

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/01408/2014

Date of CAV : 14.12.2020

Date of Pronouncement : 21.12.2020



**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**

Syed Jilani Basha S/o. Syed Ibrahim,
Aged 42 years, Occ : Assistant Loco Pilot,
O/o Chief Crew Control, Secunderabad Depot,
Secunderabad Division, South Central Railway,
Secunderabad.

...Applicant

(By Advocate : Mr.KRKV Prasad)

Vs.

1. Union of India represented by
The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
2. The Additional Divisional Railway Manager (T),
South Central Railway, Sanchalan Bhavan,
Secunderabad Division, Secunderabad.
3. The Senior Divisional Electrical Engineer (TRSO),
South Central Railway, Sanchalan Bhavan,
Secunderabad Division, Secunderabad.
4. The Chief Crew Controller,
South Central Railway, Secunderabad R.S.,
Secunderabad Division.Respondents

(By Advocate : Mr. N.Srinatha Rao, SC for Railways)

ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:



2. The Original Application is filed challenging the penalty imposed on the applicant vide memo dated 06.05.2013 r/w. Corrigendum dt. 18.10.2013.

3. Brief facts are that the applicant, while working as Loco Pilot (Passenger), was suspended on 12.06.2012 and the same was revoked on 19.06.2012. Charge memo was issued on 21.06.2012. Disciplinary inquiry was conducted and penalty of reduction from the post of Loco Pilot (Passenger) to a lower time scale of pay and post in the post of Asst. Loco Pilot at initial pay in Rs.5200-20000 + GP 1900 fixing his pay at Rs.7100/- in the time scale of pay for a period of three years with cumulative effect was imposed on 06.05.2013. Appeal was preferred on 03.06.2013, followed by reminder on 27.10.2014. The respondents also issued Corrigendum on 18.10.2013, substituting the word 'cumulative' by inserting that the penalty will have effect on the seniority in the higher grade/ post on his restoration to the higher grade/ post. Aggrieved that the punishment is disproportionate, the OA is filed.

4. The contentions of the applicant are that the findings of the Inquiry Officer are perverse and not based on evidence. Principles of natural justice have been violated. The order of the Appellate Authority is a non speaking order and that too, after two years, with a prejudiced mind.

Appeal was disposed after filing the Original Application. By way of amendment, the applicant also challenged the order of the appellate authority dt. 26.10.2015.



5. Respondents in their reply statement have stated that the applicant was proceeded on grounds of indiscipline and imposed the penalty in question. Inquiry Officer has held the charges proved and appropriate penalty has been imposed. Appellate Authority has reduced the penalty of reduction to lower post / grade of Asst. Loco Pilot to a period of one year, with Grade Pay of Rs.1900/- and fixing the pay at Rs.7,100/-. All the contentions made by the applicant were denied.

6. Heard both the counsel and perused the pleadings.

7(I) From the facts of the case, it is seen that the applicant while working as Loco Pilot (Passenger), reported private sick, permitted under Para 538 of IRMM (Indian Railway Medical Manual), for five days from 12.06.2012. The concerned authority denied sick memo and the applicant approached a private doctor. Respondents taking cognizance of the fact that applicant did not work the train Nos.57156 & 57549, despite orders at 1430 hrs and 1930 hrs on 12.06.2012, placed the applicant under suspension and after revoking the same, disciplinary action was taken imposing the penalty of reduction to a lower time scale of pay and post in the post of Asst. Loco Pilot at initial pay in Rs.5200-20000 + GP 1900 fixing his pay at Rs.7100/- in the time scale of pay for a period of three years with cumulative effect.

(II) Applicant did approach the Chief Crew Controller and requested for sick leave which was denied due to acute shortage of staff. The applicant claims that since sick leave was denied, he had to approach the private Doctor, which is permitted under Para 538 of IRMM. Though the Railway Hospital was nearby, yet the applicant went to a private hospital for check up and sick certificate. That is his choice and cannot be questioned as contended by the Respondents on the ground that Railway Hospital was nearer and not approaching the Railway Hospital would cast doubts on the sickness of the applicant as per the sick certificate submitted. However, as per para 538(2) of IRMM, if an employee seeks leave based on Medical Certificate issued by a private Doctor, then such request has to be supported by a sick certificate from a Railway Doctor. Para 538(2) of IRMM is extracted hereunder:

“Should a Railway employee, residing within the jurisdiction of the Railway doctor, desire to be attended by a non-Railway doctor of his own choice, it is not incumbent on him to place himself under the treatment of the Railway doctor. It is however essential that if leave of absence is required on medical certificate, a request for such leave should be supported by a sick certificate from the Railway doctor.”

Applicant failed to produce the Railway Doctor certificate, nor did he furnish reasons as to why he had not complied with the Rules. Rules are to be followed as per Hon'ble Supreme Court's judgments, as under:

*The Hon'ble Supreme Court observation in **T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544** held that “Action in respect of matters covered by rules should be regulated by rules”. Again in **Seighal's case (1992) (1) supp 1 SCC 304** the Hon'ble Supreme Court has stated that “Wanton or deliberate deviation in implementation of rules should be curbed and snubbed.” In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held “the court cannot dehors rules”*



(III) In regard to the inquiry, the applicant contends that as per PW-1, preparatory time of two hours was not given and that the evidence was tendered by PW-3 when leading questions were put to him by the Inquiry Officer. Further, the applicant contends that the evidence was based on hearsay. Applicant contends that Inquiry Officer's report was biased and the Principles of Natural Justice were violated in conducting the inquiry.

(IV) A perusal of the Inquiry Officer's Report makes it clear that the applicant engaged a Defence Assistant and has examined the witnesses and cross examined them. The documents required have been supplied to the applicant. Therefore, it cannot be said that Principles of Natural Justice have been violated. Moreover, the applicant nor his Defence Assistant raised any objection about conduct of Inquiry when it was in process. Applicant did state that leading questions were asked by the Inquiry Officer, but he has not indicated as to what were those leading questions and why they can be called as leading. Applicant admitted that he had received a call on 12.06.2012 to work. The Inquiry Officer, after an elaborate inquiry, did hold the charges as 'proved'. It is well settled in law that the Tribunal should not re-appreciate evidence as held by the Hon'ble Supreme Court in ***B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749***, as under:-

Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or



conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case. (Emphasis supplied)

(V) The Inquiry Officer's report is based on evidence and the Inquiry Officer has followed the due procedure. Disciplinary Authority, based on the Inquiry Officer's Report, has imposed the penalty and the Appellate Authority has reduced it by ordering "reduction to lower grade/post of Asst. Loco Pilot at PB Rs.5200-20,2000+GP Rs.1900 fixing the pay at Rs.7100/- for the period of one year. The seniority will be restored on completion of period of penalty and his restoration to the higher grade/ post.". Though there has been a delay in disposing of the appeal, yet it was disposed of by reducing the penalty. The objection raised by the applicant is that the appeal should not have been decided when Original Application is pending.

The applicant has also given a letter to the Appellate Authority on 02.03.2015, that since the Original Application is admitted, he would not be able to appear in person. The Appellate Authority could have waited when a written submissions have been made. However, though he has reduced the penalty, applicant is aggrieved that it is a non speaking order and is

banked on the technical aspects. Learned Counsel for the Respondents has submitted that the applicant has not availed the remedy of Revision Petition available to him under the Rules.



(VI) In view of our above observations, we direct the Applicant to prefer a Revision Petition within a period of two weeks from the date of receipt of a copy of this order and thereafter, the petitioning authority shall dispose of the same in eight weeks time, keeping in view the judgments submitted by the Applicant on 14.12.2020, which may be submitted by the applicant along with his Revision Petition.

(VII) With the above direction, the Original Application is disposed of with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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