

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CWP 4086/2000

% Date of Hearing & Decision : 23 July 2003

SHRI ANEK SINGH Petitioner

! Through Ms Meenu Mainee, Adv.

versus

\$ UNION OF INDIA & ORS. Respondent

^ Through Mr. H.K.Gangwani, Adv.

CORAM:

* HON'BLE MR JUSTICE D K. JAIN
* HON'BLE MR JUSTICE MADAN B. LOKUR

1 Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not?

3 Whether the judgment should be reported in the Digest?

* D.K. JAIN, J. (ORAL)

Challenge in this writ petition is to an order, dated
14 February 2000, passed by the Central Administrative
Tribunal, Principal Bench, New Delhi (for short 'the

Tribunal') in OA No.1012/96. By the impugned order, the Tribunal has dismissed petitioner's original application, wherein he had assailed the order of removal from service passed against him.

Background facts in brief are as follows:

The petitioner was appointed as Assistant Station Master in the Northern Railway and was promoted as Sr.Assistant Station Master in the year 1981. While working as Assistant Station Master at Hardwaganj, he was served with a charge memo, alleging (i) misbehaviour with the Station Master; (ii) unauthorised absence from duty from 2 November 1982 to 15 November 1982 and (iii) malingering from duty on 2 November 1982. The Inquiry Officer, appointed under the Railway Services (Conduct) Rules, 1968 for holding an inquiry into the charges, found that charge of misbehaviour was not substantiated but the other two charges were fully established. Relying on the report of the Inquiry Officer, the disciplinary authority passed an order dismissing the petitioner from service. The order was

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challenged before the Tribunal. Accepting the plea of the petitioner that the Inquiry Officer's report had not been furnished to him before passing the order of dismissal, the Tribunal set aside the said order, with liberty to the department to conduct the departmental proceedings afresh from the stage of supplying the inquiry report. Accordingly, a copy of the inquiry report was supplied to the petitioner and upon consideration of his representation against the said report, a fresh order, removing him from service, was passed. The disciplinary authority, disagreeing with the finding of the Inquiry Officer on the first charge, held that raising of tone was definitely an act of indiscipline and therefore, this charge also stood proved. Petitioner's appeal to the appellate authority against the said order was unsuccessful. Being aggrieved, the petitioner preferred the Original Application before the Tribunal. As noted above, the said application has been dismissed. However, while dismissing the application, the Tribunal has directed the respondents to pay to the petitioner the back wages from the

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date his suspension was revoked till the date of reinstatement, when his first afore-noted original application was allowed. Hence the present writ petition.

The order of the Tribunal is assailed by learned counsel for the petitioner mainly on the ground that the Tribunal has failed to apply the settled principle of law that where the disciplinary authority disagrees with the finding recorded by an Inquiry Officer, the reasons recorded for his disagreement must be communicated to the delinquent officer. It is urged that in the present case, no reasons for the said disagreement having been communicated to the petitioner, the order passed by the disciplinary authority, without complying with the mandatory requirement, is illegal. It is also pleaded that the punishment of removal from service is disproportionate to the alleged misconduct on the part of the petitioner.

We are unable to agree with learned counsel for the petitioner.

There is no quarrel with the proposition that the

principle of natural justice demands that whenever the disciplinary authority proposes to disagree with a finding recorded by an Inquiry Officer on any article of charge, which is favourable to the delinquent officer, then before recording his own conclusion, he must convey his tentative reasons for such disagreement and the delinquent officer must get an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the Inquiry Officer. [See: Punjab National Bank & Ors Vs. Sh Kunt Behari Misra JT 1998 (5) SCC 548].

But, in the present case, the Tribunal's view on merits of the first charge, on which the disciplinary authority had disagreed with the findings of the Inquiry Officer has gone in favour of the petitioner. The Tribunal, while accepting the contention of counsel for the petitioner, has come to the conclusion that there is no evidence in support of the first charge and, therefore, it has to be held as not proved. Thus, the petitioner cannot have any grievance on that account and the decision of the Apex

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Court in Kunl Behari Misra's case (supra) strongly relied upon by counsel for the petitioner, is of no avail to him..

As regards, the question of proportionality of the punishment imposed, it is well settled that unless the punishment imposed shocks the conscience of the Court, there is no scope for interference. In the instant case, we do not find any such ground to interfere with the impugned punishment.

Accordingly, the writ petition, being without any merit, is dismissed.


D.K. JAIN, J


MADAN B. LOKUR, J

JULY 23, 2003
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