

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 622/2003

New Delhi this the 4th day of May 2004

Hon'ble Shri V.K.Majotra, Vice Chairman (A)
Hon'ble Shri Bharat Bhushan, Member (J)

Jagan Lal Koli,
S/O Shri Ganga Ram,
R/O F-294/5, Sector-12,
Vijay Nagar, Ghaziabad (UP)

(By Shri Yogesh Sharma)

...Applicant

VERSUS

1. Union of India though the General Manager, Northern Railway, Baroda House, New Delhi.
2. The F.A. and C.A.O. (W&S), Northern Railway, Head Quarter Office, Baroda House, New Delhi.
3. The Dy.C.A.O. (W&S), Northern Railway, Head Quarter Office, Baroda House, New Delhi.

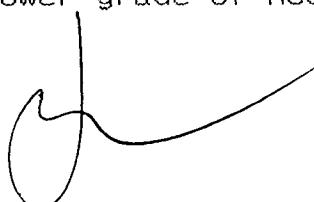
...Respondents

(By Advocate Shri R. L. Dhawan)

O R D E R

Hon'ble Shri Bharat Bhushan, Member (J)

Impugned before us is the order dated 5.12.2001 (Annexure A 1) passed by Ms. Bhavana Sharma, Dy.CAO/S&W. Vide the said order the applicant was guilty of committing serious misconduct inasmuch as he had adopted unfair means to get his name placed in the list of successful candidates for qualifying the IREM examination, 1998. For this, he is alleged to have contravened rule 3 (1)(i) and (iii) of the Railway Service Conduct Rules, 1966. Thus by holding him guilty a penalty of reduction to lower post/grade was imposed on him. Consequently he was reduced to lower grade of Accounts Assistant in the scale



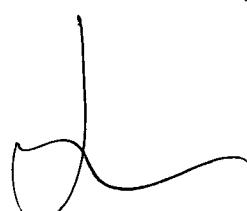
(11)

of Rs.5000-8000 from the higher post/grade of S.O. in the scale of Rs.5500-9000 without postponing future increments. The said order also contained the fact that the said reduction to the lower post/grade was to remain till the time he was found fit by the competent authority to restore to the higher post/grade.

2. The applicant preferred an appeal and the appellate authority was, however, pleased to modify the order of punishment as under vide order dated 3.2.2003:-

"You are, thereby, reduced to the lower grade of Accounts Assistant in the scale of Rs.5000-8000 for a period of two years with immediate effect with further direction to restore you to the higher post/grade of Section Officer in the scale of Rs.5500-9000 after completion of two years".

3. The facts as borne out from the records are that the applicant while working as Accounts Assistant, Northern Railway, Baroda House, New Delhi appeared in Appendix III A, IREM Examination, 1988 conducted by the Railway Board with Roll No. 1705 (Code No. J-707) in six subjects i.e. GRP (without books), General Expenditure (without books), Store Accounts (with books), Store Accounts (without books), Advance Book Keeping (without books) and General Expenditure (with books). But the scrutiny of applicant's answer sheets revealed that the answer books of GRP (without books) and Advance Book Keeping (without books) were tallying word by word to the answers of same papers of S/Shri Ranbir Singh Roll No.1677 (Code J-679) and Ashok Kumar Roll No. 1486 (Code No. J-448). The applicant's

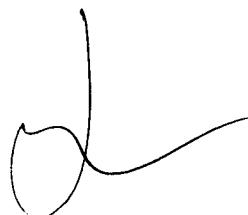


answers books of Stores Accounts (without books), Stores Accounts (with books), General expenditure (with books) and General expenditure (without book) were also found tallying word by word with the answers of same subjects of Shri V.K.Sharma, Roll No. 1531 (Code No.J-533) and Shri Sandeep Kumar, Roll No. 1657 (Code No. J-659).

4. The respondents case is, that, the aforesaid conduct established that the aforesaid persons, including the applicant, had copied with each other or from some source at some place other than examination hall and thereby had adopted unfair means to pass the said examination in order to get their names placed in the list of successful candidates.

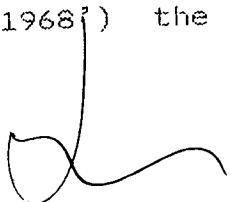
5. For this act of the applicant, the, respondents issued chargesheet for imposition of major penalty and thereafter the departmental proceedings were conducted which culminated into the penalty as described hereinbefore. And as already mentioned after filing the appeal filed by the applicant, the appellate authority had modified the penalty as described hereinbefore.

6. It is alleged by the petitioner that the enquiry had been conducted by the Enquiry Officer in a totally bias and illegal manner. It has been stated that the respondents had earlier conducted preliminary enquiry in which the statement of witnesses were recorded in the absence of the applicant, but copy of the statement of such witnesses recorded in the preliminary enquiry as well as a



copy of the preliminary enquiry report were not supplied to him in spite of repeated requests. It is also alleged that the enquiry had been conducted by the inquiry officer herself in a manner which shows malice towards the applicant as she had conducted the cross-examination of the witnesses mainly to bring out searching questions to prove the guilt of the applicant. Lastly, it has been submitted that exactly the same and identical chargesheet was issued to all other persons as well whose names were shown in the charge sheet and one, out of them, namely, Shri Sandeep Kumar who appeared at Moradabad Centre had filed OA 818/2001 before the Tribunal (PB), New Delhi and the Tribunal was pleased to quash the penalty order and the charge sheet vide its judgement dated 30.7.2002. He has annexed a copy of the same as Annexure A 17. Hence, it is urged that the charges in the instant case are exactly similar as in that case where the impugned orders have been quashed and now it has been submitted that on the basis of the said judgement only, the impugned orders in the present OA need to be quashed.

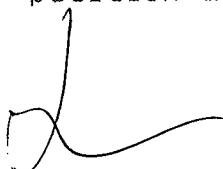
7. The respondents, while contesting the OA, have controverted the allegations levelled by the applicant. However, they have raised a preliminary objection to the fact that the application is premature and is not maintainable under Section 20 of the Administrative Tribunals Act, 1985 (hereinafter referred as the Act). They have submitted that in terms of Rule 25(3) of Railway Servants (D&A) Rules, 1968 (hereinafter referred as the 'Rules 1968') the applicant has not exhausted all the



remedies available to him after passing the order by the appellate authority. He has not preferred the revision petition to the next higher authority and as such, according to them, Section 20 of the Act would put an embargo that the Tribunal shall not ordinarily interfere unless the applicant had availed of all the remedies available to him under the relevant service rules as to the redressal of the grievances. On merits also their contention is that the Enquiry Officer had strictly followed the procedure laid down under the Rules in letter and spirit so as to ensure that full opportunity was given to the applicant to defend himself and there had been no irregularity or illegality in conducting the enquiry.

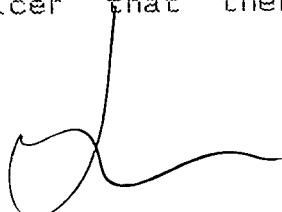
8. As regards the allegation regarding the non-supply of certain documents to the applicant is concerned, the respondents have stated that during the course of enquiry, all the documents as had been asked for by the applicant had been supplied. It is further urged by them that the offence committed by the petitioner is of very serious in nature because he wanted to gain undeserved mileage over other candidates by resorting to unfair means, hence, according to them the applicant does not deserve any leniency or mercy.

9. Heard the learned counsel for the parties and perused the records. Firstly, let us deal with the preliminary objection raised by the respondents wherein it has been urged that the applicant was firstly required to file revision petition against the orders passed by the



appellate authority before approaching the Tribunal. In this regard, learned counsel for the applicant has contended very vehemently that so far as the mandatory provision of filing a revision petition after the disposal of the appeal before approaching the Tribunal is concerned, according to him, as per rule 24 of the Railway Servants (D&A) Rules, 1968 (hereinafter called the Rules) only in case where penalty of either dismissal or removal or compulsory retirement from service has been imposed, the mandatory provision is there for the delinquent to apply to the General Manager for the revision of the penalty imposed on him. Hence, his submission in the case in hand is, that, the penalty imposed against the applicant is only reduction in rank/post and as such there is no mandatory provision of filing revision petition against the appellate authority's order before approaching the Tribunal. In order to appreciate the rival contention on the issue, we have been extensively taken through the relevant provisions contained in Rules 24 and 25, but the learned counsel for the respondents has not been able to bring to our notice any provision which could reveal that the applicant under the circumstances where the penalty of only reducing to a lower rank/post has been imposed was ~~magatorily~~ required to file a revision petition against the appellate authority's order before approaching the Tribunal. This being so, we find no merit in the preliminary objection raised by the respondents. Hence the same is hereby dismissed.

10. Now, coming on merits- The findings of the Enquiry Officer that there was a planned scheme to

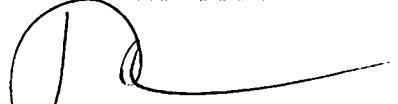


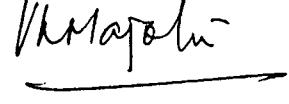
substitute answer sheets and gain undeserved mileage appears to be perverse and based simply on surmises and conjectures because it is not borne on record as to when and in what manner the applicant or any other candidates who had appeared at the Moradabad centre had connived with each other for copying, rewriting or substituting the answer sheets. The enquiry officer has based her finding only on the basis that the answer sheets of all the three candidates tallied with each other verbatim. So under the circumstances, it appears that the enquiry officer has simply drawn simple presumption that the applicant must have adopted unfair means to secure higher marks to qualify the examination. But in our view, this presumption, however, strong it may be in the absence of any evidence cannot stand the scrutiny of law. The respondents have also not been able to satisfactorily explain as to how and in what circumstances when the examinations had been conducted simultaneously at two centres i.e. Delhi and Moradabad, the applicant in Delhi was able to copy the answer sheet written by his counter part candidates at Moradabad at the same time. Even otherwise, there is a lot of variation in the marks awarded to each of these candidates for the answers allegedly written verbatim.

11. In the light of the aforesaid discussions we are of the view that this is a clear cut case of perverse findings recorded by the Inquiry Officer on the basis of surmises and conjectures without any reliable evidence to hold the applicant guilty for adopting unfair means to find

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his name placed in the list of successful candidates. Consequently the orders passed by the disciplinary authority on the basis of the findings recorded by the inquiry officer are perverse and the same are liable to be set aside. Accordingly, we quash the findings arrived at by the inquiry officer and the order passed by the Disciplinary authority. We also quash the order passed by the appellate authority. Consequently, the OA is allowed with all consequential benefits. The directions be complied with within a period of two months from the date of receipt of a copy of this order.

No costs.

Bharat Bhushan)
Member (J)


(V.K. Majotra)
Vice Chairman (A)

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