

(RESERVED)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

This the 10th day of JANUARY, 2020.

ORIGINAL APPLICATION NO. 446 OF 2019

HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J)
HON'BLE MS NAINI JAYASEELAN, MEMBER (A)

1. B.K. Rawat aged about 44 years son of Shri Jagdish Sahai Rawat resident of 195, Gandhi Nagar, Naibasti, District-Lalitpur-UP.
.....Applicant.

VERSUS

1. Union of India through General Manager, North Central Railway, Headquarters Office, Subedarganj, Allahabad.
2. Chief Rolling Stock Engineer (Diesel), North Central Railway, Headquarters Office, Subedarganj, Allahabad.
3. Chief Electrical Engineer, North Central Railway, Headquarters Office, Subedarganj, Allahabad.
4. Additional Divisional Railway Manager, North Central Railway, Jhansi Division, Jhansi.
5. Senior Divisional Mechanical Engineer (O&F), North Central Railway, Jhansi Division, Jhansi.

.....Respondents

Advocate for the Applicant : Shri Pradeep Kumar Mishra

Advocate for the Respondents : Ms Shruti Malviya

(Delivered by Hon'ble Ms. Naini Jayaseelan, Member-A)

The present Original Application (in short OA) has been filed by the applicant under Section-19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

ORDER

- (a) *Issue an order or direction in the nature of certiorari to quash and set aside the impugned orders dated 26.11.2015 (Enquiry Report), 22.01.2016 (NIP), 23.05.2016 (Appellate Order) 30.01.2017 (Revisionary Order) and order dated 13.11.2018. (Annexure A-1) passed by the Respondents.*
- (b) *Issue an order or direction in the nature of mandamus directing Respondents to reinstate the applicant in service with all consequential benefits.*
- (c) *Issue an order or direction in the nature of mandamus directing Respondents to pay the full back wages with an interest @ 12% per annum.*
- (d) *Issue any further order or direction, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*
- (e) *Award the suitable costs of the case in favour of the applicant.*

2. The brief facts of the case are that the applicant was working as Loco Pilot (Goods) under the control of Senior Divisional Mechanical Engineer (O & F), NCR, Jhansi. On 26.04.2015, while working on a light engine, the applicant overshot the starter signal no. S-80-B. However, when a red flag was shown by the concerned employee, the applicant stopped the engine at once. Thereafter, the applicant was served a Major Penalty Charge Sheet dated 03.06.2015 (Annexure No. A-3).

3. It has been stated in the OA that without giving any opportunity to the applicant to submit defense statement/reply as required under Railway Servant (Discipline and Appeal), Rules, 1968, the Disciplinary Authority ordered an inquiry vide order dated 04.06.2015. Thereafter, a departmental enquiry of the incident was conducted under the Railway Servant (Discipline and Appeal) Rule, 1968. It has been further stated in the OA that the Inquiry Officer without considering the facts which were pointed out during the inquiry proceeding and without taking contributory factors of the incident into account held the applicant responsible for the incident. The Disciplinary Authority i.e., Respondent No. 5, thereafter, passed the impugned punishment order dated 22.01.2016 (Annexure No. A-1) by which the applicant was removed from service. The applicant filed an appeal (Annexure No. A-8) against the impugned punishment order and the appeal was rejected by the Appellate Authority i.e., Respondent No. 4 vide order dated 23.05.2016 (Annexure No. A-9). The applicant also filed Revision dated 25.07.2016 (Annexure No. A-10) and the Revision was also rejected by the Revisionary Authority vide order dated 30.01.2017 (Annexure No. A-11).

4. The main point raised by learned counsel for the applicant is that the major penalty chargesheet was issued on 03.06.2015 and the inquiry officer was appointed on 04.05.2015 i.e., that is within a day of issuance of the chargesheet.

5. Learned counsel for the applicant states that as per Rule 9 (7) of the Railway Servants (Discipline and Appeal) Rules, 1968, the disciplinary authority is required to ask the Railway Servant to submit a written statement of his defence within ten days or such further time as the disciplinary authority may allow. Further, as per Rule 9 (a) (i) of the Railway Servants (Discipline and Appeal) Rules, 1968 on receipt of the written statement of defence, the disciplinary authority shall consider the same and decide whether the inquiry should be proceeded with under this rule. He states that in this case, the disciplinary authority has not waited for mandatory 10 days before deciding to proceed with the disciplinary proceedings and has appointed the inquiry officer before this mandatory period and therefore, the disciplinary proceedings need to be quashed being violative of the rules.

6. In the counter affidavit filed by the respondents, it has been stated that the applicant had overshot the signal on 26.04.2015 and the post of Loco Pilot is a very responsible and sensitive post and there was a contributory negligence on the part of the delinquent employee. The working on this post directly affects the operation of the train, therefore, responsibility and liability of the applicant cannot be ignored. It has also been stated that the applicant was provided with all the opportunities to defend his case.

7. Learned counsel for the applicant has filed rejoinder affidavit basically reiterating the facts stated in the O.A.

8. Heard the counsels for both the parties and perused the records.

9. During the arguments, learned counsel for the respondents admitted the fact that the necessary 10 days time was not granted to the applicant to submit a written statement of defence as per Rule 9 (7) of the Railway Servant (Discipline & Appeal) Rules, 1968.

10. The consideration of the written statement of defence before the appointment of Inquiry Officer is absolutely essential in the progress of the disciplinary proceeding. However, in this case no time was granted to the applicant for submitting written statement of defence. However, in spite of the gravity of charges which could have resulted in serious accident, the 10 day time period should not have been dispensed with.

11. Therefore, the OA is partly allowed and the impugned orders dated 26.11.2015 (Inquiry Report), 22.01.2016 (punishment order), 23.05.2016 (Appellate Order), 30.01.2017 (Revisionary Order) and 13.11.2018 are quashed and set aside. Given the gravity of the charge, the respondents are directed to re-serve the charge sheet giving the delinquent officer due opportunity to submit his written statement of defence within 10 days so as to ensure that the rule position as laid down in Rule 9 (7) of the Railway Servants (Discipline & Appeal) Rules, 1968 is not circumvented in any way. No order as to costs.

(NAINI JAYASEELAN)
MEMBER-A

(RAKESH SAGAR JAIN)
MEMBER-J

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