

Central Administrative Tribunal, Principal Bench

Original Application No.1762 of 1999

New Delhi, this the 13th day of July, 2001

Hon'ble Mr. Justice Ashok Agarwal, Chairman
Hon'ble Mr. M.P. Singh, Member(A)

12

Dr. J.P. Agarwal
Ex. Sr. Medical Superintendent
Northern Railway
presently
Resident of H.No.6/1, Sector-2
Rajender Nagar, Sahibabad
Ghaziabad

- Applicant

(By Advocate: Shri B.S. Mainee)

Versus

Union of India: through

1. The Secretary
Railway Board
Ministry of Railways
Rail Bhawan,
New Delhi

2. The General Manager
Northern Railway
Baroda House,
New Delhi

3. The Chief Medical Director
Northern Railway
Baroda House,
New Delhi

- Respondents

(By Advocate - Shri R.L. Dhawan)

O R D E R (ORAL)

By Mr. M.P. Singh, Member(A)

By filing this OA, applicant has challenged the orders passed on 14.7.97 and 17.6.98.

2. Brief facts of the case are that the applicant was appointed as Assistant Surgeon in the year 1965. Thereafter, he was promoted as Assistant Medical Officer and again as Assistant Divisional Medical Officer on 1.1.73. While working as Assistant Medical Officer, the applicant was implicated in a false case for demanding and



13

accepting illegal gratification from a railway employee.

In pursuance of the aforesaid criminal case, the applicant was placed under suspension on 7.6.86. In the meantime, he was transferred from Ghaziabad to Tundla and thereafter to South Central Railway at Calcutta. The aforesaid order of transfer was challenged before the Tribunal in OA No.864/89 which was allowed. The applicant, in the meantime, became due for promotion which was not given to him and his suspension period was also not decided. Aggrieved by this, he filed an OA No.2622/93 praying for directions to treat the suspension period as duty and pay him back wages and release the promotions. This O.A. was allowed by an order dated 7.11.94. Thereafter a chargesheet was issued by the respondents against the applicant. The charges were as follows:

"Article - I :

Dr J.P.Agarwal obtained/availed 34 sets of duty passes Ex-Delhi/Ghaziabad to Dehradun and back to which he was not entitled.

Article - II :

Dr.J.P.Agarwal claimed and received payment of TA/DA amounting to Rs.3,300/- to which he was not entitled.

Article - III :

Dr.J.P. Agarwal applied and obtained a private passport from Passport Office, Lucknow, without securing a 'No Objection Certificate' from the Railway Administration.

Article - IV :

Dr.J.P.Agarwal left India for Zurich (Switzerland) on 9.11.91 from Indira Gandhi International Airport, New Delhi without obtaining the permission of the competent authority to leave his headquarters (Ghaziabad)."

3. Enquiry was held and the enquiry officer concluded the enquiry. Articles of Charge 1&2 were not proved whereas 3&4 were proved. The disciplinary authority



14

recorded a note of disagreement with the findings of the enquiry officer and forwarded the same to the applicant to submit his representation. The applicant submitted his representation. Thereafter the disciplinary authority, after taking into consideration the representation of the applicant and other material available on record, imposed the penalty of reduction in pay by two stages with cumulative effect. The applicant filed an appeal against the order of the disciplinary authority. The appellate authority rejected the appeal of the applicant. Aggrieved by this, the applicant has filed the present OA praying for directions to quash the orders of the disciplinary authority and appellate authority with all consequential benefits.

4. The respondents in their reply have stated that applicant was served with memo of charges dated 23.6.93 for failure to maintain absolute integrity and acting in a manner unbecoming of a Railway Servant, thereby contravening Rule 3 (1) (i) and (iii) of the Railway Services (Conduct) Rules, 1966. After following the procedure laid down in Railway Servants (Discipline and Appeal) Rules, 1968, the Railway Board acting as the disciplinary authority vide their order dated 14.7.97 (Annexure A-1 of OA), imposed on the applicant the penalty of reduction in pay by two stages in the scale of Rs.4500-5700 with cumulative effect till his retirement on 31.7.97. The applicant submitted his appeal which has been considered by the President in consultation with the Union Public Service Commission (in short 'UPSC'). The appellate authority held that the penalty imposed upon the applicant is not excessive and accordingly rejected his appeal vide



15

order dated 17.6.98 (Annexure A-2). According to the respondents, the orders of the disciplinary authority and the appellate authority have been passed after following due procedure as laid down in Railway Servants (Discipline and Appeal) Rules, 1968. In view of the aforesaid submissions, the OA has no merit and is liable to be dismissed.

5. Heard both the learned counsel and perused the material available on record.

6. During the course of arguments, learned counsel for the applicant submitted that the General Manager who has recorded the note of disagreement and issued notice to the applicant, is not the appointing authority. He drew our attention to rule 10 (3) of Railway Servants (Discipline and Appeal) Rules and submitted that the competent authority in this case was the Railway Board and not the General Manager.

7. On the other hand, learned counsel for the respondents drew our attention to rule 2 (c) of Railway Servants (Discipline and Appeal) Rules in which the disciplinary authority of various railway servants has been defined. As per rule 2 (c) (ii) 'disciplinary authority' means in relation to Rule 9 and clauses (a) and (b) of sub-rule (1) of Rule 11, in the case of any Gazetted Railway Servant, an authority competent to impose any of the following penalties specified in Rule 6. The following penalties have been prescribed in Rule 6 which could be imposed on a railway servant:

"Minor Penalties

- (i) Censure;
- (ii) Withholding of his promotion for a specified period.;
- (iii) Recovery from his pay of the whole or part of



16

- any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders;
- (iii)(a) Withholding of the privilege Passes or Privilege Ticket Orders or both;
 - (iii)(b) Reduction to a lower stage in the time scale of pay for a period not exceeding three years, without cumulative effect and not adversely affecting his pension.
 - (iv) Withholding of increments of pay for a specified period with further directions as to whether on the expiry of such period this will or not have the effect of postponing the future increments of pay.

Minor Penalties

- (v) {Save as otherwise provided for in clause (iii-b) reduction to the lower stage in the time-scale of pay for a specified period, with further directions as to whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;
- (vi) Reduction to a lower time scale of pay, grade, post or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the Railway servant was reduced and his seniority and pay on such restoration to that grade, post or service;
- (vii) Compulsory retirement;
- (viii) Removal from service which shall not be a disqualification for future employment under the Government or Railway Administration;
- (ix) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government or Railway Administration."

8. Learned counsel for the respondents also drew our attention to Schedule III of the Railway Servants (Discipline and Appeal) Rules which provides that in the case of Group 'A' officers in junior time scale, the competent authority for the purpose of imposing the penalties specified in clauses (i), (iii), (iii-a), (iii-b) and (iv) of Rule 6 is the General Manager.

9. Learned counsel for the applicant submitted that the penalty imposed on the applicant is ^{under} ~~under~~ specified ^{under} clause (v) of Rule 6 for which only Railway Board is the competent authority and the General Manager

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17

therefore could not have imposed the same. Learned counsel for the respondents stated that at the time of recording disagreement, the quantum of the punishment was not decided. It was only after the receipt of the representation of the applicant on a show-cause notice, it was decided to impose penalty of reduction of pay by two stages with cumulative effect. The General Manager has therefore obtained the orders of competent authority i.e. Railway Board before imposing the aforesaid penalty. The learned counsel also submitted that the applicant at the time of issuing the chargesheet was working in the junior time scale and hence, the General Manager is the competent authority to initiate disciplinary proceedings against him.

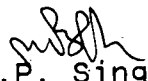
10. Learned counsel for the applicant also submitted that at the time of imposing the penalty, the applicant was working as Senior Divisional Medical Officer which post is equivalent or even higher than junior administrative grade. The contention of the learned counsel for the applicant is not tenable as the orders of the competent authority have already been obtained by the General Manager before imposing the penalty on the applicant in 1997. In view of this, the contention of the learned counsel for the applicant is rejected.

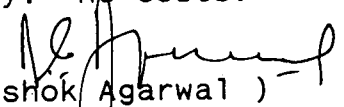
11. After hearing both the learned counsel and perusing the record, we are of the view that the enquiry has been held in accordance with rules, instructions and law. Due procedure has been followed by the respondents. It is settled law that the court cannot re-appreciate the



18

evidence and also cannot 'go into the quantum of the punishment. In view of the aforesaid facts, the OA is liable to be dismissed. We do so accordingly. No costs.


(M.P. Singh)
Member(A)


(Ashok Agarwal)
Chairman

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