

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA 2588/1999

14

New Delhi this the 13th day of July, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Ashok Kumar Gupta
Retired Railway Electric Driver
R/O N-28, Teachers Colony,
Pratap Vihar, Sector-12,
Ghaziabad.

... Applicant

(By Advocate Shri K.K. Patel)

Versus

Union of India through:

1. General Manager,
Northern Railway,
Headquarter Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Delhi Division, New Delhi.
3. Divisional Personnel Officer,
Northern Railway,
New Delhi.

... Respondents

(By Advocate Mrs. Meera Chhibber)

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Member (J))

The applicant has challenged the validity of the orders passed by the respondents with respect to his appeal dated 20.2.1999 and 2.6.1999 on 10.6.99 (Annexure 1) and read with the order dated 22.7.1999 (Annexure 2).

2. The applicant had filed earlier an application

(OA 1756/1997), which was disposed of by the Tribunal's

order dated 4.12.1997 (Annexure 4), by which the Tribunal

had quashed and set aside the disciplinary authority's order

dated 20.11.1996, the appellate authority's order dated

24.1.1997 and the Review authority's order dated 26.5.1997

18.

15

and the matter was remanded back to the disciplinary authority for taking up the departmental proceedings in accordance with law. Thereafter, the disciplinary authority again passed an order of reversion against which he had filed an appeal. In the impugned order dated 10.6.99, a lenient view had been taken, taking into account the facts of the case, including the fact that the applicant had already been medically de-categorised and declared unfit for the job of Driver/running category and was under lot of stress due to which he had even asked for premature retirement. Hence the punishment of reduction from Driver to Engine Turner was reduced to 'Censure'. By the later impugned order dated 22.7.99 the competent authority had passed the following orders, the relevant portion of which reads as follows:-

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1. 8.8.95 to 1-2-1996 Suspension period may be treated as duty.
 2. 21.11.96 to 24.1.97 Removal period may be treated as duty.
 3. 25.1.97 to 3.12.97 Reversion period may be treated as LWP.
 4. 4.12.97 to 14.1.98 Waiting period may be treated as duty.
 5. 21.3.99 to 16.6.99 Waiting period may be treated as leave due plus extra ordinary leave upto six months. "

3. Shri K.K.Patel, learned counsel for the applicant has impugned the aforesaid orders only with regard to Paragraphs 3

16

and 5 i.e. the decision of the respondents to treat the reversion period from 25.1.1997 to 3.12.1997 as leave without pay and the waiting period between 21.3.1999 to 16.6.1999 as leave due plus extra ordinary leave upto six months.

4. I have heard Shri K.K.Patel, learned counsel for the applicant and Mrs Meera Chhibber, learned counsel for the respondents and perused the records.

5. The main contention of Shri K.K.Patel, learned counsel on the validity of the action taken by the respondents with regard to Paragraph 3 of the order dated 22.9.99 is that the reversion order dated 24.1.1997 is not in accordance with the provisions of Railway Board Circulars dated 10.7.1971 and 22.8.1962 (which are referred to in page No.94 of the Railway Servants(Discipline and Appeal) Rules, 1968 M.L.Jand Bahri Brothers). He has also submitted that when the reduction has been set aside, the respondents ought to have taken into account the Railway Board Circular dated 18.5.63 in which it has been provided that if the reduction is found to be wholly unjustified, the concerned employee may be given, for the period in question when he was reduced, the full pay leave salary or both, as the case may be, and allowance to which he would have been entitled had he not been reduced.

Learned counsel has contended that the order of reversion dated 24.1.1997 is bad in law because it does not follow

13

17

the provisions laid down in the Railway Board Circulars dated 10.7.1971 and 22.8.1962 which requires^{that is} the date from which it will take effect and the period for which the penalty shall be operated has to be indicated. These contentions have been controverted by the learned counsel for the respondents. She has submitted that the validity of the order dated 24.1.1997 has not been questioned in the present OA. In any case, Mrs Meera Chhibber, learned counsel, has submitted that the order of the appellate authority dated 24.1.1997 clearly lays down the period of reduction and indicates the post salary, and other details, and the respondents have given effect to this order w.e.f. 25.1.1997. She has also submitted that the applicant had not reported to the concerned authority, namely, Chief Crew Controller(CCC), Ghaziabad to whom the applicant should have reported after the order was passed, reducing his rank from Driver to Engine Turner. It is not denied by the applicant^{that is} this order had been served on him.

6. I have considered the order dated 24.1.97 reducing the applicant in rank together with the aforesaid relevant Railway Board Circulars relied upon by the applicant.. This order is clear and does ~~not~~^{to} indeed conform^{to} the rule position, as laid down under Rule 6(vi) of the Railway Servants (Discipline and Appeal) Rules, 1968. The order clearly states that the applicant has been reduced in rank from Driver to Engine Turner grade Rs.1200-2040 at the lowest of the grade

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18

i.e. Rs.1200 for a period of three years with cumulative effect. This order read with Paragraph 3 of the impugned order dated 22.7.1999, in which the operative date is 25.1.1997, therefore, does not show that the respondents have, in any way passed ^a bald order as ~~he~~^{he} has now tried to ^{be} made out by the learned counsel for the applicant. In this view of the matter, the contentions of the learned counsel for the applicant based on the order passed by the respondents dated 24.1.1997 are rejected. The Tribunal's order in OA 1756/97 has been passed on 4.12.1997 taking into account the relevant facts and circumstances of the case. The order of the competent authority dated 22.7.99 with regard to the treatment of the period of reversion of the applicant from 25.1.1997 to 3.12.1997 does not justify any interference in exercise of the power of the judicial review.

7. The next limb of the arguments advanced by the learned counsel for the applicant is with regard to Para-graph 5 of the order dated 22.7.99 which states that after the Tribunal's order dated 4.12.97 was passed in OA 1756/97, the respondents again passed an order dated 24.7.98, reverting the applicant. Thereafter the applicant had filed an MA 1717/98 and the order of reversion dated 24.7.98 was stayed by the Tribunal's order dated 13.10.1998. Subsequently, the respondents passed another reversion dated 26.11.1998. Against this order the applicant had filed another case (OA 1756/97 MA 1717/98) in which by order dated 2.12.1998 the respondents were restrained

from taking any further action till the disposal of the appeal. Thereafter the appellate authority by the Order dated 10.6.99 set aside the reversion order and he was imposed the penalty of censure, taking into account the fact that the applicant had, in the meantime, applied for voluntary retirement which was accepted by the competent authority on 11.6.99 and given effect to on 15.6.1999. During the course of hearing, learned counsel for the applicant on instructions from the applicant, who is present, in court, states that after the reversion order was passed by the respondents and stayed by the Tribunal by order dated 13.10.98 he was in hospital for several months upto 20.3.1999.

8. Shri K.K.Patel, learned counsel for the applicant has submitted that in the aforesaid circumstances, the respondents decision in Paragraph 5 of the impugned order to treat the period from 21.3.99 to 16.6.99 as waiting period is illegal. In this connection, learned counsel for the parties have referred to the fact that in March, 1999 the respondents had on the recommendations of the Medical Board decategorised the applicant under Para.573 of the Indian Railway Medical Manual, 1981. Learned counsel for the respondents has submitted that in the letter dated 4.5.1999 (Annexure R-III) reference has been made to the earlier letter dated 29.4.99 in which the applicant had

29

been duly informed that he has been found fit for the post of OS I and not OS II, subject to the final outcome of the appeal. Learned counsel has submitted that in spite of this order, the applicant did not report for duty with the respondents as he was required to do, so. Hence, according to the respondents the period from 21.3.1999 to 16.6.1999 has been treated as waiting period.

9. After perusal of the records and the submissions made by the learned counsel for both the parties, it is relevant to note that it is not ~~the~~ case of the applicant that ~~he~~ ^{not} he was informed of his medical decategorisation and order that he ~~was~~ found fit for OS I instead of OS II. ^{he} Even after receiving ^{the} letter dated 4.5.1999, the applicant does not state that he has reported for duty in that post. He has also not placed any documents to show that he had reported for duty during the relevant period. Admittedly, as mentioned above, the applicant was discharged from hospital on 20.3.1999. Therefore, the period between 21.3.1999 to the date when he was voluntary retired on 15.6.1999 is the period when he had admittedly not reported for

18.

21

duty in any post, whether in his earlier post or the medically decategorised post of OS I. That being the case, the treatment of this period by the competent authority as waiting period cannot also be faulted as being unreasonable or arbitrary which warrants any interference in the matter.

10. For the reasons given above, I find no merit in this application. The same is accordingly dismissed. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

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