

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/512/2014

HYDERABAD, this the 20th day of January, 2020



**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**

A. Bholanath,
S/o. A.V. Narayana,
Aged 42 years,
Occ: Loco Pilot (Goods),
O/o. the Chief Traction Crew Controller,
East Coast Railway,
Waltair Division, Bacheli.

... Applicant

(By advocate: Mr. K.R.K.V. Prasad)

Vs

1. Union of India rep. by
The General Manager,
East Coast Railway,
Chandrasekhapur, Bhubaneshwar.
2. The Divisional Railway Manager,
East Coast Railway, Waltair Division,
Visakhapatnam.
3. The Additional Divisional Railway Manager,
East Coast Railway,
Waltair Division,
Visakhapatnam.
4. The Senior Divisional Electrical Engineer (OP),
East Coast Railway,
Waltair Division,
Visakhapatnam.

... Respondents

(By advocate: Mr. T. Hanumantha Reddy,
SC for Railways)

O R D E R (ORAL)**Hon'ble Mr. Ashish Kalia, Judl. Member**

The present Original Application is filed u/Section 19 of Administrative Tribunals Act, 1985 with the following prayer:



..... to call for the records pertaining to the order No.WAT/ EL/ RSO/ D&A/AB dated 21.4.2014 and order No. WAT/ EL/ RSO/D&A/ AB/235 dated 21/27.08.2014 and declare the action of the 4th respondent in imposing the punishment of reduction from the post of Loco Pilot (Goods) Grade-II Pay Band of Rs.9300-34800/- with Grade Pay of Rs.4200/- to the post of Assistant Loco Pilot Pay Band of Rs.5200-20200 with Grade Pay of Rs.1900/- for a period of 3 years on cumulative effect and the action of 3rd respondent in enhancing the said penalty with five years as illegal, arbitrary, is in violation of principles of natural justice and rules, null and void and set aside and quash the said two orders and grant all consequential benefits to the applicant as if no penalty was imposed on the applicant.ö

2. The brief facts of the case are that the applicant is presently working as Loco Pilot (Goods) in the office of the Chief Traction Crew Controller, Bacheli in Waltair Division of East Coast Railway. He was issued with a charge memo on 7.11.2013, alleging that he has not obeyed the orders of Station Master, Kirundal. An Inquiry Officer was appointed, who submitted his report holding the charge as proved. After the applicant submitted his reply to the inquiry report, the Disciplinary Authority, imposed the penalty of reverting him from the grade of Loco Pilot (Goods) to the initial grade of Assistant Loco Pilot for a period of three years. The applicant preferred an appeal dated 27.5.2014. The Appellate Authority vide

his order dated 21/27.8.2014 enhanced the penalty imposed on the applicant to that of reversion to the initial grade for five years.

3. The respondents filed reply, stating that the action of the respondents in imposing penalty on the applicant is in accordance with rules and law in view of the fact that shunt movements are not carried out by the applicant, for which he is solely responsible. They further submitted that ample opportunity was afforded to him to prove his alleged innocence of the charges in question.

4. Heard Sri KRKV Prasad, learned counsel for the applicant and Mr. T. Hanumantha Reddy, learned counsel for the respondents, at length.

5. The applicant in the present O.A., after amendment, raised a ground that the Appellate Authority passed a non-speaking order, without application of mind on various contentions raised by the applicant in his appeal. We find that the only ground where we can exercise our jurisdiction is the appellate order passed by the Appellate Authority, without giving an opportunity to the applicant to make a representation and he is praying for setting aside and quashing the same.

6. On the contrary, the respondents took a stand that after appeal, there is another remedy available to the applicant, which is not exhausted.

7. As decided by this Tribunal in large number of cases, the revisional jurisdiction is only optional to the applicant. The last order which can be assailed by any of the applicants is the appellate order. In the present case,



the Disciplinary Authority imposed the penalty of reverting from the grade of Loco Pilot to the initial grade for a period of three years. The applicant preferred an appeal on 27.5.2014. The Appellate Authority has enhanced the punishment by recording disagreement and without giving reasonable opportunity to the applicant to present his side on the enhancement of penalty. In the matter of **Yoginath D. Bagde Vs State of Maharashtra** (2006) 5 SCC 446), the Hon'ble Supreme Court held that though the show cause notice was issued to the petitioner by the Disciplinary Authority, that did not contain any specific ground on which, the Disciplinary Authority was proceeding or proposing to disagree with the findings of the Inquiry Officer. The Disciplinary Authority has to give reasons for disagreement with the Inquiry Report; that too on the basis of record. The Disciplinary Authority cannot rely upon anything, which is not part of record nor can examine any witnesses, who are not examined by him. The Disciplinary Authority has to give a tentative reason for disagreement and is required to give the delinquent official an opportunity to represent against the same.

8. Thus, in the present case, while passing the appellate order, the Appellate Authority has not given any Disagreement Note nor given any opportunity to the delinquent officer, the applicant herein, for defending his case. Without hearing the applicant, the penalty has been enhanced, which is against the service jurisprudence. Therefore, we hereby set aside the impugned order dated 21/27.08.2014, and direct the Appellate Authority to pass a speaking and reasoned order, duly dealing with all the contentions raised in the appeal. Even the opportunity of personal hearing may be given to the applicant. This exercise shall be completed within 60 days from the

date of receipt of this order. In case such order of the respondents is not in favour of the applicant, he is at liberty to approach this Tribunal once again. Also, the said order shall not be implemented for at least 10 days, to enable the applicant to approach this Tribunal.

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



(B.V. SUDHAKAR)
ADMN. MEMBER

(ASHISH KALIA)
JUDL. MEMBER

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