968, the learned counsel for the applicant has very honestly pressed for his alternative argument, that is, on question of punishment.

8. Before discussing the point further the law laid down by the Apex Court in the case of B.C. Chaturvedi -vs- Union of India, (1995)6 Supreme Court Cases 749 may be quoted as below:

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts the evidence and the conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent

findings.....

findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have even reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case."

9. From what has been held by the Apex Court in B. Chaturvedi's case we find that in the present case the enquiry has been held by a competent officer who has complied with the rules of natural justice. In the case before us the applicant has in his defence statement (Annexure A/2 dated 1.1.1993) admitted all the shortcomings pointed out in the memorandum of charges under Article I, II and III by stating that it was by oversight. Though in respect of D. Kamraj the admission is only to the effect that leave account was kept in the Service Book and in case of Sreekanta Singh it is stated that leave account was not debited. However, in respect of Dudhnath and Pardeshi it is admitted that through oversight the entry was not posted. In the grounds of appeal (Annexure A/8) the applicant stated as follows:

"Though I had to all the questions asked in the enquiry before the defence councillor admitting that these mistake were happen and fallen arrear due to over burdening of works on me, the findings of the enquiry were not favourably considered by DEN/TSK and imposed serious punishment on me by passing his order to reduce me to jr-Clerk in Bottom Seniority with cumulative effect."

On this point the question put by the Enquiry Officer to the applicant at the time of enquiry also revealed that ~~in~~ all the four shortcomings which were noted in the article of charges have been admitted by the applicant by stating that leave was not posted erroneously or inadvertently leave was posted wrongly like that. Thus the applicant has admitted the charges which have been framed against him.

10. The concluding paragraph of the Enquiry Officer



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is as follows:

"So, Shri B.L. Mazumder, Head Clerk under PWI/NAM is held responsible for exhibiting lack of integrity, devotion to duty and acting in a manner un-becoming of Railway Servant and thereby violated the Rules 3(I) (i), (ii) & (iii) of Railway Service Conduct Rules 1966."

11. The relevant portion of the order passed by the disciplinary authority is as below:

"So I pass the order to reduce Shri B.L. Mazumder to Jr. Clerk in bottom seniority with cumulative effect.

Appeal lies with Sr.DEN/TSK."

12. From the two orders quoted above it is seen that though the Enquiry Officer has found that there is lack of integrity, devotion to duty and acting in a manner unbecoming of a Railway Servant on the part of the applicant the superior authority has found on careful study of the enquiry report that non-updating and non-posting of the leave was "intentional in order to manipulate later on." He has further found that the applicant "exhibited lack of integrity." With the help of the learned counsel for the parties we have examined the Enquiry Officer's report and documents on record and we find that there is not even an iota of evidence to draw an inference that non-posting and non-updating was intentional or it was due to lack of integrity. The learned counsel for the respondents has submitted that the case of the applicant is that omission in updating and non-posting is due to overwork, but that ground cannot be accepted. At no stage the applicant at any time beforehand prior to the enquiry had complained about the same. The question before us is not whether the applicant had complained or not about the overwork, but what we have to see is that whatever finding is recorded is based on some evidence. If the finding is not based on any evidence the same has to be struck down. As in B.C. Chaturvedi's case (Supra), the Apex Court has held that adequacy of evidence or reliability of evidence cannot be permitted to be canvassed, but the Tribunal may interfere where the conclusions or findings reached by the disciplinary authority is based on no evidence. The Tribunal can also interfere if the conclusion on finding be such that no reasonable person could have ever reached to the conclusions



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as recorded by the authority. In the present case it is no doubt true that there has been non-updating and non-posting of leave accounts. The same may be due to carelessness, not being alert, forgetfulness or any other such reason. No finding that the same was intentional or due to lack of integrity can be recorded in absence of any evidence. It is seen that non-posting of leave and non-updating of leave records is in respect of four different persons and not in respect of one individual. Thus the interference by the disciplinary authority that non-posting and non-updating was intentional in order to manipulate later on is not substantiated from any evidence on record. Similarly, it is also not substantiated that the omission on the part of the applicant in non-posting of leave and non-updating of leave records exhibits lack of integrity. Such a finding has resulted in miscarriage of justice so far it relates to quantum of sentence. In view of these discussions the finding of the disciplinary authority has to be quashed to this extent.

13. Annexure A/9 is the order of the Appellate Authority which is in the following words:

"Your appeal against Notice of Imposing penalty issued vide DEN/TSK's letter No.110-DAR/BLM dated 21.9.93 was put up to Appellate Authority (Sr.DEN/TSK) on 3.11.93. The decision of Appellate Authority at PP/4 of file No.110-DAR/BLM is communicated to you which is as under.

"Perused the appeal of Shri B.L. Mazumder, the reasoning given by Shri B.L. Mazumder is not found convincing so as to point towards his innocence. The penalty of reduction of Shri B.L. Mazumder to Jr. Clerk in bottom seniority stands."

14. Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968 provides for consideration of appeal. An Appellate Authority has to consider, (a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provision of the Constitution of India or in the failure of justice, (b) whether the findings of the disciplinary authority are warranted by the evidence on the record, and, (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe, and pass orders. Instead of passing the order in accordance with Rule 22(2) referred to above the Appellate Authority has shifted the whole burden

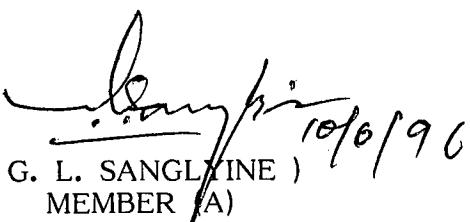
on the applicant by observing that the reasoning given by him is not found convincing so as to point towards his innocence. The Appellate Authority has not recorded his satisfaction as required under Rule 22(2) (Supra).

15. In view of our discussions made above we are convinced that from the evidence on record the article of charges framed against the applicant is fully proved, but the finding recorded by the disciplinary Authority that the non-posting of leave and non-updating of leave records was "intentional in order to manipulate later on" and it was due to "lack of integrity" is without any evidence. To this extent the order of the disciplinary authority is liable to be quashed and is quashed. The order of the Appellate Authority, in view of our discussions made above is also liable to be quashed and is quashed.

16. We, therefore, upheld the finding of guilt recorded against the applicant by the Enquiry Officer and the disciplinary authority and remand the case back to the disciplinary authority to award penalty as may be found reasonable in the circumstances of the case. The consequential orders, Annexure A/6 dated 1.10.1993, Annexure A/7 dated 23.11.1993, regarding fixation of pay is also quashed. We refrain from passing any order in respect of pay, etc. as that will be covered by the order which may be passed by the disciplinary authority.

17. The original application is allowed partly in above terms and respondent No.4 is directed to pass an order regarding penalty within a period of three months from the date of communication of this order and the Appellate Authority to decide the same within two months thereafter in case any appeal is preferred.

18. Cost on parties.


(G. L. SANGALINE)
MEMBER (A)


10/6/96
(D. C. VERMA)
MEMBER (J)