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UNION OF INDIA

.... PETITIONER

Through Ms. Rajdipa Behura, Advocate

Versus

BINDA PANDIT

RESPONDENT

Through Mr. Manoj, Ms. Aparna Sinha, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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|-----------|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J.

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1. This is a writ petition filed on behalf of Union of India under Article 226 of the Constitution of India assailing the order passed by the Administrative Tribunal (for short 'the Tribunal) in O.A. No.420/2008 wherein vide order dated 22.07.2008, the Tribunal allowed the O.A. with all consequential benefits including promotions as per law. The petitioners had been directed to carry out the aforesaid exercise within a period of two months from the date of receipt of a copy of this order.
2. Briefly stating the facts of this case are:

- i) The respondent who was working as Timekeeper-cum-Clerk in Rail Yatri Niwas was charged for being absent from duty for 1-1/2 hours on 07.08.1997 and having been found in excess of cash to the tune of Rs.49.50 was proceeded against for a major penalty and was charge sheeted accordingly.
- ii) However, as certain documents were not made available an order was passed on 16.04.2007 whereby the major penalty chargesheet was converted into minor penalty chargesheet and on representation of the respondent only a minor penalty was imposed upon him. An appeal preferred against it was turned down which gave rise to the filing of the Original Application before the Tribunal.

3. Before the Tribunal the respondent had argued that as per the Indian Railway Commercial Manual (IRCM) petty excess of cash below Rs.100/- does not attract minor proceedings and does not entail punishment. Moreover, it was also stated that the allegations pertain to the year 1997 but the enquiry was held in 2007 that also after withdrawing the major penalty as documents which ought to have been supplied were not supplied. It was also submitted that in those 10 years even the due promotion of the petitioner were not given even though having qualified the departmental examination. His promotion was withheld only on account of pendency of the enquiry. It was also submitted that even converting a chargesheet for major penalty into a

minor penalty chargesheet was an arbitrary exercise of power by the petitioners as no laid down procedure under the Railway Servants (Discipline & Appeal) Rules, 1968 has been adopted and without giving any show cause notice to the respondent about imposition of penalty.

4. In these circumstances, the Tribunal allowed the O.A. by making following observations:

6. On careful consideration of the rival contentions of the parties, not only delay in initiating the enquiry but also delay in its disposal defeats justice. It prejudices the employee to the extent that it acts as an impediment for his future progression. Delay in holding disciplinary enquiry and its completion has been held to be illegal by the Apex Court in **P.V. Mahadevan, Vs. M.D., T.N. Housing Board, 2005 SCC (L&S) 861.**

7. In the instant case the allegations pertained to the year 1997 and on a major penalty chargesheet issued when it was found that the original documents were not available, inordinate and unexplained delay has cropped up.....

It may be legal that on a major penalty proceedings on the basis of the findings of the enquiry officer if a minor penalty is imposed it does not suffer from any legal infirmity, but once the major penalty chargesheet itself has been converted into a minor penalty proceedings, as a condition precedent, a show cause notice to the delinquent employee to file effective representation is must, which when denied, not only the procedural rules are violated but denial of reasonable opportunity causes prejudice to the delinquent employee, which is in contravention of principles of natural justice.

8. Moreover, what I find that the explanation for absence was that as the applicant was highly diabetic and had to resort to hospital has been proved from the medical documents and moreover a shortage of less than

Rs.50/- cannot entail any punishment, as per the IRCM.

9. In Railways, even in minor penalty proceedings the disciplinary and appellate authorities are bound to record reasons in support of the order. From the perusal of the order passed by the disciplinary authority I do not find any reason, the order being non-speaking cannot be sustained, as reasons are to be recorded by disciplinary authority in support of the order as per the Railway Board's circular of 1985 and also as per the decision of the Apex Court in **Narpat Singh Vs. Rajasthan Financial Corporation, 2007 (11) SCALE 458**. The appellate order too suffers from the same infirmity. Though reasons have been recorded, yet are contradictory on the one hand when a conscious decision has been taken to convert the major penalty proceedings into minor penalty proceedings, the reason was that documents were not available, yet on the other hand, on the basis of those documents applicant has been held guilty. Moreover, the appellate authority has not considered the contentions raised by the applicant in his appeal, which is obligated, as ruled by the Apex Court in **D.F.O. Vs. M. Rao, 2008 (1) SCC (L&S) 788**.

10. Insofar as delay in concluding the proceedings is concerned, though I do not find any explanation that even after conversion of the chargesheet into a minor one the same after a gap of 10 years is not reasonable and inordinately delayed, which is unexplained.

5. We have heard the arguments from the side of the counsel for the petitioner who has assailed the impugned order by submitting that the very fact that the respondent was found in possession of cash in excess, this itself shows that he was guilty. It has been submitted that the department for reasons having not supplied copies of documents which ought to have been supplied thought it appropriate to convert the major penalty chargesheet into a minor penalty chargesheet. It has been

submitted that taking into consideration the offence committed by the respondent, the delay should not have been taken into consideration by the Tribunal for setting aside the order of punishment and giving directions to allow the O.A. with all consequential benefits.

6. No explanation has been furnished as to why the Appellate Authority has ignored the submission made by the respondent. In this regard we have ourselves looked into the orders passed by the Appellate Authority are available at page 50 of the paper book and which goes to show that the appellant authority has not considered the contentions raised by the respondent in his appeal. There is also no justification as to why the major penalty chargesheet was converted into minor chargesheet and as to why the respondent was not heard on the matter. Merely because the petitioners could not supply the documents which were material to the respondent and which would have assisted him in opposing the chargesheet cannot be a justification to convert the major penalty chargesheet to minor penalty chargesheet and cannot justify the order passed by the Appellate Authority.

7. We are conscious of the fact that mere delay in holding the departmental enquiry may not make the prosecution case fatal. However, we find no justification as to why the relevant documents were not supplied to the respondent when demanded. Nothing has been brought to our notice that the delay would not have caused any prejudice to the respondent. No explanation to the contrary has been even pleaded either before the Tribunal or before us.

8. Having gone through the record and the order passed by the Tribunal, we find no ground to interfere therein in exercise of powers vested in this Court under Article 226 of the Constitution of India and for that reason we dismiss the writ petition with no orders as to costs. All the pending applications shall also stand disposed of.

MOOL CHAND GARG, J.

FEBRUARY 22, 2010

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ANIL KUMAR, J.