

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, PRAYAGRAJ**

Prayagraj, this Tuesday, the 29th day of December, 2020

Original Application No. 330/00018/2011
(U/S 19, Administrative Tribunal Act, 1985)

Present:

Hon'ble Mrs. Justice Vijay Lakshmi, Member-Judicial
Hon'ble Mr. Navin Tandon, Member-Administrative

Nagendra Prasad, aged about 51 years, S/o Shri Bal Govind, R/o village – Dharakhurd, P.O. – Dhara Buzurg, District Kushinagar and presently working on the post of Head clerk General under S.S.E. Tools Room and Mill Right workshop, Signal Workshop, North Eastern Railway, Gorakhpur Cantt.

.....Applicant.

By Advocate : Shri S.K. Kushwaha (in Court)

V E R S U S

1.Union of India through the General Manager, North Eastern Railway, Gorakhpur.

2.The Chief Workshop Manager, (Signal Workshop) North Eastern Railway, Gorakhpur Cantt.

3.The Deputy Signal Telecom Engineer, (Signal Workshop) North Eastern Railway, Gorakhpur Cantt.

4 .The Senior Section Engineer, Tools Room and Mill Right Workshop, Signal Workshop, North Eastern Railway, Gorakhpur.

.....Respondents.

By Advocate : Shri L.M. Singh (in Court)

(Reserved on 16.12.2020)

O R D E R

Delivered by Hon'ble Mr. Navin Tandon, Member (Administrative) :

Through video conferencing.

1. The applicant is aggrieved that the Disciplinary Authority has withdrawn the charge sheet and penalty order of minor penalty at appeal stage and has issued a major penalty charge sheet.

2. The undisputed facts of the case are that the applicant was issued a minor penalty charge sheet on 24.07.2010 (Annexure-A-3) against which the applicant submitted his representation on 04.08.2010 (Annexure-A-4). The statement of the applicant was taken on 19.08.2010 (Annexure-A-5). After considering the said documents, the Disciplinary Authority imposed a penalty of withholding three sets of privilege pass each for the year 2011 and 2012 (total six sets) vide order dated 24/25.08.2010 (Annexure-A-6). The applicant submitted his appeal on 25.09.2010 (Annexure-A-7).

2.1 Giving reference of the appeal dated 25.09.2010, the Disciplinary Authority cancelled the charge sheet dated 24.07.2010 and penalty order dated 24.08.2010 vide order dated 13.12.2010 (Annexure-A-8)

2.2 The Disciplinary Authority issued a major penalty charge sheet on 14.12.2010 (Annexure-A-1), which inter alia include the charges of the minor penalty charge sheet. The Inquiry Officer has been nominated on 04.01.2011 (Annexure-A-2).

3. The applicant has prayed for the following relief(s) :-

“8.RELIEF SOUGHT : In view of the facts mentioned in paragraph no.6 above of the O.A. the applicant seek for the following reliefs :-

That this Hon'ble Tribunal be pleased to :-

- (i) ***Issue a order or direction in the nature of Certiorari calling for the records and quashing the impugned***

orders dated 14.12.2010 and 4.1.2011 issued by the respondent no.3 (shown as Annexures No.A-1 & A-2 to Compilation No.1 to this Original Application).

- (ii) Issue a order or direction by way of Mandamus directing the respondents not to take any coercive action in future against the applicant.***
- (iii) Grant such other reliefs, as the applicant might be found entitled to in the facts and circumstances of the case.***
- (iv) Allow this original application with cost.”***

4. This OA has been filed challenging the issue of major penalty charge sheet. This Tribunal vide order dated 12.01.2011 had considered the issue and directed the respondents to stay the disciplinary proceedings.

5. The issue to be adjudicated falls in a very narrow compass of the Disciplinary Authority issuing orders at appeal stage.

5.1 The applicant has claimed that the Disciplinary Authority has no power to cancel the earlier charge sheet and penalty order. Further, it has no power to decide the appeal of the applicant dated 25.09.2010.

5.2. The respondents in their supplementary counter affidavit has filed the copy of the noting sheet wherein the Appellate Authority has passed the order, which is as per Rule 22 (2)(c)(ii) of Railway Servants (Discipline & Appeal) Rules, 1968 (for brevity, DAR hereinafter).

6. Heard the argument of learned counsel for both the parties and perused the records made available to us in PDF Form.

6.1 Learned counsel for the applicant vehemently argued that the order of the Appellate Authority in the noting sheet have not been communicated to the applicant through any order, as required under Rule 26 of DAR.

6.2 Learned counsel for the respondents highlighted the order of the Appellate Authority given in the noting sheet of the file.

FINDINGS

7. The DAR specifies the roles of Disciplinary and Appellate Authorities. The Disciplinary Authority has various tasks listed including framing and issue of charge sheet, ordering enquiry, considering the representations of the charged employee and issuing the final order regarding imposition of appropriate penalty or otherwise. After the issue of final orders, the mandate of Disciplinary Authority expires having accomplished the purpose of its creation. In other words, he becomes functus officio. He does not have the powers to withdraw the charge sheet after penalty order has been issued. Further, he cannot withdraw the penalty order after issue, because no powers have been vested in him to recall its penalty orders.

8. The order dated 13.10.2010 (Annexure-A-8) has been issued by the Disciplinary Authority. The subject matter mentioned therein is minor penalty charge sheet dated 24/26.07.2010 and the reference is appeal dated 25.09.2010. The body of the letter talks of cancelling the minor

penalty charge sheet dated 24/26.07.2010 and notice of imposition of penalty dated 24.08.2010.

9. Since the communication gives the reference of appeal dated 25.09.2010, nobody other than the Appellate Authority has the power to deal with the appeal. The Disciplinary Authority cannot usurp the power of the Appellate Authority.

10. Therefore, the communication dated 13.12.2010 (Annexure-A-8) is illegal on two accounts. Firstly, the Disciplinary Authority having become functus officio after the issue of the penalty order and secondly, the appeal cannot be decided by anybody else other than the Appellate Authority. In the communication dated 13.12.2010, there is not even a whisper whether the Appellate Authority has considered the appeal or not.

11. Learned counsel for the applicant took us through Rule 22 and 26 of the DAR which reads as under:

“22. Consideration of appeal –

- (1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 5 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.*
- (2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider :-*
 - (a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;*
 - (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and*

(c) *whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders:-*

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case:

XXX

XXX

XXX

Para 26. Service of orders, notices etc.

Every order, notice and other process made or issued under these rules, shall be served in person on the Railway servant concerned or communicated to him by registered post."

12. Learned counsel for the applicant submitted that Rule 22 details how an appeal is to be considered by the Appellate Authority. After considering the action to be taken, the Appellate Authority has to "pass orders" as stated in Rule 22(2)(c). Further, service of orders is to be done as per Rule 26. He averred that the Appellate Authority did not do any of these actions which were required of him.

13. We find merit in the above arguments of the learned counsel for the applicant that there is no order on record wherein the said orders of the Appellate Authority has been communicated to the applicant. Therefore, the provisions of Rule 22(2)(c) and Rule 26 have not been met.

14. We are fortified in our views by the judgment of Hon'ble Supreme Court in ***Bachhittar Singh Vs. State of Punjab, reported in AIR 1963 SC 395***, wherein it held as under :-

"Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its

communication the order cannot be regarded as anything more than provisional in character. We are, therefore, of the opinion that the remarks or the order of the Revenue Minister, PEPSU are of no avail to the appellant."

15. From the above deliberations, we are of the considered view that the order dated 13.12.2010 (Annexure-A-8) does not stand scrutiny and is liable to be set aside.

16. In view of the above deliberations, the Original Application is allowed. The order dated 13.12.2010 (Annexure-A-8) is quashed and set aside. Consequently, the issue of major penalty charge sheet dated 14.12.2010 (Annexure-A-1) and nomination of Inquiry Officer dated 04.01.2011 (Annexure-A-2) do not have legs to stand on and are quashed and set aside. The respondents are at liberty to take action as per law. No costs.

(Navin Tandon)
Member(Administrative)

(Justice Vijay Lakshmi)
Member(Judicial)

RKM/