

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
New Delhi

O.A. No. 1549 of 1998

New Delhi, this 3rd day of the November, 2000

Hon'ble Mr. Kuldip Singh Member(J)
Hon'ble Mr. M.P. Singh, Member(A)

Sh. Gurdas Singh
S/o Sh. Lalta Ram
Sr. Goods Driver,
Delhi Sarai Rohilla,
Delhi-220005.

..... Applicant
(By Advocate : Shri D.K. Sammi)

Versus

Union of India through

1. General Manager,
Northern Railway,
Baroda House,
New Delhi-110001.

2. Divisional Railway Manager,
Northern Railway,
Bikaner Division,
DRM Office, Bikaner (Raj.)

3. Divisional Mechanical Engineer (P)
Northern Railway,
Bikaner Division,
DRM Office
Bikaner (Raj.)

..... Respondents

(By Advocate: Shri R.L. Dhawan)

ORDER (oral)

Hon'ble Mr. Kuldip Singh,

Applicant in this OA has assailed, the order dated 28.11.1995, whereby the pay of applicant had been reduced from Rs.1750/- to Rs.1550/- for a period of three years.

2. The brief facts of the case as stated by the applicant are that he was promoted from the grade of Rs.1350-2200 to the grade of Rs.1600-2660 w.e.f. 1.11.1993 and his pay was fixed at Rs.1600/- and thereafter, he was promoted to the next higher grade too. Further from April 1994 after availing his due

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increment, his pay was fixed Rs.1700/- and on 1.4.1995 he was getting Rs.1750/-. The applicant further stated that he has been penalised by the impugned order dated 28.11.1995 by which his pay has been reduced from Rs.1750/- to Rs.1550/- for a period of three years, in the scale of Rs. 1350-2200.

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3. The applicant was awarded the aforesaid punishment as it was found, he was responsible for derailment of train No.386 DNP at Rewari Station. The respondents issued SF-11 for the above mentioned misconduct (Annex-A), according to which the applicant can only be imposed a minor penalty but penalty imposed on him is a major one. The applicant has submitted that the respondents have not only reduced his pay but have also reduced his scale from Rs.1600-2600 to Rs.1350-2200 for a period of three years. The respondents in their reply have stated that mentioning the scale of pay of Rs.1350-2200 order dated 28.11.95 was only a clerical error which was modified vide order dated 29.7.1999 which reads as under:-

"In the above NIP, a punishment of reduction in pay from the stage of pay Rs.1750/- to 1550/- in grade 1350-2200 for 3 years was imposed on taking notice of the discripnacy, it is revealed that grade of Rs. 1350-2200 in the NIP dated 28.11.95 has been mentioned inadvertently.

Accordingly, in partial modification in aforesaid NIP dtd. 28.11.95, it may now be read as under:-

"You are, therefore, reduced from the pay of Rs.1700/- to the stage of Rs.1600/- in grade of Rs. 1600-2600 for a period of 3 years. "in place of " you are, therefore reduced from the pay of Rs. 1750/- to the stage of Rs. 1550/- in grade Rs. 1350-2200 for a period of 3 years"."

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4.. The Applicant further submitted that as per modified order, his pay was reduced to the stage of Rs.1600/- w.e.f. 10.8.1994, but he was getting the pay of Rs.1550/-. It showed that it was not a clerical error, he received the same pay of Rs.1550/- upto the month of December'97 and thereafter Rs.5600/- upto the month of March, 1998 and now getting Rs.6200/- from April'1998 onwards. Aggrieved by this, the applicant has filed this OA seeking direction to respondents to rectify the pay & grade to him with all other benefits and allowances attached to the post effective from the date of issue of the very first penalties.

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5.. The respondents in their reply have stated that the application is barred by limitation because the applicant was awarded the penalty of reduction of pay in the same time scale of pay, vide order dated 28.11.1995. The applicant has submitted his appeal which was rejected by the appellate authority vide order dated 4.4.1996. The present OA has been filed after more than two years and three months on 29.7.1998. It is further submitted by the respondents that after following the procedure laid down in the Railway Servants (D&A) Rules, the applicant was awarded the penalty of reduction of pay in the same time scale of pay vide order dated 28.11.1995 which was modified vide order dated 29.7.99, Annexure R-3.

6.. We have heard the learned counsel of both sides and perused the record.

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7. The main contention of the applicant is that the applicant has been punished twice, first vide order dated 28.11.1995 by which his pay has been reduced from Rs.1750/- to Rs. 1550/- and secondly vide order dated 29.7.1999. The order dated 29.7.99 modified the earlier order dated 28.11.95, because that order not only reduced the applicant's pay from Rs.1750/- to Rs.1550/- but also reduced his pay scale. Since his pay was reduced at the level in the scale of Rs.1350-2200 whereas there was no stage of Rs.1550/- in the scale of Rs.1600-2600 and as such the order dated 28.11.1995 was, in fact, an order which inflicted a major penalty instead of minor only for which SF5 should have been issued. SF11 is issued for minor penalty only. Thus, the entire proceeding are liable to be quashed and orders passed by the respondents are to be set aside and quashed.

8. The learned counsel for the respondents has submitted that it is a fact that SF11 is meant for taking action for imposing minor penalty only, but the penalty imposed vide order dated 28.11.1995 has not its double effect, because the department had later on after checking record found that the applicant had been wrongly reduced to the stage of Rs.1550/-, in the pay scale of Rs.1350-2200 and, therefore, they had rightly modified, the order dated 29.7.1999.

9. The learned counsel for the applicant, thereafter submitted that the order dated 29.7.1999 would actually affect the applicant beyond the age of 58 years, as such the minor penalty could not have been imposed

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minor penalty going beyond the age of superannuation.

Learned counsel for the respondents submitted, since the age of superannuation has also been modified, the department was within its legal right to pass the order imposing minor penalty and had rightly amended the order dated 28.11.95 vide order dated 29.7.1999.

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10. We have considered the contention of the parties and we have gone through the record. The only ground on which the applicant has assailed, the order dated 28.11.1995 was that the penalty imposed upon the applicant was reducing his salary as well as his grade. But we have seen that this order has been modified vide order dated 29.7.1999. The modified penalty imposed by this order shows that the penalty imposed is now within ambit ^{of} the ~~scope~~ of minor penalty.

11. Since the imposition of penalty has not been challenged on merits, so we find that there is no reason to interfere with the penalty imposed vide modified order dated 29.7.1999. However, the learned counsel, appearing for the applicant, has submitted that since vide modified order, the applicant's pay has been reduced from Rs.1700/- to Rs.1600/- instead offrom Rs.1750/- to Rs.1550/-, that shows, the applicant's pay has to be fixed at Rs.1600/- instead of Rs.1550/- and difference in salary in consequence to the modified order has to be paid to him. On this aspect, the respondents have to pay arrears of difference in salary to the applicant ^{if not already paid by} _L within a period of three months from the date of receipt of a copy of

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the order. But the order dated 29.7.1999, imposing the
penalty stands as it is. The OA is accordingly
disposed of. No costs.

m/s
(M.P. Singh)
Member(A)

K.S.
(Kuldip Singh)
Member(J)

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