

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. No.2234/2003

This the 28th day of July, 2004

HON'BLE SHRI V.K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Latoor Singh S/O Faquir Chand,
Ex. Guard 'A', Northern Railway,
Moradabad Division.
R/O Village Shekhu Pura Amma,
Tehsil Amroha, Distt. Moradabad,
Moradabad (UP).

... Applicant

(By Shri G.D.Bhandari, Advocate)

-Versus-

1. Union of India through
General Manager, Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway Moradabad.
3. Senior Divisional Operations Manager,
Northern Railway, Moradabad.
4. Shri V.P.Sharma,
Sr.W.M.I. (Inquiry Officer),
DRM's Office, Northern Railway,
Moradabad.

... Respondents

(By Shri R.L.Dhawan, Advocate)

ORDER (ORAL)

Hon'ble Shri V.K. Majotra, Vice-Chairman (A)

Applicant has challenged Annexure A-1 dated 19.5.2003 whereby penalty of compulsory retirement was imposed upon him in departmental proceedings against him. Applicant has also challenged Annexure A-3 dated 30.7.2003 whereby his appeal against Annexure A-1 was rejected by the appellate authority. Vide Annexure A-5 dated 22.7.1994 following charges were levelled against the applicant :

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"The said Shri Latoor Singh, Guard 'A' HQ/DDN acted in a most careless and indisciplined manner in that he turned up on duty to work 4042 Dn on 08.07.1994 ex-DDN to DLI in a state of intoxication due to excessive consumption of alcohol. DMO/DDN was called to examine him, who after examination, declared in his report that he was in an intoxicated state. He was taken off from the Brakevan of 4042 Dn and another Guard Shri Surrender Singh, Grade 'C', was utilised vice him.

The said Shri Latoor Singh, Guard 'A' HQ/DDN, is, therefore, considered responsible for failing to maintain devotion to duty and for acting in a manner that was unbecoming of a Railway servant and, therefore, is said to have violated Rule 3(1) (ii) & (iii) of the Railway Services Conduct Rules of 1966. He is also considered to have violated Rule No.2.09 of General and Subsidiary Rules of 1990."

2. Applicant had been initially inflicted the punishment of dismissal from service which was challenged through OA No.51/1996 before the Lucknow Bench of this Tribunal. In view of the fact that the doctor who had examined the applicant had not been produced for cross examination by the applicant in the enquiry against him, it was held that the charge of consumption of alcohol and intoxication was not established. In the result the OA was partly allowed as follows :

"19.Impugned order of dismissal and the appellate order are quashed and set-aside. Respondents are directed to reinstate the applicant forthwith and treat him as deemed suspended from the date of his dismissal. They are also at liberty, if so advised, to take up the proceedings from the stage of examination of the concerned Doctor, give an opportunity to cross-examine him and thereafter to finalise the proceedings within a period of six months from the date of receipt of a copy of this order. The intervening period shall be decided by the respondents after the conclusion of the proceedings in accordance with the extant rules and instructions....."

1/2

3. In terms of the aforesaid directions of the Court, the enquiry officer examined the concerned doctor (Dr. Y.S.Ataria) on 25.2.2003. Applicant cross examined him and the enquiry officer submitted a fresh report dated 9.4.2003 (Annexure A-28) and concluded that the applicant was guilty of the charge levelled against him. On the basis of this report of the enquiry officer, respondents have proceeded to impose upon applicant the punishment which has been challenged herein.

4. The learned counsel of the applicant stated that despite the statement of the doctor to the effect that applicant had not consumed alcohol, the enquiry officer had given a perverse finding to the effect that the charge against the applicant of having consumed alcohol and that he was under influence of liquor was established. He further pointed out that in paragraph 4.29 of the OA relating to applicant's representation dated 5.2.2003 (Annexure A-19), it has been averred that as the applicant and the enquiry officer Shri V.P.Sharma were not on good terms and a criminal case under Sections 452/504/506 was pending in the court between them, he did not expect an impartial enquiry by the enquiry officer. He requested the disciplinary authority to change the enquiry officer. In paragraph 5.10 of the OA applicant has explored this ground of the enquiry officer being biased against him.

5. The learned counsel of the respondents produced the records relating to the D&AR case against the applicant. The learned counsel stated that in the

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medical report dated 12.7.1994 the doctor on examination of the applicant had stated that applicant complained of "giddiness, palpitation, altered consciousness". The learned counsel pointed out that in his enquiry report, the enquiry officer has stated that these "symptoms visibly exist in a person who is heavily drunk or heavily intoxicated". The learned counsel further stated that relying on the evidence of the doctor, the enquiry officer and the other authorities had concluded that applicant was guilty of the charge alleged against him.

6. We have considered the rival contentions and perused the D&AR records produced before us.

7. While different aspects of the case had been considered in applicant's earlier OA, being OA-51/96 decided by the Lucknow Bench on 18.11.2002 (Annexure A-17) which was partly allowed, respondents had been directed thereby to take up the proceedings from the stage of examination of the concerned doctor. Normally, this Tribunal is not supposed to re-appraise the evidence in disciplinary proceedings, however, when it is alleged that perverse findings have been recorded in the enquiry, it is necessary to see how such finding has been made. The doctor's report dated 12.7.1994 does not indicate the doctor's opinion about applicant's being under influence of liquor. It only indicates that applicant had complained ^{to} of giddiness, palpitation and altered consciousness. In his statement before the enquiry officer (Annexure A-24), Dr. Y.S. Ataria has stated, "there was no alcoholic smell observed". To a question

11

whether he had prepared a case sheet for examination of drunkenness on the prescribed proforma vide Annexure-XIX, para 565 (4) of Medical Department Manual of 1981, the doctor stated that that was not required. In a case of consumption of liquor and being in a state of intoxication on consumption of liquor, the evidence of the medical expert is crucial. In the present case, although the doctor has stated certain symptoms in the applicant at the time of examination, he has not opined that applicant was under influence of liquor or was intoxicated. The enquiry officer has given his conclusion that the charged official was under influence of liquor on the basis of symptoms indicated by the doctor. When the doctor has not given any opinion about the consumption of liquor and being under the influence of liquor, the finding of the inquiry officer is certainly perverse and could not have been relied upon by the disciplinary and ^{the} appellate authorities. The doctor has clearly stated that he did not prepare the medical examination report in the prescribed format as it was not found to be necessary. He has also not indicated that the applicant was under influence of liquor.

8. In the light of the above discussions, the case has been rendered as a case of no evidence but perverse findings in the enquiry against applicant. As such, the impugned orders are liable to be set aside and the OA has to be allowed. Ordered accordingly. Applicant shall be entitled to consequential benefits, including consideration of payment of subsistence allowance by

112

deeming him under suspension from initial dismissal order dated 1.8.1995 till the date of these orders from when he would be reinstated forthwith. No costs.

S. Raju

(Shanker Raju)
Member (J)

/as/

V. K. Majotra

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

28-7-04