

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 989 of 2013

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

K.Rama Rao, aged about 44 years, S/o Late K. Krishna Rao, Ex-Diesel Loco Pilot [Goods] at present residing at 58/17/7, Shanti Nagar, NAD Cross Road, PO – NAD, Dist.-Visakhapatnam.

.....Applicant

VERSUS

1. Union of India represented through its General Manager, E.Co.Railway, E.Co.R.Sadan, Samant Vihar, PO-Mancheswar, Dist.-Khurda, Pin-751017.
2. Chief Personnel Officer, E.Co.Rly., Chandrasekhpur, Rail Vihar, Bhubaneswar.
3. The Divisional Railway Manager, East Coast Railway, Khurda Road, Jatni, Dist.-Khurda, Pin - 752050.
4. The Senior Divisional Mechanical Engineer, East Coast Railway, Khurda Road, Jatni, Dist.-Khurda, Pin - 752050.
5. The Divisional Mechanical Engineer, East Coast Railway, Khurda Road, Jatni, Dist.-Khurda, Pin - 752050.
6. Chief Crew Controller, East Coast Railway, Khurda, Pin-752050.

.....Respondents

For the applicant : None

For the respondents: Mr.S.K.Nayak, counsel for Mr.S.K.Ojha, counsel

Heard & reserved on : 20.2.2020 Order on : 5.3.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The OA has been filed with the prayer for the following reliefs:-

- “(i) To quash the charge sheet under Annexure A/2 being contrary to the letter of the disciplinary authority;
- (ii) To quash the report of the IO under Annexure A/5 being perverse and contrary to well known and codified rules and law;
- (iii) To quash the Punishment Notice under Annexure A/8;
- (iv) To quash the order under Annexure A/13 of the appellate authority and direct the Respondents to reinstate the applicant to his original post with all consequential service and financial benefits retrospectively;
- (v) To pass any other order/orders as deemed fit and proper.”

2. The applicant, while working as a LOCO Pilot, was issued a charge memo dated 10/18.1.2006 (Annexure-A/2 of the OA) for remaining on unauthorized absence from duty from 18.3.2005 to 10.8.2005. The applicant's case is that he had to take leave due to sudden illness and continued till he became fit. He

submitted his reply to the charge-sheet. Inquiry Officer (in short IO) was appointed and he submitted the report to exonerate the applicant. But the disciplinary authority (in short DA) ordered fresh inquiry through another IO. To his report, the applicant submitted his representation. But the DA imposed a harsh punishment of removal from service vide order dated 6/7.5.2009 (Annexure-A/8). He preferred an appeal dated 4.6.2009 (Annexure-A/9). The Appellate Authority (in short AA) disposed of the appeal by modifying the punishment to reduction in rank vide order dated 30.3.2010 (Annexure-A/11).

3. Being aggrieved by the order at A/11, the applicant filed the OA No. 211/2010 which was disposed of vide order dated 31.8.2012 (Annexure-A/12) by setting aside the order dated 30.3.2010 and remitting the matter to the AA for fresh disposal of the appeal. Thereafter, the AA passed the order dated 31.8.2012 (Annexure-A/13) by which the applicant was reduced to the post of Assistant Loco Pilot for a period of two years and after two years he will lose his seniority and the period from the date of removal to reinstatement will be treated as dies non. The applicant has challenged this order dated 31.8.2012 (A/13) in this OA.

4. The grounds urged in the OA are that his unauthorized absence was not willful as it was due to illness. He had proceeded on leave after due intimation as per the Annexure-A/1 which was overlooked by the respondents. It is further stated in the OA that he was not a habitual absentee. It is further stated that the IO and DA failed to comply the rule 9(12) of the Railway Servants (Discipline & Appeal) Rules, 1968 (in short DAR, 1968). It is also averred that the AA did not consider his past service and imposed multiple punishments by the impugned order and there has been no application of mind on the part of the AA since the provisions of the rule 22(2) of the DAR, 1968 have not been followed. It is stated that the procedure laid down for ex-parte inquiry has not been followed and that the AA has treated the entire period as dies non without considering the fact that the delay in consideration of the appeal.

5. Counter filed by the respondents stated that the first IO did not establish whether the medical certificate from the private doctor furnished by the applicant was genuine or it was submitted to save him from the allegation of unauthorized absence and he ordered fresh inquiry through another IO. It was stated that the applicant had submitted the PMC on 3.4.2005 followed by subsequent PMCs on 28.4.2005, 25.5.2005 and 25.7.2005 for continuation of illness of the applicant. It is further averred that the applicant was provided opportunity to defend the charges. DA also gave a personal hearing to him after receiving his representation on the report of the IO. But he did not avail of the

opportunity. It is stated that the applicant did not exhaust the remedy of Revision before approaching the Tribunal.

6. No Rejoinder has been filed by the applicant. The matter was heard partly on 23.1.2020 and then on 11.2.2020, there was none on behalf of the applicant. The matter was posted to 20.2.2020 when also no one appeared on behalf of the applicant. Hence, it was decided to conclude the hearing after hearing the respondents' counsel and then dispose of the OA by this order based on the materials available on record under the rule 15 of the CAT (Procedure) Rules, 1987. Learned counsel for the respondents

7. From the facts of the case, it is clear that the applicant proceeded on leave on 18.3.2005 without obtaining prior permission for the competent authority as no such permission was produced or averred by the applicant. He continued to remain absent till he furnished the PMC on 3.4.2005 and continued to remain absent. The reason for not consulting the Railway medical authorities has not been mentioned by the applicant. Hence, *prima facie* there is evidence based on which the impugned punishment has been imposed.

8. It is the settled law that this Tribunal has limited scope for judicial review of the disciplinary proceedings if the punishment is as per the rules and there is some evidence to justify the same. The punishment as modified by the AA in his order dated 31.8.2012 (Annexure-A/13) is that the applicant will be reverted to the lower grade of ALP with PB-1 and grade pay of Rs. 2400/- for a period of two years, with his pay fixed at Rs. 14,580/- for a period of 24 months and he will lose his seniority after completion of the punishment period. It is seen that the punishment is for definite period and it does not specify whether on completion of 24 months, the applicant will regain his earlier rank of Loco Pilot. In this regard, para 15 of the Master Circular No. 66 of the Railway Board states as under:-

“15. Reduction to a lower service/grade/post

(a) The penalty of reduction to a lower grade or post should invariably be imposed for a specified period unless the clear intention is that the reduction should be permanent or for an indefinite period i.e. till such date as, on the basis of his performance subsequent to the order of reduction, he may be considered fit for promotion. Where the order imposing such penalty does not specify the period of reduction and there is coupled with it an order declaring the Railway Servant permanently unfit for promotion, the question of re-promotion will, obviously not arise.

(b) Where the reduction to a lower grade or post is for a specified period, the employee should be repromoted automatically, on expiry of the penalty, to the post from which he was reduced. Such an order of reduction should clearly specify:

- (i) The period of reduction; and
- (ii) Whether on re-promotion, the Railway Servant will regain the original pay and seniority in the higher grade from which he was reduced.

Where the reduction is not to operate to postpone future increments, the seniority of the Railway servant should be fixed in the higher service, grade or post or the higher time-scale at what it would have been but for his reduction. Where the reduction is to operate to postpone future increments, the seniority of the Railway servant should be fixed by giving credit for the period of service rendered by him in the higher service, grade or post prior to his reduction.

(c)

(viii) If the penalty of reduction to a lower grade for a specified period is not to operate to postpone future increments, the employee shall be allowed, on restoration to the higher grade, the pay which he would have drawn had he not been reduced to the lower grade i.e. the service rendered in the lower grade will count towards increments in the higher grade. If the penalty is to operate to postpone future increments, the pay shall be fixed, on restoration to the higher grade, by treating the period for which he was reduced as not counting for increment in the higher grade.

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9. Thus as per the Railway Board's Master Circular No. 66 as extracted above, since the impugned punishment order is silent about whether the period of reduction will count towards increment or not, it has to be assumed that the period of reduction of the applicant to lower grade will count towards future increments, which will imply that after completion of the punishment period, the applicant is to be placed at higher grade of Loco Pilot with his pay is to be fixed at the same stage had he not been reduced to the lower post.

10. In the circumstances, this OA is disposed of with direction to the respondents to fix the applicant's grade/rank and pay after completion of the punishment period of 24 months as discussed in paragraph 9 of this order, if not done already. There will be no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)