

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

OA No.210/378/2018

Dated this Tuesday the 10th day of December, 2019

**Coram: Dr. Bhagwan Sahai, Member (A).
R.N. Singh, Member (J).**

Shri Krishna Kundlik Firinge,
Age 43 years,
working as Jr. Ticket Examiner,
under Station Manager,
Central Railway, Pune Division,
Pune 411.
R/o Mamasahab Mohol Kusti
Sankul, Katraj, Behind Katraj Dairy,
Pune 411 00.

...Applicant.

(By Advocate Shri D. N. Karande).

Versus

1. Union of India through
the General Manager,
Central Railway,
2nd Floor, GM Office Building,
CST Mumbai 400 001.
2. Chief Personnel Officer,
Central Railway,
1st Floor of GM's Office,
CSTM, Mumbai-400 001.
3. Divisional Railway Manager,
Central Railway,
Pune Divisional Office,
Near Pune Railway Station,
Pune-411 001.
4. Sr. Divisional Personnel Officer,
Pune Divisional Office,
DRM's Office Building,
Near Pune Station,
Pune-411 001.
5. Sr. Divisional Commercial Manager,
Pune Division,

DRM's Office Building,
Pune-41 001.

... Respondents.

(By Advocate Shri R. R. Shetty).

O R D E R (O R A L)

Per : R. N. Singh, Member (J)

1. Shri D. N. Karande, learned counsel for the applicant.
2. Shri R. R. Shetty, learned counsel for the respondents.
3. The applicant in the present OA who is working as Junior Ticket Examiner has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"a) That this Hon'ble Tribunal may call for the records pertaining to the case of Disciplinary proceeding at various level. Which led to issue the impugned orders.

b) This Hon'ble Tribunal may kindly quash and set aside the penalties dated 07.01.2014 (A-1), 30.06.2014 (A-2), 25.10.2014 (A-3), and impugned orders dated 24.08.2015 (A-4) and 06.01.2016 (A-5).

c) Declare that punishment ordered is disproportionate. And also declared it as invalid, void, and illegal one.

d) That the respondents be directed to restore all consequential benefits such as the increments/promotion & fixation of pay as per 7th CPC with all consequential benefit.

e) Cost of this O.A. May kindly be saddled on the respondents."

4. The undisputed fact leading to the present OA.

is that a departmental proceeding was initiated against the applicant. The precise charges are he did not cooperate in the vigilance investigation and had destroyed evidence against him lying within the control of the Vigilance Departmental forceably. The Inquiry Officer had reported the charges as proved. A copy of the inquiry report was provided to the applicant and after considering all the relevant facts and documents on record Disciplinary Authority passed the order of punishment dated 07.01.2014 in the form reduction of pay by four stages in the same scale of of pay for a period of 10 years with cumulative effect.

5. The applicant preferred a statutory appeal dated NIL (Annexure A-8). However, the Appellate Authority did not pass any order thereon such appeal rather on the advice received form the Vigilance Branch of the respondents, the Revisionary Authority issued a show cause notice dated 05.05.2014 (Annexure A-9) proposing to enhance the penalty. The applicant submitted his reply dated 15.05.2014 (Annexure A-10) to such show cause notice.

6. In the said reply the applicant has submitted that he has cooperated with the Vigilance Branch of the respondents during the inquiry proceedings, however, the Disciplinary Authority has imposed serious penalty

and that has put the applicant into grave financial hardships and any enhancement in such punishment is going to further demoralize the applicant, in as much as the applicant's wife, one school going daughter, one small daughter and also the old aged parents were depending upon the applicant. Therefore he requested the Revisionary Authority to take a lenient view on humanitarian grounds by not enhancing the penalty.

7. However, the Revisionary Authority passed the order dated 25.11.2014 (Annexure A-3) enhancing the penalty in the forms of reduction in post and grade with Grade Pay of Rs.1900/- as Junior Ticker Examiner in the Pay Band of Rs.5200-20,200 with pay fixed at pay of Rs.5200/- and Grade Pay of Rs.1900/- with cumulative effect, affecting the applicant's promotion and retirement benefit for a period of 15 (fifteen) years. The order further contained that the applicant will subsequently earn his increment and promotion from reduced pay of Rs.5200 only as and when his next increment and promotion becomes due after completion of this punishment. The impugned order dated 25.11.2014 also provided for Revision Petition against such order under Rule 25(1) of the Railway Servants D&A Rules, 1968. However, subsequently the respondents have issued a corrigendum letter dated 06.01.2016 (Annexure A-5)

for deleting certain paragraphs of the order 25.11.2014

which provides as under:

"The following is hereby deleted from the order dated 25.11.2014.

'Under Rule 25(1) of the Railway Servants D&A Rules, 1968, revision petition against these orders lie with the CCM.CSTM.

The revision petition shall be preferred in your own name and under your own signature and presented within 45 days from the date of receipt of the orders to the Revisionary Authority.

The revision petition shall be complete in it and shall contain all material statements and arguments on which CE rely and shall not contain any disrespectful or improper language.'

Please acknowledgment receipt."

8. The learned counsel for the applicant submits that the impugned order dated 25.11.2014 (Annexure A-3) and order dated 06.01.2016 (Annexure A-5) are illegal in as much as the order dated 25.11.2014 has been passed apparently in view of the proposal/advice received from the Vigilance Branch of the respondents and the order dated 06.01.2016 has taken away the right of the applicant to prefer revision/ appeal against the impugned order dated 25.11.2014 enhancing the penalty. Besides the order dated 06.01.2016 is contrary to the provisions of the clarification, issued by the Railway Board vide their letter no.E(D&A)94/RG 6-11, dated

31.08.1994 RBE 68/94 (Annexure A-14) which provides as under:

"Revision under Rule 25 of Railway Servants (D&A) Rule-Attention is invited to Board's letter No.E(D&A) 19/RG 6-40, dated 18.08.1981 & 19.03.1982, under which it was clarified that Rule 25 envisages revisions by any of the specified authorities only once and does not provide for further revision, either of the original order or of the order made on revision.

2. Board would, like to clarify that while further under Rule 25 is not possible, Rule 18 D&A (Rule 18 of D&A) Rules provides for Appeal against the revisionary orders in the following types of cases.

(I) If, as a result of suo-moto revision, the revising authority imposes any of the penalties under Rule 6 where no penalty had earlier been imposed, further appeal will lie to the authority to which the revising authority is immediately subordinate, in terms of Rule 18 (ii) read with Rule 19 (1) (I).

(II) If the revising authority enhances the penalty already imposed further appeal will lie to the next higher authority under Rule 18(iii) and 19(1) (ii).

3. It is, therefore, clear from Rule 18 & 25 that while revision is provided for only once by any one of the specified authorities, Appeal are provided for whenever there is imposition of a penalty whereas no penalty exists or where penalty already imposed is enhanced.

4. This is a partial modification of the clarification contained in d.o. Letter No. E(D&A) 81 RG65, dated 17.11.81 from DE/Railway Board addressed to CPO/Western Railway and copies to the CPOs of other Railways. This disposes off Western Rly's

letter E/DAR/308/43/4/267, dated
01.01.1994."

9. The applicant has also filed MA No.296/2018 seeking condonation of delay in filing of the present OA. The learned counsel for the applicant argues that there has been delay in filing of the OA. However, such delay is neither intentional nor in order get any undue benefit. He further submits that the respondents who have violated their own binding instructions i.e. RBE 68/1994 has no reason to ignore the claim of the applicant on the technical ground. He further refers to the judgment of the Hon'ble High Court of Bombay (Aurangabad Bench) in WP No.2839/2013 in the case of Prashant Vs. State of Maharashtra reported in 2015 (5) SLR 702 (Bom.) 702 which held that if the petitioner has not gained any undue advantage, a valuable right of appeal cannot be taken away by adopting hyper-technical approach. Therefore a liberal approach be adopted in such cases. He has also placed reliance upon the law laid down by the Hon'ble Apex Court in the case of Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy (SC) 2014 (1) page 21, to argue that the delay may be condoned if sufficient cause is shown and for condonation of delay various facts have to be considered.

10. In response to the notice issued from this

Tribunal, the respondents have filed reply to the OA as well as to the MA. The learned counsel for the respondents submits that the applicant has miserably failed to show sufficient cause to seek condonation of delay. He further submits that the applicant has not even correctly stated as to the delay is for how long. Therefore, he submits that the indulgence of this Tribunal is not called for in condoning the delay.

11. On merit, the learned counsel for the respondents vehemently opposes the claim of the applicant. He reiterates the objections and submissions of the respondents made in their counter reply. He further places reliance on the judgment of the Hon'ble Apex Court in the case of Sunil Kumar Banerjee Vs. Union of India, reported in AIR 1981, Supreme Court Cases Page 1170, particularly para-4 thereof to argue that mere consultation with vigilance branch for enhancement of the punishment in a disciplinary proceedings does not vitiate the proceeding or the order passed by the Competent Authority in the matter. However, he has not been able to controvert the contention of the learned counsel for the applicant that in view of the provisions of RBE 68/1994 (Annexure A-14) after the impugned order dated 25.11.2014, the applicant was entitled to prefer an appeal and the

respondents were duty bound to consider such appeal, if preferred by the applicant.

12. We have perused the pleadings available on record and we have also considered the submissions made by the learned counsels for the parties. We are of the considered view that the applicant has been diligent in pursuing the Disciplinary Proceedings initiated against him since beginning. He has taken all the steps to defend himself. Moreover, it is also not the case that by causing delay in approaching this Tribunal the applicant was likely to gain any undue benefit. In such facts and circumstances of the case and keeping in view the judgment of the Hon'ble High Court of Bombay in the case of Prashant (supra) and that of the Hon'ble Apex Court in Esha Bhattacharjee (supra), the application seeking condonation of delay deserves to be allowed. We order accordingly and hence the delay in filing of the OA is condoned.

13. Further, in view of the law laid down by the Hon'ble Apex Court in the case of Sunil Kumar Banerjee (supra), we are of the view that merely for consultation with the Vigilance Branch and on considering proposal/advice of the Vigilance Branch, the impugned order dated 25.11.2014 cannot be construed as to have been vitiated. However, in view the

provisions of RBE No.68/1994 (Annexure A-14) the respondents were bound to consider the appeal preferred by the applicant against the impugned order dated 25.11.2014.

14. In view of the aforesaid, the OA is disposed of with directions to the respondents to consider the applicant's appeal/representation dated 30.11.2014 (Annexure A-12) and dispose of the same by passing a reasoned and speaking order as expeditiously as possible and in any case within ten weeks from the date of receipt of certified copy of this order.

15. The OA is disposed of in the aforesaid terms.
No order as to costs.

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(R. N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

V.

JD
19/12/19