
(2023) 05 CAT CK 0064

In the Central Administrative Tribunal

Case No : Original Application No. 330, 00792 Of 2022

Durga Prasad Sharma

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 23-05-2023

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Railway Servant (Discipline And Appeal) Rules, 1966 — Rule 3(1)(k), 11

Citation : (2023) 05 CAT CK 0064

Hon'ble Judges : Om Prakash VII, Member (J)

Bench : Single Bench

Advocate : M.K Upadhyay, Shivaji Singh

Final Decision : Dismissed

Judgement

Om Prakash VII, Member (J)

1. The present O.A has been filed by the applicant under section 19 of the Administrative Tribunal Act, 1985 seeking the following reliefs:-

“(i) This Hon’ble Tribunal may be pleased to quash the orders dated 06.11.2021, 08.03.2022, 26.8.2022 passed by the respondent No.4, 3 and 2 respectively/

(ii) This Hon’ble Tribunal may be pleased to direct the respondents to allow the benefits of increment of pay along with arrears and admissible interest thereupon.

(iii) Any other relief, which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case may be given in favour of the applicant.

(iv) Award the costs of the original application in favour of the applicant”.

2. The brief facts of the case, as stated in the O.A. are that the applicant is an Ex-Military retired person. On the notification of Group 'D' post, which is meant for Ex-Serviceman, the applicant applied for the post of Helper and after completing all the formalities, he was posted on 24.08.2011 in the respondents' department.

The applicant was promoted to the post of Motor Vehicle Driver on 17.11.2015 and thereafter on 17.11.2015, the applicant was again promoted to the post of Tower Wagon Loco Pilot. when the applicant was running the tower wagon No. 8411, the applicant noticed some technical difficulties in the wagon as such he mentioned the same in the daily log book for maintenance of the same. Upon the remarks of the applicant, the tower wagon was repaired but the problem was intact, therefore, the applicant again wrote in the log book about the same. On 04.09.2021, respondent No. 4 issued a memo of charge as SF-11 against the applicant thereby the applicant was charged for inefficiency and less knowledge in his work and as such he was charged for disobeying the sub-rule 1 (k) and 11 of rule 3 of Railway Servant (Discipline and Appeal) Rules, 1966 and the applicant was directed to submit his reply within 10 days. On 14.09.2021, the applicant submitted his reply against the aforesaid charge memo. By order dated 06.11.2021, respondent No. 4 passed an order whereby the applicant was held responsible for the aforesaid fault and imposed withholding of one increment for one year without cumulative effect. Against the order dated 06.11.2011, the applicant filed an appeal before the appellate authority, which was decided by the appellate authority and reduced the punishment of the applicant from withholding one increment for one year to six months without cumulative effect. The applicant filed revision petition before the revisionary authority and the revisionary authority upheld the order of the appellate authority by his order dated 26.8.2022.

3. I have heard Shri M.K. Upadhyay, learned counsel for the applicant, and Shri Shivaji Singh, learned counsel for the respondents, and perused the pleadings available on record.

4. Learned counsel for the applicant submitted that on the complaint of the applicant, Shri Tarun Kumar from CRS Tundla was coming to rectify the defect in the wagon but the same was not rectified by him and as such he recommended for calling the engineer from Bhopal to rectify the defect. He further submitted that orders passed by the disciplinary and appellate authorities are not only illegal but are based on surmises and conjectures. Learned counsel contended that the applicant demanded for proper inquiry but the disciplinary authority passed the order without recording any reason for not holding the inquiry in the matter, which shows that the applicant was used as feed goat to save the others. Learned counsel further contended that the applicant has been punished for no fault of his own as such the impugned punishment order is bad in law and liable to be quashed.

5. On the other hand, learned counsel for the respondents submitted that disciplinary authority after following the procedure prescribed in the Railway Servant (Discipline & Appeal) Rules passed the punishment order against the applicant, thus, there is no illegality or infirmity in the punishment order. Learned counsel further submitted that the appellate authority has clearly mentioned in his speaking order that the applicant has lack of knowledge even then with

positive mindset, the appellate authority reduced the period of punishment to six months from one year. He contended that the revisionary authority after considering the entire material available on record has rightly passed the order on the revision petition of the applicant.

6. I have gone through the rival submissions of the learned counsel for the parties and perused the entire pleadings.

7. From the perusal of the record, it reveals that all three authorities after considering the materials available on record including the applicant's representation made against the charge-sheet, imposed the punishment upon the applicant. Again the appeal against the order of Disciplinary Authority and the revision against the order of the appellate authority would show that the said authority disposed of the appeal/revision by a reasoned and speaking order. The findings recorded by the Disciplinary Authority and Appellate Authority are based on evidence/materials, and it cannot be said that there was no evidence before the Disciplinary Authority, Appellate Authority and Revisional authority to arrive at the above findings/ conclusions against the applicant. The applicant, in discharge of his duties, was required to discharge his duties with the utmost sense of integrity, honesty, devotion, and diligence, and to ensure that he did nothing which could be termed as carelessness, negligence, and lack of devotion towards his duties. Applicant has been unable to show any infirmity in the orders of upholding the order of punishment. It is also observed that in the case of Govt. of A.P. Vs. P. Chandra Mouli – 2009 (13) SCC 272, it has been held by the Hon'ble Supreme Court that the power of punishment to an employee is within the discretion of the employer and ordinarily the courts do not interfere unless it is found that either inquiry, proceedings or punishment is vitiated because of non-observance of the relevant rules and regulations or principles of natural justice or denial of a reasonable opportunity to defend, etc. or that the punishment is totally disproportionate to the proved misconduct of an employee. Thus, the Tribunal cannot interfere with the findings of the Inquiry Officer or Disciplinary Authority where they are not arbitrary or utterly perverse.

8. Thus, it is clear from the above decisions that this Tribunal has very limited power of judicial review in disciplinary proceedings and Courts/Tribunals have to ensure only that the employee receives fair treatment and relevant rules, regulations, and principles of natural justice have been adhered to and the employee was afforded reasonable opportunity to defend his case. Therefore, it can be concluded that the judicial review lies on the aspect of procedural irregularity and denial of legitimate opportunity for presenting his case. It also transpires from the facts and circumstances of the case that all procedures prescribed for imposing minor punishment have been followed by the disciplinary authority. In the facts and circumstances of the case, mere entry in the log book information sought to have been given to the higher authority are not sufficient to hold that finding recorded by the enquiry officer and appellate authority as well as revisional authority are illegal or perverse. There is no denial on part of

the applicant that there was some defect in the carriage wagon. If such is the position, the applicant's argument in total are also not liable to be accepted. Plea taken by the applicant for full fledged enquiry cannot be accepted.

9. In the instant case, I do not find any irregularity or infirmity in the impugned orders as it has been passed after giving the applicant a reasonable opportunity of being heard. Hence, the punishment imposed upon the applicant cannot be said to be disproportionate, illegal and findings of the disciplinary authority as well as appellate authority both can also not be termed to be illegal or perverse rather they are based on sufficient evidence available on record itself.

10. In view of the above observations, I am of the considered opinion that the applicant has failed to establish his case; hence, the OA is liable to be dismissed. Accordingly, it is dismissed. No order as to costs. All associated MAs stand disposed of.