

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/00400/2020

HYDERABAD, this the 20th day of January, 2021

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



M.Papanaik (Group 'C'),
S/o Mansingh, aged 56 years,
Chief Pharmacist, Railway Hospital,
South Central Railway, Vijayawada Division.Applicant

(By Advocate : Mr. G. Trinadha Rao)

Vs.

1. Union of India Represented by
The General Manager,
South Central Railway, Rail Nilayam,
3rd Floor, Secunderabad-500 025.
2. The Additional Chief Medical Superintendent / Admn,
Railway Hospital, South Central Railway,
Vijayawada Division, Vijayawada.
3. The Chief Medical Superintendent,
Railway Hospital, South Central Railway,
Vijayawada Division, Vijayawada.
4. The Principal Chief Medical Director,
Rail Nilayam, South Central Railway,
Secunderabad.Respondents

(By Advocate : Mr. S. M. Patnaik, SC for Railways)

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

Through Video Conferencing:

2. The OA is filed in regard to issue of show notice dt.17.07.2020 by the Revising Authority proposing to enhance penalty imposed by the disciplinary authority, without the disposal of the appeal of the applicant and that too, against Rules.



3. Brief facts of the case are that the applicant while working as Chief Pharmacist in the respondents organization, was alleged to have demanded and collected bribe of Rs.100 for issue of sick certificate to a decoy patient and therefore, disciplinary proceedings were initiated by issuing Charge Memo on 12.6.2009, resulting in imposing the penalty of reduction to lower scale of pay by 2 stages for 3 years without cumulative effect, on 18.11.2019. Appeal preferred on 16.12.2019 was not disposed and on the contrary, the revising authority issued show cause notice on 17.7.2020 proposing to enhance the penalty to that of removal from service. Aggrieved, the OA is filed.

4. The contentions of the applicant are that as per Rule 25 of the Railway Servants (Discipline & Appeal) Rules 1968, no proceeding for revision to enhance the penalty can be taken up after 6 months from the date of imposition of the penalty. Applicant was not the competent authority to issue the sick certificate. Any delay to issue the show cause notice due to Covid situation is unacceptable since Rule 25 is statutory in

nature and there is no enabling provision in the said rule for relaxation of the time period. Principles of Natural Justice have not been followed and the penalty proposed is shocking and highly disproportionate. Above all, the appeal of the applicant made on 16.12.2019 has not been disposed.



5. Respondents, in their reply statement, state that that the appeal dated 16.12.2019 was not received and that the applicant may have got an endorsement from the competent authority but would not have given to the office for further processing. Therefore, the revision authority was not aware of the Appeal. Further, applicant has filed the OA without giving a reply to the show cause notice and hence the OA has to be dismissed on the ground that the remedy available was not exhausted. For officers of the grade of General Manager, Railway Board or any equivalent authority or above etc., there is no time limit prescribed for reviewing the penalty as laid down in Rule 25 (5) of RS (D&A) Rules. The PHOD belongs to this category and is eligible to issue the notice. Further Railway Board on 27.4.2020 has instructed to exclude the lock down period in working out the time limits and the Ministry of Home Affairs has extended the lock down upto 30.9.2020. There was no reminder received in respect of the appeal submitted. Hence, it is to presume that the applicant has accepted the penalty imposed by the disciplinary authority. Therefore, taking up revision of the penalty by issue of a show cause notice is in order.

6. Heard both the counsel and perused the pleadings on record.



7. I. The controversy is about the issue of show cause notice issued to the applicant on 17.7.2020 by the Revising Authority proposing to enhance the penalty to removal from service consequent to the applicant being found guilty based on allegations of bribe, in the disciplinary proceedings initiated against him leading to imposition of penalty of reduction to lower scale of pay by 2 stages for 3 years without cumulative effect by the disciplinary authority on 18.11.2019. Applicant claims that he submitted the appeal on 16.12.2019, which was duly endorsed by the office of the 3rd respondent. However, the respondents state that the applicant might have got the appeal endorsed by the competent authority and would not have handed over the appeal to the concerned section. We are not persuaded by this argument since any official document endorsed to a particular authority has to be passed on through the official channel and not to hand it over to the employee who made the appeal/represented. Hence, it was the mistake of the competent authority and not that of the applicant in not acting in a responsible manner. It also does not speak well about the effective implementation of rules in regard to dealing with issues of statutory in nature by the respondents. Appeal submitted should not be dealt in a casual manner as expounded by the respondents in the reply statement. As per Rule 25 (2) of RS (D&A) Rules, Revising Authority should not review the penalty after lapse of 6 months from the date of the penalty order by the disciplinary authority and also when an appeal is pending. In the instant case, the penalty was imposed by the disciplinary authority on 18.11.2019 and the review could have been done by 17.5.2020, whereas show cause notice was issued on 17.7.2020 making it invalid *per se* due to the time limitation. Moreover, rule 25 is a statutory provision which cannot

be infringed by issue of an executive order of the Railway Board memo 35/2020 dated 27.4.2020 relaxing the time limits in view of the lock down imposed by the Govt. of India up to 30.9.2020. Even presuming, though not admitted, if the appeal is not received, the Principles of Natural justice call for hearing the applicant about his submission of the appeal before the penalty is enhanced. Therefore, the averment made that for officers of the level of GM and above, the time limitation does not apply would not hold good. Before condemning anyone, one has to be heard. Ld. Counsel for the applicant pleaded that the appeal be disposed.



II. Therefore, in view of the above, the show cause notice issued on 17.7.2020 is set aside. Applicant is directed to submit the copy of the appeal dated 16.12.2019 afresh to the competent authority, within a period of one week from the date of receipt of this order. From the date of receipt of the appeal referred to, respondents are granted 3 months time to dispose of the appeal in accordance with the extent rules and in accordance with law.

With the above direction, the OA is disposed of with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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