

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,

Original Application No.040/00438 of 2014

Date of Order: This the 20th Day of May 2016

HON'BLE MRS.MANJULA DAS, JUDICIAL MEMBER

HON'BLE MOHD HALEEM KHAN, ADMINISTRATIVE MEMBER

1. Sri Rajen Kujur

S/O Late Kandru Kujur

R/O Vill.Chowpukuria

P.O.Bagdogra

Pin No.734422

Siat:Darjeeling (West Bengal)

Applicant

By Advocate Mr.J.P.Das

-Vs-

1. The Union of India represented by the General Manager, Northeast Frontier Railway
P.O.Maligaon Railway HQrs.Pin No.781011
Dist.Kmrup(Assam)

2. The Operation Manager
Northeast Frontier Railway
Maligaon, Pin No.781011
Dist.Kamrup (M)(Assam)

3. The Divisional Railway Manager
Northeast Frontier Railway
Rangia, Pin No.781365
Dist.Kamrup(Assam)

4. The Addl.Divisional Railway Manager Northeast Frontier Railway

Rangia Pin No,781365
Dist. Kamrup (Assam)

5. The Divisional Operation Manager
Northeast Frontier Railway
Rangia Pin No.781365
Dist.Kamrup, (Assam)
6. The Senior Divisional Operation Manager
Northeast Frontier Railway
Rangia, Pin No.781365
Dist.Kamrup, (Assam)
7. The Assistant Commercial Manager,
Northeast Frontier Railwy
Alipurduar Junction
PinNo.
8. The D.P.O.
Northeast Frontier Railway
Rangia, Pin No.781365
Dist.Kamrup, (Assam)
9. The Officer on Special Duty
Northeast Frontier Railway
Rangia Division,
Pin No.781365
Dist.Kamrup, (Assam)
10. The Enquiry Officer
The then TI/angapara North
Northeast Frontier Railway
Railway Area Manager's Office
P.O. Rangapara,
Pin No.784505
Dist:- Sonitpur, (Assam)

By Advocate Mr.M.K.Mazumdar, Railway Counsel

O R D E R (ORAL)

Per Mrs. Manjula Das, Judicial Member:

By this O.A. the applicant makes a prayer for setting aside the punishment of removal order dated 20.3.2009, order of compulsory retirement passed by the appellate authority as well as revision order and for a direction to respondent authorities to re-instate the applicant in the post of S/Cleaner (Safaiwala) in the Railway Department.

2. This Tribunal vide order dated 16.06.2015 condoned the delay by allowing the Condonation Petition.No.03 of 2015.
3. Heard Mr.J.P.Das, learned counsel for the applicant and Mr. M.K.Mazumdar learned Railway Standing counsel for the Respondents, perused the pleadings and materials placed before us.

Mr.J.P.Das, learned counsel appearing for the applicant submitted that due to unauthorized absent, a disciplinary proceeding was initiated against the applicant. Learned counsel further submitted that the applicant was under treatment at Kanaklata Civil Hospital Tezpur as such letters were returned back to the office where the applicant performed his duties.

4. After recovery the applicant came to the office to attend his duty however he was intimated that a major penalty of removal has been imposed upon him.

According to learned counsel, disciplinary proceeding was initiated ex-parte without affording any opportunity to represent his case. Thus, the ex-parte decision of the disciplinary authority is not at all correct and justified.

5. Mr. Das further submitted that in compelling circumstances the applicant could not be present in the office for which the Memorandum of Charges dated 7.02.2008 was issued. However, the same has not been served upon the applicant. As such the punishment order is not legally sustainable as per Sub-rule (2) (ii) of Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968.

6. The applicant did appeal on 22.4.2009 against the punishment of removal order before the appellate authority. The appellate authority vide order dated 28.4.2009 converted the punishment i.e removal from service to "Compulsory Retirement" w.e.f. 20.3.2009.

7. The applicant thereafter, preferred a mercy appeal before the authority dated 04.06.2009 where the respondent's authority did not accede to.

8. Mr.Das, forcefully argued that while punishment was imposed upon the applicant the disciplinary authority did not follow the provisions of Rule 9 of Railway Servants Discipline & Appeal Rules 1968 and that score alone the punishment order cannot be sustained.

9. By countering the arguments advanced by learned counsel for the applicant, Mr.M.K.Mazumdar, learned Standing counsel for the Railways vehemently argued that the memo of charges were sent to the applicant by three times to the home address which are returned back as undelivered. The applicant was charge sheeted for unauthorisedly absent for long years i.e 16.11.2006 to 23.3.2009. On 30.12.2008 an Inquiry Officer was appointed to enquire into the charges framed against the applicant. As per enquiry officer's report and the findings, the disciplinary authority imposed major penalty upon the applicant of removal/Compulsory retirement from Railway Service.

10. According to Mr.Mazumdar, the Medical Certificate produced by the applicant to the authority was from private Doctor where he undergone treatment and not from the Doctor of Railway

hospital. Moreover, in Tezpur there is a Railway hospital and as per provisions of Railway norms and rule the railway employee ought to have been treatment in Railway Hospital. As such, the Railway authority declined the Medical Certificate and after enquiry punishment order was passed by the disciplinary authority.

11. It was further submitted by the learned counsel that the applicant did not inform about his sickness or any of the family members regarding his treatment and what treatment was going on to the respondent authority. Moreover, all the time the memorandum of charges were returned back. As such, there is no lapse on the part of the respondents authority.

12. For proper adjudication of the matter, we are taken in hand the Railway Servants (Discipline & Appeal) Rule 1968, where Rule 9 provides the procedure for imposing major penalty.

The Rule 9 (7) provides as here under:-

“(7) the Disciplinary authority shall deliver or cause to be delivered to the Railway servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Railway servant to submit a written statement of his defence within

ten days or such further time as the disciplinary authority may allow.”

Railway Servant (Discipline and Appeal) Rules 1968 which is as hereunder:-

“The inquiry under the D&A Rules can be held ex parte only if after delivery of the Charge Memorandum the Railway servant does not comply with the requirements cast on him by the rules. Delivery means actual delivery. Hence in cases of deemed delivery of charge memorandum, the inquiry cannot be held ex parte in terms of Rule 9 (23) of Railway Servants (Discipline & Appeal) Rules, 1968 because the charge Memorandum has not actually been delivered.”

13. The Rule 9 (23) provides as here under:-

“ If the Railway servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex-parte.”

14. Now in the present case the question arises as to whether the Memorandum of charges has actually been served upon the applicant. The learned counsel for the applicant has drawn our attention to the guidelines and the Article of charges imposed upon

the delinquent Railway Servants. It is provided that serving of memo of charges in major penalty the disciplinary proceedings on Railway Servants who are unauthorisedly absent from duty or away from headquarters Service of charge sheet is a 'must' before holding ex parte inquiry.

15. Admittedly, in the present case, the memorandum of charges dated 07.02.2008 has not been actually delivered to the applicant. Apparently, procedural lapses is in existence on the enquiry proceedings leading to the punishment imposed upon the applicant.

16. By taking into entire conspectus of the case, we are in view that the punishment imposed by the Disciplinary Authority and Appellate Authority are not sustainable under the law. Accordingly, the punishment order dated 20.3.2009 and 28.4.2009 are hereby set aside.

17. However, the Respondents are directed to allow the applicant to join immediately in the place of posting in the same capacity. Further directed to the respondents to initiate disciplinary proceedings against the applicant for alleged unauthorise absence, with due compliance in accordance with the law as provided under Railway Servants (Discipline & Appeal) Rules 1968 within a period of 4 months from the date of receipt of this order.

21. With the above observations and directions, the O.A. is disposed of. No order as to costs.

(MOHD HALEEM KHAN)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICIAL MEMBER

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10. Consequently, the punishment order dated 20.03.2009 passed by the disciplinary authority , appellate authority dated 28.04.2009 as well as the revisional authority are hereby set aside and quashed.

11. With the above observations and directions, the Original application is disposed of. No order as to costs.

(MOHD HALEEM KHAN)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICIAL MEMBER

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