

Central Administrative Tribunal
Patna Bench, Patna.
O.A./050/00490/2016

Date of CAV : 09.12.2019

Date of Order :- 08.01. 2020

C O R A M

Hon'ble Mr. J. V. Bhairavia, Member [J]
Hon'ble Mr. Dinesh Sharma, Member [A]



Munshi Yadav, son of late Dighu Yadav, Ex-Pointsman, North Eastern Railway, Sasamusa, resident of Village & PO – Sarsar, District – Siwan [Bihar].

....Applicant

By Advocate : Shri M.P.Dixit

Vs.

1. Union of India, through the General Manager, North Eastern Railway, Gorakhpur [U.P.].
2. The General Manager [P], North Eastern Railway, Gorakhpur [U.P.].
3. The Divisional Railway Manager, North Eastern Railway, Varanasi [U.P.].
4. The Additional Divisional Railway Manager, North Eastern Railway, Varanasi [U.P.].
5. The Divisional Railway Manager [Operating], North Eastern Railway, Varanasi [U.P.].
6. The Senior Divisional Personnel Officer, North Eastern Railway, Varanasi [U.P.].
7. The Senior Divisional Financial Manager, North Eastern Railway, Varanasi [U.P.].
8. The Divisional Operating Manager, North Eastern Railway, Varanasi [U.P.].

..... Respondents.

By Advocate : Mr. Binay Kumar

O R D E R

Per J.V. Bhairavia, M [J] :- In the instant OA, the applicant has prayed for the following reliefs :-

"8[1] That Your Lordships may graciously be pleased to declare and hold the fixation of pensionary benefits including pension on the basic pay shown in the pension payment order dated 26.11.2015 as contained in Annexure-A/4 which is

based on the punishment order dated 24.10.2013 as contained in Annexure-A/3 as illegal, unjust, ab initio wrong and as such the same may be quashed.

8[2] That Your Lordships may further be pleased to quash and set aside the order dated 24.10.2013 passed by the Respondent No.8 as contained in Annexure-A/3 whereby and whereunder the punishment of fixation of pay on the initial pay in the pay scale before the imposition of the punishment of Compulsory Retirement till the date of superannuation and period from the date of compulsory retirement up to reinstatement in service i.e. 20.09.2005 to 23.10.2013 has been treated as dies non instead of A "as on duty".



8[3] That Your Lordships may further be pleased to direct/command the Respondents to restore the original pay of applicant which he was getting just before the date of imposition of compulsory retirement order with all consequential benefits including annual increment and arrears accrued thereon.

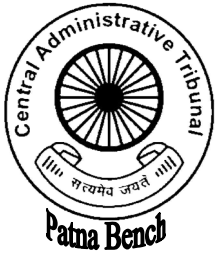
8[4] That Your Lordships may further be pleased to direct the respondents to pay the arrears for the period from 20.09.2005 to 23.10.2013 treating the same as on duty instead of dies non.

8[5] That Your Lordships may further be pleased to direct the Respondents to issue revised pension payment order henceforth and further they may be directed to revise the entire pensionary benefits including the pension, DCRG, Leave Encashment, Commuted Value of pension, etc. on the restored pay after adding due increments and other admissible benefits together with arrears.

8[6] That Your Lordships may further be pleased to direct/command the Respondents to pay the statutory interest on the arrears amount in respect of all benefits without any further delay.

8[7] Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the applicant with all consequential benefits.”

2. The applicant's case in brief, is as under : -



[i] The applicant submitted that while he was working as Pointsman at Sasamusa Railway Station, received one major penalty charge sheet dated 23.09.2003 under Rule 9 of Railway Servant [Discipline and Appeal] Rules, 1968 alleging false allegation of selling tickets. The applicant submitted that one Sri P.N.Saha, Station Master who was the concerned official, was entrusted the work of Train Operation as also selling of tickets and the applicant's job was entirely different from selling of tickets.

[ii] The applicant further submitted that in the meantime, he received a major punishment of compulsory retirement on 20.09.2005, whereas the main person who was responsible, i.e. Mr.P.N.Saha was issued a minor punishment. The applicant, thereafter, filed an appeal and revision but the same were rejected mechanically by the authorities concerned.

[iii] The applicant, thereafter, filed one OA No.672/2006, which was disposed of on 21.07.2011 [Annexure-A/1] with direction to the concerned disciplinary authority to take up proceedings afresh from the point the defect has crept in, that is, not providing an opportunity to the applicant to be heard in person along with his defence

counsel. The respondents, instead of complying the aforesaid order, filed a writ petition before the Hon'ble High Court of Patna, vide CWJC No. 22590/2012 which was heard and disposed of on 29.07.2013 [Annexure-A/2] with direction to the disciplinary authority to pass fresh appropriate orders after personal hearing within a maximum period of 8 weeks from the date of receipt/production of a copy of that order.



- [iv] Thereafter, the Respondent No.8 called the applicant along with defence helper on 10.10.2013. The applicant appeared and requested for calling the prosecution witnesses but instead of calling the prosecution witnesses, the respondent no.8 directed the applicant to file his defence, which he complied with on 16.09.2013 under the compelling circumstances. The applicant submitted that the Respondent No.8 has passed an order dated 24.10.2013 whereby punishment of compulsory retirement has been cancelled/recalled being excessive and he has been reinstated in service but the respondent no.8 has imposed another major punishment fixing his pay, which he was receiving before his compulsory retirement and further the applicant shall receive the same pay till his retirement, as also the period from the date of compulsory retirement to reinstatement in service, i.e. 20.09.2005 to 23.10.2013 has been treated as "dies non" instead of "as on duty", which is illegal, arbitrary, unconstitutional,

discriminatory and against the principle of natural justice as also against the order of this Tribunal and High Court as contained in Annexure-A/1 and A/2.

- [v] The applicant submitted that against the aforesaid punishment order dated 24.10.2013 [Annexure-A/3], he filed OA No. 227/2014 on 04.03.2014 in which notices were issued on 14.03.2014. The applicant submitted that on receipt of notice in the aforesaid case, the respondents asked the applicant to withdraw the aforesaid OA, so that his pay and other benefits could be restored. Accordingly, the applicant in view of instructions given by the respondents, filed one mention slip before this Tribunal to that effect and on the basis of the reason assigned in the mention slip, this Tribunal permitted the applicant to withdraw the aforesaid OA. The applicant submitted that even after receipt of withdrawal order, the respondents, on some pretext or other, delayed the matter. In the meantime, the applicant superannuated from service on 30.11.2015 but his pay has neither been restored nor the dies non period has been treated as on duty and subsequently the respondents issued pension payment order dated 26.11.2015 [Annexure-A/4], hence the present OA.

3. The respondents have filed their written statement and contested the case. Their submission is as under : -

- [i] On 12.02.2003, the applicant was posted as Points man at Sasamusa Station, whose duty was



to assist the working Station Master in movement of train. On the said date, line clear was given for the passenger train no.249 UP. After this, Sri P.N. Saha, Station Master asked the pointsman on duty, namely ShriMunshiYadav and ShriParshuram Prasad to reach their respective direction for fixing the line for incoming and outgoing of the said train. On this direction, ShriParshuramPrasad proceeded to his fixed direction but the applicant remained stayed at Station.



- [ii] At the same time, ShriP.N.Saha, Station Master was booking tickets. During this period, he felt nature's call and seeing Mr.MunshiYadav standing nearby, ShriSaha asked him to keep guard the ticket tube and went for nature's call. The respondents submitted that amongst ticket booking line, Vigilance sleuths were in que for preventive check. Immediately after the said station master went out, the applicant went to ticket tube window and started booking/selling tickets unauthorizedly for which he was not authorized. Decoy of Railway Vigilance team asked for 4 tickets from Sasamusa to Phagwara for which MunshiYadav who was selling the tickets told and demanded Rs. 215/- for each ticket and took the same amount though the actual fare was Rs. 205/- for each ticket. The applicant sold the

tickets and took Rs. 40/- extra from the Vigilance decoy. Immediately the vigilance team caught him red handed with tainted notes while he was selling tickets unauthorisedly on higher rate than the fixed fare.

[iii] Thereafter, the respondents issued major penalty charge sheet on 23.09.2003. Disciplinary proceedings was started against him on 21.11.2003 and the same was concluded on 20.09.2004. The alleged charges were found proved against the applicant and he was retired from service compulsorily. Shri P.N.Saha was also punished under minor penalty charges.

[iv] The respondents submitted that against the order dated 21.07.2011 passed by the Tribunal in OA 612/2006, they challenged the same before the Hon'ble High Court of Patna by way of filing CWJC No. 22590/2012, which was disposed of on 29.07.2013. Thereafter, in compliance of the aforesaid direction of the Hon'ble High Court as also of the Tribunal, the Disciplinary Authority heard the applicant in person along with his defence counsel on 10.10.2013 and considering his appeal sympathetically, the applicant was ordered to be reinstated in service fixing his pay scale and basic pay from 24.10.2013 to 30.11.2015 [date of retirement of the applicant]



instead of compulsory retirement from service.

Under the circumstanced, the applicant does not deserve additional relief/benefits.

[v] The respondents submitted that the applicant was not in service from 20.09.2005 to 23.10.2013, therefore, in terms of rule –“no work no pay” the aforesaid period was treated as dies non.



4. The applicant filed a rejoinder to the written statement and contended that the respondent no.8 passed the order dated 24.10.2013 for reinstatement of the applicant cancelling the order of compulsory retirement but imposed another major punishment fixing his pay at minimum pay which he was getting before his compulsory retirement without considering the defence taken by him, which is discriminatory, illegal and arbitrary in nature, since Shri P.N.Saha, the Station Master who was the main culprit/guilty in the matter was imposed only a minor punishment.

5. Heard the learned counsel for the parties and gone through the materials on record.

6. The applicant relied upon a decision rendered by Central Administrative Tribunal, Hyderabad Bench in OA No. 712/1990 decided on 07.07.1993 [reported in (1994) 26 Administrative Tribunals Cases 8] wherein in para 7, the Tribunal held that –

"7. But a case may arise where the disciplinary authority may feel to order punishment under Rule 6[v] even when the delinquent employee is due to retire within a short period. Can then it be stated that such reduction can be ordered till one day before the

date of superannuation whereby the original pay stands restored on the date of retirement? It was stated in the Railway Board's letter No. F[E]57-FR 1/1, dated 22.01.1960 that the reduction to lower stage in a time scale for an unspecified period or as a permanent measure is not permissible under the rules."

7. It is noticed that the applicant was served with one major penalty charge sheet dated 23.09.2003 under Rule 9 of Railway Servant [Discipline and Appeal] Rules, 1968. After enquiry, the Disciplinary Authority imposed major punishment of compulsory retirement of the applicant since the charges levelled against the applicant believed to be proved, vide order dated 20.08.2005. The Appellate Authority and Revisional Authority confirmed the said punishment order. Aggrieved by it, the applicant filed an OA No.672/2006, which was disposed of on 21.07.2011 [Annexure-A/1] with direction to the concerned disciplinary authority to take up proceedings afresh from the point the defect has crept in, that is, not providing an opportunity to the applicant to be heard in person along with his defence counsel and further directed that till the fresh enquiry is concluded the applicant is ordered to be reinstated in service. Against the aforesaid order passed by this Tribunal, the respondents, challenged the aforesaid order before the Hon'ble High Court of Patna, vide CWJC No. 22590/2012 which was allowed to the extent that the directions issued by the Tribunal for reinstatement of the applicant has been set aside and further directed the Disciplinary Authority to pass fresh appropriate order after personal hearing [Annexure-A/2].



Thereafter, in compliance of the aforesaid direction of the Hon'ble High Court, the Disciplinary Authority heard the applicant in person along with his defence counsel on 10.10.2013 and considering the materials on record as also the mercy application of the applicant, passed the impugned order dated 24.10.2013, whereby the punishment of compulsory retirement found to be excessive by the said authority and further ordered, the applicant to be reinstated in service fixing his pay scale and basic pay on the initial pay before imposition of compulsory retirement till the date of his reinstatement i.e. the intervening period will be treated as "dies non". The order further stipulates that the applicant is not entitled for pay and allowances for the aforesaid intervening period, but he is entitled to consequential benefits.



8. It is further noticed that the applicant challenged the said order i.e. the order dated 24.10.2013 before this Tribunal in OA No. 227/2014. It is submitted by the applicant that, he was instructed by the respondents that due to pendency of the OA, they are unable to modify or change the punishment order with regard to his mercy application, and therefore, the applicant withdrew the said OA under the bonafide believe that the respondents will modify the punishment order and pay fixation and treatment of dies non period will be modified. However, the respondents have not passed any order and ultimately the applicant superannuated from service on 30.11.2015. His Pension Payment order was issued on 26.11.2015. His pay has neither been restored nor the dies

non period has been treated as on duty which caused recurring loss to the applicant. His representation remained unanswered hence this OA and prayed for quashing and setting aside the punishment order dated 24.10.2013.



9. The counsel for the applicant mainly submitted that the applicant's date of superannuation 30.11.2015 and the impugned punishment order has been issued on 24.10.2013 whereby the disciplinary authority has treated the period before reinstatement of the applicant as dies non and due to which the applicant has been put to huge recurring monetary loss every month till his retirement and even after his retirement due to fixation of his entire pensionary benefits including pension on his reduced pay. In this regard, the counsel for the applicant placed reliance on the order passed by CAT Hyderabad Bench in the case of V.V. Ramaiah vs. UOI reported in [1994] 26 ATC page 8 and submitted that respondents on one hand reinstated the applicant by cancelling the order of removal from service by awarding punishment of compulsory retirement with effect from the date of compulsory retirement till he has been reinstated, i.e. 20.09.2005 to 24.10.2013, however, the said intervening period has been treated as dies non, which is not permissible under the rules. The penalty imposed by the respondents adversely affects his retirement benefits including the pension. The respondents have acted discriminately.

10. In our considered opinion, the submission of the applicant is not acceptable for the reason that the disciplinary

authority has found the charges levelled against the applicant has been proved and find it appropriate to held that the initial punishment of compulsory retirement is excessive and therefore, the applicant has been ordered to be reinstated in service. However, considering the gravity of charges, he has been awarded punishment fixing his pay and pay scale, which he was getting before the punishment of compulsory retirement till the date of his superannuation. The intervening period has been considered as dies non. The said decision of the respondents cannot be said to be suffered from any infirmity. Admittedly, the applicant was not in service during the aforesaid intervening period. Therefore, the Disciplinary Authority find it appropriate to treat the said period as dies non and reinstated the applicant by accepting the mercy application of the applicant. The respondents have granted due opportunity to the applicant before passing of the impugned order.



11. As noticed hereinabove, the applicant sold the tickets unauthorizedly for which he was not authorized. The said charges levelled against the applicant were proved during the enquiry and considering the entire case record as well as defence submitted by the applicant and the directions issued by the Hon'ble High Court in CWJC No. 22590/2012, the competent authority has passed the impugned order which in our considered opinion do not suffer from any infirmities. Therefore, we are not inclined to interfere with the order

passed by the Disciplinary Authority under our limited power of judicial review.

12. The judgment relied upon by the applicant is not applicable in the facts and circumstances of the present case. The impugned order was passed on 24.10.2013. It is noticed that the applicant was reinstated in service and thereafter, he worked till his superannuation, i.e. 30.11.2015. The respondents have issued PPO as per the last pay drawn by the applicant.

13. We do not find any merit in the present case. Accordingly the same is dismissed. No costs.



Sd/-
[Dinesh Sharma]M[A]

Sd/-
[Jayesh V. Bhairavia]M[J]

mps