

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

LIBRARY

No. O.A. 1218 of 2013

Reserved on: 2.3.2020

Date of order: 16.03.2020

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sri Raj Kumar Yadav,
Aged about 52 years,
Son of Late Ram Kripal Yadav,
Working for gain to the post of
Tower Wagon Driver, Grade I,
Under the Divisional Railway Manager,
Eastern Railway, Asansol,
Residing at Quarter No. 26, Station Colony, Panagar,
District : Burdwan, Pin Code : 713 148.

..... Applicant.

Versus

1. The Union of India,
Service through General Manager,
Eastern Railway,
Fairley Place, 17, N.S. Road,
Kolkata - 700 001.
2. The General Manager,
Eastern Railway,
Fairley Place, 17, N.S. Road,
Kolkata - 700 001.
3. The Divisional Railway Manager,
Asansol Division,
Eastern Railway,
District : Burdwan, Pin Code : 713 148.
4. The Senior Divisional Electrical Engineer/TRD,
Eastern Railway,
Asansol Division,
District : Burdwan - 713 148.
5. The Divisional Electrical Engineer/TRD,
Eastern Railway,
Asansol Division,
District : Burdwan, Pin Code - 713 148.
6. The Senior Commercial Manager,
Eastern Railway,

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Asansol Division,
District : Burdwan - 713 148.

..... Respondents

For the Applicant : Ms. A. Roy, Counsel

For the Respondents : Mr. K.N. Bhattacharyya, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 in third stage litigation praying for the following relief:-

- "a) A DIRECTION do issue setting aside the charge sheet dtd. 24.01.2002 being Annexure "A-1" hereto;
- b) A DIRECTION do issue setting aside the order of the Appellate authority being Memo No. ACOE/20/RKY/698 dated 27.03.2012 issued under the signature of the Senior Divisional Electrical Engineer/ TRD, Eastern Railway, Asansol Division being Annexure "A-8" hereto;
- c) DIRECTION do issue upon the respondent authorities directing them/ their agents and/ or subordinates to produce the records of the case and on such production being made to render conscionable justice by passing necessary orders thereon;
- d) DIRECTION do issue upon the respondent authorities directing them/ their agents and/ or subordinates to allow the applicant to pay all other consequential benefits holding that no proceeding had ever been initiated against the applicant;
- e) Costs of and incidental to this application;
- f) And/ or to pass such other or further order or orders as to your Lordships may seem fit and proper;"

2. The facts, in a narrow compass, are as follows:-

The applicant was appointed as a Khalasi in the year 1980 and was promoted to the post of Tower Wagon Driver Group 'C' on 6.1.1999. He was chargesheeted on 24.1.2002 as per Rule 9 of the RSDA Rules, 1968. On 4.2.2002, the applicant represented requesting for furnishing of documents, inspection of relevant documents and for allowing one Shri

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S. Samanta to appear as his defence counsel. On 20.2.2002 the disciplinary authority appointed Enquiry Officer to enquire into the charges levelled against the applicant. On 2.5.2002 the applicant replied to the impugned chargesheet. The date of enquiry was fixed on 21.6.2002 and on 23.8.2002, the applicant was removed from service as per orders of the disciplinary authority. As the applicant's appeal was not disposed of by the Appellate Authority, he approached this Tribunal in O.A. No. 905 of 2005 subsequent to which, the appellate authority confirmed the order of removal from service vide his orders dated 20.12.2006.

Being aggrieved by such orders of the appellate authority, the applicant approached the Tribunal in second stage litigation in O.A. No. 393 of 2007, upon which this Tribunal quashed the orders of the appellate authority and remanded the matter back to the authority for passing an order in appeal as per Rule 22(2) of RSDA Rules.

The appellate authority thereafter issued a memorandum order dated 27.3.2012 after granting personal hearing to the applicant vide which the authority decided to reinstate the applicant in service with the penalty of reduction of two stage lower in time scale of pay for one year with cumulative effect. The period from the date of his removal to resumption of his duties was directed to be treated as "DIES NON".

The applicant has approached this Tribunal, challenging, inter alia, the orders of the Appellate Authority.

3. The applicant, being aggrieved with the orders of the disciplinary authority dated 23.8.2002 as well as that of the appellate authority dated 20.12.2006 vide which he was removed from service, had approached the Tribunal challenging the same in second stage litigation. This Tribunal, after hearing both Ld. Counsel, had disposed of the said O.A. by directing as follows:-

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"16. It is seen that the orders of the appellate authority do not conform to the ingredients as laid down by the RSDA Rules. The ingredients are whether the proceeding is in conformity with the Constitutional provision as also to the principles of natural justice. The applicant has raised several points regarding the chargesheet including non-supply of documents which appeared his written statement of defence in so far as the chargesheet is concerned. It has to be seen by the appellate authority as to whether the enquiry was ordered before allowing the applicant to make statement of defence. It has also been seen that whether during the enquiry the applicant was given adequate opportunity of defending himself. We at this state, therefore, remand back the matter to the authority for passing an order in the appeal as per Rule 22(2) of RSDA Rules. The orders passed by the appellate authority dated 20.12.2006 are hereby quashed. While disposing of the appeal of the applicant so desires, a hearing may be given to the applicant."

4. The applicant has challenged the orders of the appellate authority primarily on the following grounds:-

" For that the impugned order is bad since bereft of doubt was given to the applicant imposition of punishment to any extent is bad and further treating the period from the date of removal of the applicant up to resuming duty as "Dias Non" is non application of mind, without jurisdiction, erroneous and arbitrary and thus liable to be set aside and further that the applicant is entitled to all other consequential benefits holding that no proceeding had ever been initiated against the applicant."

5. It transpires that the disciplinary authority, vide his orders dated 24.1.2002, had imposed the penalty of removal from service upon the applicant and the appellate authority in the first instance had upheld such orders of removal. While issuing his reasoned orders in compliance to the orders of the Tribunal dated 2.12.2011, the appellate authority noted that the applicant is indeed guilty of driving the tower wagon at high speed as evident from the intensity of damages to the tower wagons in the incident. The said authority, however, concluded that there was scope of benefit of doubt on technicalities particularly with reference to the brake power of both the tower wagons and, hence, adopted a more lenient view, and, on sympathetic grounds, decided to reinstate the applicant in service with a penalty of reduction of two stages lower in time scale of pay for one year with cumulative effect.

The said appellate authority further directed that the period from his date of removal to resumption of duties will be treated as dies-non. The applicant has alleged non-application of mind, as well as arbitrary

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and erroneous decision making in issue of such appellate orders dated 27.3.2012.

In this O.A., the applicant has once again raised the issue of jurisdiction which was dealt with by this Tribunal in the earlier round of litigation wherein this Tribunal had decided to confine adjudication to the orders of the appellate authority. This Tribunal would also confine itself to the legality of the orders of the appellate authority dated 27.3.2012 in the present O.A.

6. Detailed averments on challenge to such penalty imposed by the appellate authority vide his orders dated 27.3.2012, however, is not on record; the only cryptic grounds being that of non-application of mind, arbitrary and erroneous decision making.

7. Herein, we would refer to Rule 25 of the RSDA Rules, 1968 which reads as follows:-

"25. Revision - (1) Notwithstanding anything contained in these rules -

(i) the President, or
 (ii) the Railway Board, or
 (iii) the General Manager of a Railway Administration or an authority of that status in the case of a Railway servant serving under his control, or
 (iv) the appellate authority not below the rank of a Divisional Railway Manager in cases where no appeal has been preferred, or
 (v) any other authority not below the rank of Deputy Head of Department in the case of a Railway servant serving under his control - may at any time, either on his or its own motion or otherwise, call for the records of any inquiry and revise any order made under these rules or under the rules repealed by Rule 29, after consultation with the Commission, where such consultation is necessary, and may - (a) confirm, modify or set aside the order; or (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or (d) pass such orders as it may deem fit:

Provided that -

(a) no order imposing or enhancing any penalty shall be made by any revising authority unless the Railway servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed;

(b) subject to the provisions of Rule 14, where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of Rule 6 or the penalty specified in clause (iv) of Rule 6 which falls within the scope of the provisions contained in sub-rule (2) of Rule 11 or to enhance the penalty imposed by the order under revision to any of the penalties specified in this sub-clause, no such penalty shall be imposed except after following the procedure for inquiry in the manner laid down in Rule 9, unless such inquiry has already been held, and also except after consultation with the Commission, where such consultation is necessary.

(2) No proceeding for revision shall be commenced until after -

(i) the expiry of the period of limitation for appeal; or

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(ii) the disposal of the appeal where any such appeal has been preferred:

Provided that the provisions of this sub-rule shall not apply to the revision of punishment in case of Railway accidents.

(3) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules.

(4) No power of revision shall be exercised under this rule -

(i) by the appellate or revising authority where it has already considered the appeal or the case and passed orders thereon; and

(ii) by a revising authority unless it is higher than the appellate authority where an appeal has been preferred or where no appeal has been preferred and the time limit laid down for revision by the appellate authority, has expired:

Provided that nothing contained in clauses (i) and (ii) above, shall apply to revision by the President.

(5) No action under this rule shall be initiated by -

(a) an appellate authority other than the President; or

(b) the revising authorities mentioned in item (v) of sub-rule (1) -

After more than six months from the date of the order to be revised in cases where it is proposed to impose or enhance a penalty or modify the order to the detriment of the Railway servant; or more than one year after the date of the order to be revised in cases where it is proposed to reduce or cancel the penalty imposed or modify the order in favour of the Railway servant:

Provided that when revision is undertaken by the Railway Board or the General Manager of a Zonal Railway or an authority of the status of a General Manager in any other Railway Unit or Administration when they are higher than the appellate Authority, and by the President even when he is the appellate authority, this can be done without restriction of any time limit.

Explanation: For the purposes of this sub-rule the time limits for revision of cases shall be reckoned from the date of issue of the orders proposed to be revised. In cases where original order has been upheld by the appellate authority, the time limit shall be reckoned from the date of issue of the appellate orders.

Note :- Time limit for revision petition is 45 days from the date of delivery of the order sought to be revised. Where no appeal has been preferred against the order of the disciplinary authority the time limit of 45 days will be reckoned from the date of expiry of the period of limitation for submission of appeal [E(D&A)84RB6-44 of 2.12.1986 W.R. No. 188/86], the authority may entertain petition after expiry of period if it is satisfied that the petitioner had sufficient cause for delay (ibid).

25-A. Review - The President may at any time either on his own motion or otherwise review any order passed under these rules when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case has come or has been brought to his notice.

Provided that no order imposing or enhancing any penalty shall be made by the President unless the Railway servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed or where it is proposed to impose any of the major penalties specified in Rule 6 or to enhance the minor penalty imposed by the order sought to be reviewed to any of the major penalties and if an enquiry under Rule 9 has not already been held in the case, no such penalty shall be imposed except after inquiring in the manner laid down in Rule 9, subject to the provisions of Rule 14 and except after consultation with the Commission where such consultation is necessary.

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- (i) Revision is different from review. Review in terms of Rule 25-A can be undertaken only by the President and only when some new evidence

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which could not be produced or was not available at the time of passing the order and which has the effect of changing the nature of the case, is brought to the notice of President. Both revision and review can be undertaken either suo-moto or on submission of a petition by the employee.

- (ii) Revision can be undertaken by the President, Railway Board, GM or any other authority not below the rank of Dy. HOD. It can be undertaken on consideration of a Revision Petition submitted by the employee or as a suo-moto exercise. If undertaken suo-moto, then the revisionary proceedings should not be started till disposal of the appeal, if already submitted or till the expiry of the limitation period of 45 days for submission of appeal. This, however, does not apply to revision of punishment in case of railway accidents.
- (iii) Where a review petition is submitted by the employee, the petition should be dealt with in the same manner as if it were an appeal. Thus, the time limit for submitting the revision petition is also 45 days, which needs to be indicated in the appellate order and the Revising Authority should also consider the case in the same manner as the Appellate Authority is required to do.

[R.B's letters No. E(D&A)84RG 6-44 dated 8.1.85 (RBE 12/85 and 2.12.86 (RBE 235/86)]

- (iv) The revising authority has to be higher in rank than the Appellate Authority where:-
 - (i) An appeal has been preferred; or
 - (ii) Where the time limit prescribed for "revision to be made by the Appellate Authority", as laid down in Rule 25(5) of RS (O&A) Rules has expired.

The above stipulation does not apply to the revisions made by the President. (Rule 25(4) of RS (D&A) Rules, 1968) Railway Board Master Circular No. 67 dated 21.9.2011).

1. Difference between revision and review is that review as per Rule 25(A) can be undertaken only by the President and that too when some new evidence which could not be produced or was not available at the time when the order was passed and which has the effect of changing the nature of the case, is brought to the notice of the President. Revision and Review both of them can be undertaken either on submission of a petition by the employee or suo moto.
2. The revision of the punishment can be undertaken by the President, Railway Board, General Manager or any other authority not below the rank of Deputy Head of the Department. Revision can be undertaken on consideration of a revision petition submitted by the employee also or suo moto. If the revision is undertaken suo moto the revisionary proceedings should not be started till the disposal of the appeal, if already submitted or till the expiry of limitation period of 45 days for submission of an appeal. This however, shall not be applicable in case of railway accidents.
3. In those cases where the employees submit their revision petitions, the revision should be dealt with in the same manner as if it was an appeal. The time limit for submitting the revision petition is 45 days which needs to be indicated in the appellate order and the Revising Authority should also consider the case in the manner as the Appellate Authority is required to do.
4. The revising authority has to be higher than the Appellate Authority where:-
 - (i) An appeal has been preferred; or
 - (ii) Where the time limit prescribed for "revision to be made by the Appellate Authority" as per Rule 25(5) of the RS (D&A) Rules has expired.

The above stipulation does not apply to the revision made by the President.

In cases where the revision is undertaken after the time limit given below than it can be done only by the General Manager or Railway Board provided they are above the Appellate Authority or by the President even if he happens to be the Appellate Authority.

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- (a) Beyond 6 months from the date of the order to be revised in case where it is proposed to impose a penalty (where no penalty is in force).
- (b) Beyond one year from the date of the order to be revised in case where it is proposed to cancel the penalty imposed or reduce the penalty. The aforesaid time limit is relevant only for suo moto proceedings and not for consideration and disposal of revision petition which has to be done by the prescribing Revising Authority subject to condonation of delay, if any, in submission of revision petitions.

- (i) In cases where the revising authority purposes to impose a penalty (where no penalty has been imposed) or enhance the penalty, then a Show Cause Notice has to be issued to the Railway servant indicating the proposed penalty to enable him to represent against the said penalty. If the proposed penalty is such that holding of an inquiry is mandatory before its imposition and if an inquiry has not already been held in that case, then an inquiry should first be held before the proposed penalty can be imposed by the Revising Authority.

- (c) Some special provisions for non-gazetted staff are as under:-

- (i) As per Rule 24(2) of (D&A) Rules A Group 'C' employees who has been dismissed/removed/compulsorily retired can submit his revision petition directly to the General Manager, even though the prescribing Revising Authority may be a lower authority in his case and can also request the General Manager to refer his case to Railway Rates Tribunal for advice. If the General Manager does not propose to accept the advice of RRT, approval of Railway Board is required before final orders are passed.

[RB's No. E51 RG 6-20 dated 17.5.52, E(D&A)61 RG 6-28 dated 5.6.63 and E(D&A)83 RG 6-8 dated 25.3.83]

- (ii) As per Rule 24(3) of (D&A) Rules A Group 'D'; employee who has been dismissed / removed/compulsorily retired may submit his revision petition directly to the Divisional Railway Manager or where he is not directly under control of any DRM, to the senior most administrative grade officer.

- (d) Revision is a one-time exercise and there is no provision for a second revision of the case. However, if the revisionary order imposes a penalty where no penalty was earlier imposed or if it enhances the penalty, the rules provide for submission of an appeal against such imposition/enhancement of the penalty, to the next higher authority. There is no provision for further revision of the appellate order.

[(RB's No. E(D&A)79RG 6-40 dated 18.8.81 and No. E(D&A)94 RG 6-11 dated 31.8.94 (RBE 68/94)].

- (e) In case of enhancement of the penalty, if the lower penalty has already been undergone by the charged official in whole or in part, then the facts relating to the original penalty can be taken into consideration by the Revising Authority who can impose an additional penalty by way of enhancement of punishment.

[R.B.'s No. E55 RG 6-14 dated 28.2.56 and No. E(D&A) 71 RG 6-18 dated 12.12.72].

- (f) Revision/Review of disciplinary cases which have already been finalized before retirement of the concerned Railway employee cannot be initiated after his retirement with a view to impose a cut in the pensionary benefits. However, in cases where a show cause notice for suo-moto revision had been issued before retirement or where a revision petition submitted by the employee was pending at the time of retirement, revisionary proceedings can continue after retirement also.

[R.B.'s No. E(D&A)93 RG 6-61 dated 11.1.2000 (RBE 5/2000)]

- (g) Pending Revision Petitions/Appels have to be disposed of on merits by the Revising/Appellate Authority, even if the employee concerned may have died in the meanwhile.

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[R.B.s No. E(D&A)85RG6-46 dated 11.11.85 (RBE 313/85) and RB Master Circular No. 67, dated 21.9.2011]"

There is nothing on record to substantiate that the applicant had ever, being aggrieved by the orders of the appellate authority, preferred a revision petition.

We also note that the time limit for preferring such revision petition has lapsed. We would hence, accord liberty to the applicant to prefer a revisional appeal to the appropriate authority as provided for under the RSDA Rules, 1968 after waiving limitation in this regard. He may challenge the orders of the appellate authority and advance detailed grounds in support of his claim within a period of four weeks from the date of receipt of a copy of this order, and, once so received, the said revisional authority shall arrive at his conclusion in accordance with law within a period of six weeks from the date of receipt of such representation, and thereafter convey his decision to the applicant with a speaking and reasoned order.

8. With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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