

(2024) 08 CAT CK 0009

In the Central Administrative Tribunal

Case No : Original Application No. 1839 Of 2010

Kaushal Kishore

APPELLANT

Vs

Union Of India, Through The General Manager, North Central
Railway, Allahabad & Ors.

RESPONDENT

Date of Decision : 16-08-2024

Acts Referred:

Citation : (2024) 08 CAT CK 0009

Hon'ble Judges : Om Prakash VII, Member (J); Mohan Pyare, Member (A)

Bench : Division Bench

Advocate : Pankaj Srivastava, Krishna Kumar Ojha

Final Decision : Disposed Of

Judgement

Om Prakash VII, Member (J)

1. Shri Pankaj Srivastava, learned counsel for the applicant and Shri Krishna Kumar Ojha, learned counsel for the respondents, were present at the time of hearing.

2. The instant original application has been filed by the applicant seeking following relief:

"i. to issue a suitable order or direction quashing the impugned order dated 23.05.2006 passed by the Disciplinary Authority as well as the order dated 26.2.2009 passed by the Appellate Authority (filed as Annexure No. A-1 and A-2 respectively with Compilation – II to this Original Application) passed by the respondent No. 2.

ii. to issue any other suitable order or direction which this Hon'ble Court may deem fit and proper.

iii. to award cost of the original application to the applicant."

3. A synopsis of the controversy prevailing in the instant case is that the

applicant is aggrieved by the impugned order dated 23.05.2006 passed by the Disciplinary Authority of the respondents and order dated 26.02.2009 passed by the Appellate Authority whereby a punishment of stopping the next increment of the applicant for a period of four years was imposed upon the applicant. Alleging the orders to be illegal, arbitrary, biased and malafide, the applicant, by way of the instant OA, seeks quashing of the same along with a direction to the respondents to revert the punishment and pay him the entire consequential monetary benefits.

4. We have heard the learned counsels for the parties and gone through the records.

5. Disclosing a brief history of the case, learned counsel for the applicant submitted that the applicant was initially appointed in the year 1992 on the post of Assistant Electric Driver and also elected as Additional Secretary in the Loco Branch, North Central Railway Men's Union, Tundala, Division Allahabad in the year 1993. On 01.03.2005, he was served with a chargesheet with the allegation that from 09.01.2005 to 15.01.2005, the applicant was given L.R. with other drivers but some of them complained that L.R. performed by the applicant is forged and applicant has never performed the L.R. duty with them. Thereafter, one Shri Raj Kumar, who was the batchmate of Shri A A Azad (who was personally biased officer with the applicant) was appointed as Enquiry Officer to investigate the case. No documents were supplied to the applicant nor was the chargesheet properly served upon him. Service upon the applicant was presumed on the basis of pasting. It was next argued by the applicant's counsel that inquiry officer as well as the Disciplinary Authority have not followed the basic requirement for concluding the enquiry. The inquiry report was submitted on the basis of false facts without concluding the inquiry in the manner laid down in the rules relating to this fact. Learned counsel for the applicant referred to the inquiry report and argued that inquiry officer himself was of the view that inquiry could not be concluded. It was also argued that allegation leveled against the applicant regarding his conduct and behavior during the inquiry is false. In fact, misbehavior was done on the part of the witnesses and the presenting officer against the applicant and for this reason, one FIR was also lodged by the applicant against the above persons. Learned counsel further argued that had the applicant misbehaved with the official and witnesses or had he shown his revolver to them, as has been falsely alleged in the inquiry report, simple question arises as to why those persons did not lodge any FIR against the applicant. Since no such FIR or formal complaint was ever lodged, plea taken by the respondents in their inquiry report is completely baseless.

6. Learned counsel for the applicant further argued that inquiry was concluded without examining all the witnesses and also without affording opportunity of hearing to the applicant to defend his case. No opinion has been formed indicating this fact that it is not possible to hold inquiry in such a situation and until and unless such opinion is formed, inquiry report cannot be taken into

consideration. Referring to the inquiry report, it was further argued that grounds taken by the inquiry officer have not been substantiated through any concrete evidence. The applicant approached before this Court challenging the order passed by the disciplinary authority and the OA was disposed of with a direction to the applicant to prefer an appeal before the Appellate Authority. It was further argued that the applicant mentioning all the facts and grounds, preferred a comprehensive appeal which too was rejected by the Appellate Authority by a non-speaking order and without considering the fact and ground taken by the applicant. At no point of time, the list of witnesses was provided to the applicant. It is also argued that order passed by the disciplinary authority as well as the appellate authority is non-speaking and proforma order. Since proper opportunity to defend the case was not provided to the applicant, thus, there is a clear cut violation of principle of natural justice and therefore, it is also argued that OA be allowed and impugned orders passed by the respondents be set aside.

7. Learned counsel for the respondents vehemently opposed the submissions of the applicant's counsel and referring to the inquiry report, he argued that copy of the charge sheet and other documents were supplied to the applicant as would be clear from the documents enclosed along with the counter. The applicant had participated in the inquiry proceedings. He did not challenge the inquiry report in the first OA and even in this OA, thus, the Tribunal cannot go into the correctness of the inquiry report. It is also argued that applicant himself has shown his revolver to the presenting officer and the witnesses during the course of inquiry proceedings and due to this reason, inquiry could not be concluded. Merely because no FIR was lodged by the witnesses or the presenting officer against this conduct of the applicant, the facts disclosed in the inquiry report in this regard could not be taken as false. It was further argued that inquiry officer has conclusively observed that from the evidence adduced during the inquiry, allegation leveled against the applicant through the charge sheet is proved and thus, the Disciplinary Authority has rightly passed the impugned order which was further validated by the Appellate Authority also after considering the entire grounds taken in the appeal. There is no illegality or infirmity in the orders passed by the Disciplinary Authority and the Appellate Authority and there has been no violation of principal of natural justice during the course of inquiry proceedings. The applicant was afforded adequate opportunity to defend his case and he was always supplied all the requisite documents which he asked for. Thus, prayer was made to dismiss the OA as being devoid of merits.

8. Learned counsel for the applicant rebutted the aforesaid submission of the respondents' counsel. To substantiate his argument, learned counsel for the applicant has also placed reliance upon the following case laws:

i. Judgment dated 19.12.2008 passed by Hon'ble Supreme Court of India in Civil Appeal No. 7431 of 2008 titled Roop Singh Negi Vs. Punjab National Bank And Ors.

ii. Judgment dated 01.07.2024 passed by the Hon'ble High Court of Patna in Civil

Writ Jurisdiction Case No. 6902 of 2022 titled Umesh Kumar Sinha Vs. State of Bihar and Ors.

9. We have considered the rival contentions and gone through the documents on record.

10. As the brief facts of the case have already been narrated above, the same are not reiterated for the sake of brevity. Admittedly, in this matter a charge sheet SF-5 was issued on 01.03.2005 which was served upon the applicant through Postal medium. A perusal of the inquiry report also reveals that the applicant had appeared during the inquiry proceedings. Defence assistant was nominated. All the necessary documents which the applicant requested for were also supplied to him. It is also evident from the record that inquiry could not be concluded recording the fact that during the course of proceedings, at one instance, the applicant had shown his revolver to the presenting officer and the witnesses. No FIR whatsoever was lodged on the part of the presenting officer or the witnesses against the aforesaid alleged act of the applicant. However, one FIR was lodged on the part of the applicant mentioning therein that witnesses and presenting officer, etc. have misbehaved with him during the inquiry. Inquiry has been concluded on the basis of evidence collected till the date the aforesaid alleged incident took place and on the basis of such inquiry report, punishment was imposed upon the applicant.

11. A careful perusal of the inquiry report reveals that the inquiry officer has himself mentioned the fact that the inquiry proceedings could not be completed and were left incomplete because of the incident wherein the applicant had shown his revolver to the presenting officer and the witnesses and thus, on the basis of the evidence already available with him and also on the basis of the statements given by the witnesses, he proceeded to finalise the inquiry report thereby holding all the charges leveled against the applicant as proved. The simple question arises that when the conduct of the applicant was so inappropriate, dangerous and improper that the inquiry officer could not continue with the inquiry proceedings, for what reasons, a formal complaint or FIR was never filed against the applicant either by the presenting officer or by the witnesses who were the part of the inquiry proceedings?

12. In addition to the above, it is also pertinent to note that when the inquiry officer has recorded that the charges were established on the basis of evidence already available with him on the occasion of non-completion of the inquiry and also on the basis of the statements of the witnesses, why no detailed tabulation of all such evidences and witnesses' statements was not given in the inquiry report itself. When the inquiry was deemed complete on the basis of already available evidences, in all likelihood, it was incumbent upon the inquiry officer to have recorded each of those evidences in detail and also a comprehensive mention regarding the statement of witnesses should have been made. While the Tribunal is not at all commenting upon the veracity of the allegations nor is it absolving the applicant of any of the allegations leveled against him, indeed we

are of the considered view that when the inquiry could not be finalized citing the illegal conduct on the part of the applicant, to establish the charges, the inquiry officer must have detailed every oral, documentary or material evidence which he relied upon to establish the charges against the applicant. Further, every statement given by each witness ought to have been comprehensively recorded in the inquiry report itself. Failure to do the same has only resulted in an ipse dixit inquiry report on the basis of which charges were proved and therefore, efficacy of the opinion formed by the Disciplinary and later validated by the Appellate Authority, on the basis of the said Inquiry Report, is also not established.

13. As regards to the case laws relied upon by the applicant, in both the cases viz. the case of Roop Singh Negi (supra) and Umesh Kumar Sinha (supra), the Hon'ble Supreme Court of India and the Hon'ble High Court of Patna have quashed the respective impugned punishment order(s) recording that since the inquiry proceedings was based merely on surmises and conjectures, the same cannot be held as sustainable. Although not completely, but the ratio laid down by the respective courts in the aforesaid case laws hold some bearing to the case of the applicant also. Here also, in the instance of non-finalisation of the inquiry proceedings, the inquiry officer went ahead to establish the charges based on the evidence already available with him and also on the basis of the statements of witnesses. However, the same have not been categorically and comprehensively recorded in the inquiry report and as such, the said inquiry report cannot be deemed as tenable.

14. Thus, without commenting anything upon the veracity of the charges leveled against the applicant and without absolving the applicant of any charges as leveled against him, the Tribunal is of the considered opinion that the inquiry was not conducted in the appropriate manner for the reasons elucidated in the preceding paragraph. Thus, it would be in the fitness of things to dispose of this OA directing the respondents to re-conduct / reinstitute the inquiry from the stage it was abandoned.

15. Accordingly, for the reasons recorded above, the instant original application is disposed of. The impugned punishment order dated 23.05.2006 passed by the Disciplinary Authority and the order dated 26.02.2009 passed by the Appellate Authority are hereby quashed and set aside. Since impugned orders have been set aside, therefore, applicant's pay be restored to its original position. The difference amount to be paid within a period of three months from the date of receipt of certified copy of this order. Respondents are further directed to re-conduct / reinstitute the inquiry from the stage it was abandoned. The said inquiry must be conducted in accordance with the stipulated departmental provisions as well as in accordance with the principal of natural justice. Further, the applicant is also hereby directed to cooperate with the inquiry officer in concluding the inquiry.

16. All associated MAs stand disposed of. No costs.