

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/01149/2015

Date of CAV : 05.11.2020.

Date of Pronouncement : 13.11.2020

Hon'ble Mr. AshishKalia, Judl. Member

Hon'ble Mr. B.V. Sudhakar, Admn. Member

Vijay BahadurPathak S/o Gaya Narayan Pathak,
Aged 35 years, Occ : Sr. Asst. Loco Pilot,
O/o The Chief Crew Controller, Guntakal R.S.,
South Central Railway, Guntakal Division.

...Applicant

(By Advocate :Mr.K.R.K.V.Prasad)

Vs.

1. The Union of India represented by
The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
2. The Senior Divisional Mechanical Engineer (C&W),
South Central Railway, Guntakal Division.
Guntakal.
3. The Divisional Mechanical Engineer (Power),
South Central Railway, Guntakal Division.
Guntakal.
4. The Assistant Divisional Mechanical
Engineer (Power),
South Central Railway, Guntakal Division.
Guntakal.

....Respondents

(By Advocate : Mrs. A. P. Lakshmi, SC for Railways)

ORDER

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

Through Video Conferencing:

2. OA has been filed challenging the penalty imposed by the respondents vide letter No.G/T.22/GTL dated 4.6.2014.

3. Applicant was appointed as Assistant Loco Pilot and he assisted the Loco Pilot in piloting the train bearing the No. KPCC/PLE from Guntakal to RTPS, Chitrapur on 17.10.2011. He worked for 20 hrs. in the process. After reaching Chitrapur Railway Station, applicant was not promptly given a bed to take rest and therefore he returned to Head Quarters, Guntakal, duly informing the concerned. For leaving work station applicant was suspended on reaching headquarters. However, suspension Memo served on 19.10.2011 was revoked on 25.10.2011. Inquiry was ordered and based on the inquiry report, Disciplinary Authority has imposed a penalty of withholding of one increment for a period of 2 years (NR). Aggrieved, OA has been filed.

4. The contentions of the applicant are that the 3rd/4th Respondents are not competent to initiate disciplinary action against the applicant since he was appointed by an Authority higher than the Disciplinary Authority. The deposition of the CLI & Loco Pilot in the inquiry were in favour of

the applicant. Four other Crew members available could have been taken on duty. Applicant could not inform Power Controller, Guntakal on his CUG as it was continuously engaged who could have balanced the situation . Train travelling from Chitrapur to Guntakal arrived at 16.45 hrs., and he had to take this train to reach H.Q. Applicant made an appeal on 07.07.2014 and followed it up by reminders on 20.9.2014, 6.12.2014 & 8.6.2015. Penalty was imposed after two years eight months of the applicant getting promoted as Sr.ALP and this has come in the way for promotion as LP (Goods) as well as mutual transfer to South Eastern Railway. Adding insult to injury, his services have been used for shunting duties from May, 2014 to May, 2015. Hon'ble Supreme Court has held that sleep is a Fundamental Right. Judgment of the Hon'ble Ahmadabad bench of this Tribunal delivered on 07.06.2005 is in support of his contention particularly in respect of delay in disposal of appeal.

5. Respondents in their reply statement confirmed that the applicant worked under the L.P. Sri M. Eranna for the journey made from Guntakal to Chitrapur on 17.10.2011. Applicant signed on at 18.30 hrs. at Guntakal and signed off at 14.30 hrs at Chitrapur RTPS, thereby working for 20.00 hrs. Booking Engine Turn (BET/CT) informed that the beds will be available at 16.15 hrs and therefore applicant demanded for issuance of emergency duty pass to return to Headquarters as a Pilot. Power Controller, Guntakal & BET/Crew Controller /CT did not permit

the applicant to return to Headquarters. Even then, applicant left for Headquarters by Train No. 6593 which arrived at Chitrapur at 16.45 hrs. Consequently, another ALP had to be arranged to meet the contingency. Applicant was proceeded on disciplinary grounds and penalty vide memo dated 4.6.2014 was imposed and he did not make an appeal up to 08.06.2015. Instead, made representations to the DRM, who endorsed to consider the appeal. In response Sr. Divisional Personal Officer was informed that no appeal was preferred by the applicant vide letter dated 04.08.2014. Appeal was preferred only on 08.06.2015. During the currency of the penalty, applicant would be ineligible for promotion/mutual transfers. When the applicant has waited up to 16.45 hrs to board the train to Guntakal, he could have very well occupied the bed, which was allotted to him at 16.15 hrs at running room, Chitrapur.

The applicant has filed a rejoinder wherein he submits that the respondents have not dealt with the issue humanely. Law stated in para 4.9 of O.A is applicable. As per information obtained under RTI, 11 employees of the respondents organization, who left the work station without permission, were imposed minor penalties whereas applicant was discriminated and imposed a harsher penalty. If the bed was not vacant at Chitrapur running room, Rule stipulates that he can be given rest from the time the bed is allotted or if the Crew is at out station, it has to be balanced as per forecast. The respondents are only talking about the first

alternative and are ignoring the second one. Appeal stated to have been received on 08.06.2015 is only a reminder appeal and that the inward and outward register kept at the lobby of the Chief Crew Controller, contain entries confirming submission of appeal. Therefore, denial of submission of an appeal is incorrect.

6. Heard Sri KRKV Prasad, learned counsel for the applicant and Smt. A.P. Lakshmi, learned counsel for the respondents and perused the pleadings on record.

7. It is true that the applicant has worked for 20.00 hrs in the train, which traversed from Guntakl to Chitrapur along with L.P. Sri. Eranna. On reaching Chitrapur, when asked for a bed in the running room, it was informed to the applicant that the bed would be available at 16.15 hrs. Learned counsel for the applicant stated, while submitting the arguments, that the applicant previously suffered from Typhoid and, therefore, he could not wait for long hours. After waiting for some time, he left Chitrapur by the Train No.6593, which arrived at 16.45 hrs. While doing so, applicant claims that he kept the Deputy Station Superintendent of Chitrapur, Chief Loco Inspector informed but not the Power Controller, Guntakal despite best efforts. Applicant's main grievance is that the punishment imposed is harsh, whereas others, who have committed a similar misconduct, were imposed minor penalties as evidenced from the information obtained under RTI on 08.08.2015. Even the appeal

preferred was not disposed promptly and therefore he represented to the DRM who has endorsed on the representations to consider the appeal. It is little surprising to note as to how the respondents could not receive the appeal. Even if it were not to be received, on representing to the DRM, respondents could have directed the applicant to resubmit the appeal. We find no action on behalf of the respondents to this extent. Nevertheless, respondents do admit that the appeal has been preferred on 08.06.2015 as per Annex.R-VI, which the Ld. Counsel for the applicant clarified was an appeal reminder. Appeal was finally disposed of on 07.09.2015, modifying the penalty as ñwithholding of annual increment for a period of 18 months (NR) w.e.f. 4.6.2014 without having an adverse effect on future pay and seniority.ö

As seen from the above, the case has come to a logical end with the disposal of the appeal of the applicant. By traversing the contours of the case keenly, we are of the view that when the applicant could wait to board the train up to 16.45hrs, he could have very well occupied the bed offered to him before his departure from Chitrapur. We are not convinced by the argument of the applicant that he was not offered the bed since no necessity befalls the respondents to deny the bed. On the contrary, it is in the interest of the respondent authority concerned to offer the bed to ensure that operational difficulties do not arise in the process. A little patience could have helped in avoiding the uncalled for pain

experienced in the process by the applicant. In hindsight, the creator of the incident is the applicant and not the respondents. If the same approach were to be adopted by all those who are similarly placed like the applicant then what would happen to the movement of trains which has great public importance. Is this not to be thought of ! Commitment to the organization is paramount come what may, for the simple reason that without the organization there can be no employees. Individual interests are subservient to Organizational interests. There will be grievances in discharging the job assigned but there is a way of getting them resolved without disrupting the work process. Applicant deserting the work station on grounds of exhaustion does impair operations and generally should not be encouraged. The hall mark of a committed employee is not to leave the work station come what may, particularly when ones nature of job has a instantaneous impact on public service like in the instant case. In fact, applicant, during the inquiry, for question No.40 has stated he did not occupy the bed which was becoming vacant at 16.15 hrs. since he was not available at CT room at that time (R-I). Therefore, for gross negligence of duty the applicant was suspended w.e.f. 19.10.2011. The Assistant Divisional Mechanical Engineer/Power /Guntakal has suspended the applicant and he is empowered to do so. The Appointing Authority is permitted to impose penalties of compulsory retirement, dismissal and removal. For other penalties, the Disciplinary

Authority is competent to impose the penalty as per Rule-6 of Railway Servants (D&A) Rules. Therefore, the contention of the applicant that the competent disciplinary authority has not initiated disciplinary action is not borne out by rules.

We sympathize with the applicant in regard to the physical exertion he has undergone, but the call of duty is supreme. Rules of the organization have to be followed to avoid inviting disciplinary action. It is important to note that the absence of the applicant would adversely impact the movement of trains which in turn would lead to public criticism. Applicant is working in a safety cadre post and requires rest. It is not that the respondents denied the bed. There was some delay in providing it. Therefore, deserting duty without permission is not something which can be appreciated. Even the respondents could have also dealt with the issue in a humane manner instead of suspending him and later while imposing the punishment, should have ensured that there was uniformity in imposing a penalty vis a vis employees similarly placed. Concept of equality not only works while showering benefits but also in imposing liabilities. Nevertheless, respondents did decide the appeal on 07.09.2015, which was the major ask of the applicant, by modifying the punishment as deemed fit. Applicant averred that similarly placed employees who deserted duty have been imposed with minor penalties. However, the facts and the circumstances are crucial to take a

view in such issues. Was it that the other employees referred to deserted work station for the reason of not providing beds and therefore the penalties ! There is no material on record which substantiates this fact. The applicant had an opportunity to occupy the bed when it was offered at 16.15 hours instead of departing by the train which left Chitrapur at 16.45 hrs. It appears emotion has taken better control of the applicant rather than reason at that instant of time. However, as the incident under reference relates to impairing operational requirements, for a minor reason of delay in providing bed by the respondents, we find that the penalty imposed is neither shocking nor disproportionate to interfere. With the disposal of the appeal the judgment of the Hon'ble Ahmadabad bench of this Tribunal in Shiv Kumar B. Nair Vs. Union of India & Others decided on 7.6.2005 [2005(3) SLJ 210 CAT] relied upon by the applicant would become irrelevant.

Hence, for the reasons stated above, we find no room for any intervention on behalf of the applicant and hence the OA has to be dismissed. Accordingly, it is dismissed. No order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER
/pv/

(ASHISH KALIA)
JUDICIAL MEMBER