CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(42)

O.A. NO. 934/2004

New Delhi, this the 5th day of July, 2006

HON'BLE MR. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

1. Shri Rajinder Sharma

... APPLICANT

(By Advocate : Shri B.S. Mainee)

VERSUS

1. Union of India : Through
The General Manager,
Northern Railway & Ors

...RESPONDENTS

(By Advocate : Shri Rajinder Khatter)

1. To be referred to the Reporter or not. Yes / No

2. To be circulated to other Benches or not. Yes / No.

(Mukesh Kumar Gupta)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.934/2004

New Delhi this the 05th day of July, 2006

HON'BLE MR. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

Shri Rajinder Sharma,
Ex-Head Telephone Operator,
D.R.M. Office,
Northern Railway,
State Entry Road,
New Delhi -110 001
R/o House No.1999/G-1
Railway Colony,
Basant Road, Paharganj,
New Delhi ...APPLICANT
(By Advocate: Shri B.S. Mainee)

VERSUS

Union of India : Trhough

1. The General Manager,
   Northern Railway,
   Baroda House, New Delhi

2. The Divisional Railway Manager,
   Northern Railway,
   State Entry Road,
   New Delhi

3. The Divisional Signal &
   Telecommunication Engineer (Tele),
   Northern Railway,
   D.R.M. Office,
   State Entry Road,
   New Delhi ...RESPONDENTS
(By Advocate:Shri Rajinder Khatter)

O R D E R (Oral)

By Mukesh Kumar Gupta, Member (J):

In this fourth round of litigation, challenge is made to penalty of removal from service inflicted vide order datede 9/14.11.2000, in exercise of power conferred by rule 14 (1) of the Railway Servants (Discipline & Appeal) Rules, 1968 (hereinafter referred to as the Rules)

as upheld by the appellate and revisional authorities vide orders dated 16.10.2001 and 31.12.2003 respectively.

2. In order to appreciate the controversy in question, certain facts in brief, are required to be noticed. On 1st December 1999, the applicant was arrested for violation of the provisions of Sections 145 and 180 of Indian Railways Act. He was produced before the learned Railway Magistrate, New Delhi, and sent to judicial custody. Vide order dated 15.12.1999 he pleaded guilty and accordingly tried summarily. A fine of Rs.200/- was imposed. In default, a simple imprisonment of 15 days was ordered. As he failed to deposit the said fine, period during which he was under judicial custody was treated as simple imprisonment and was accordingly set free. A show cause notice dated 31st August 2000 under rule 14 (1) of the Rules was issued giving him an opportunity of making a representation to the proposed penalty of removal from service. The allegations made were denied by submitting a detailed reply, stating that while going for duty he met with a minor accident and to his misfortune a colleague gave him "little brandy" to provide little stimulation to go to his house. It was also stated therein that while talking to colleagues, "his tongue was little staggering" as a result of which his colleagues issued a memo to Railway Protection Force. A plea of undergoing treatment with an Ayurvedic Doctor to be a non-alcoholic was also raised. Finding aforesaid representation to be unsatisfactory, disciplinary authority vide order dated 9/14.11.2000 inflicted punishment of removal from service under rule 14 (1) of the Rules. Vide representation dated 27.12.2000, a request was made to supply certain documents in order to enable him to file an effective appeal, which remained unattended and, therefore, he was compelled to file a

statutory appeal dated 21.2.2001. The said appeal was rejected vide order dated 19.04.2001 which was a non-speaking and unreasoned order. Being aggrieved, OA No.1897 of 2001 was preferred, wherein a plea was raised that the appellate authority had not made an attempt to discuss various issues raised in the appeal. Acceding the said plea, OA was disposed of vide order dated 31.07.2001 quashing said appellate order with liberty to reconsider the said appeal and pass a reasoned and speaking order. In compliance thereto, fresh appellate order dated 16.10.2001 was passed maintaining the penalty imposed. Thereafter, applicant submitted a detailed revision petition dated 6.10.2003 (A-11), which too was rejected by the ADRM/Tech, New Delhi vide communication dated 31.12.2003.

3. At the outset, Shri Rajender Khatter, learned counsel for Respondents raised preliminary objections that present OA suffers on account of suppression of material facts and principle of res judicata. Under para-7 of OA, applicant had not disclosed of filing RA No.309/2003 in OA No. 1947/2002, which was rejected vide order dated 13.11.2003. Our attention was drawn to orders passed on 16.09.2003 in OA No. 1947/2002 wherein it was observed that OA 111/2002 was withdrawn by applicant vide order dated 14.1.2002 without seeking any liberty to re-agitate the matter. Strong reliance was placed on AIR 1987 SC 88 ***Sarguja Transport Service vs. State Transport Appellate Tribunal, Gwalior & Ors.*** wherein it has been held that the principle underlying rule 1 of Order XXIII CPC should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judiciata but on the ground of public policy. That would also discourage the litigant

from indulging in bench-hunting tactics. Para 7 – 10 of the said order reads as follows:

> *"7. We have considered the averments made by the counsel for both the parties. Shri Mainee has tried to controvert the preliminary objections raised by the counsel for the respondents by stating that OA 111/2002 was withdrawn by the applicant at the admission stage itself as he had a ray of hope that the department will render a favourable decision out of court. The Tribunal dismissed the application without discussing the issues involved and it cannot therefore be treated to be a final decision. We are unable to accept this contention, which appears to be only an after-thought.*
>
> *8. In view of the ruling of the apex court cited by the learned counsel for the respondents, the principle of resjudicate would be applicable in this case. On the question of exhausting the available departmental remedy again, following the ratio arrived at by the coordinate Bench of this Tribunal referred to above, we hold that the application before the Tribunal is not maintainable unless the process of revision is gone through.*
>
> *9. Under these circumstances, without going into the merits of the case we hold that it would be appropriate for the applicant to file a revision petition before the competent revisional authority, in which he may take up all the points raised in this OA for consideration. The said authority, no doubt, will consider the same on merits and pass a speaking order in the matter.*
>
> *10. The OA is accordingly dismissed as not maintainable. No order as to costs."*

4. Shri B.S. Mainee, learned counsel for applicant, on the other hand, refuted aforesaid contentions and argued that since liberty was accorded to him to file revision petition, which direction had been complied with and as the same was rejected vide communication dated 31.12.2003, fresh cause of action accrued to him and the plea raised by respondents about applicability of res judicata is not justified. Reliance was also placed on paras 7 & 9 of the aforesaid judgment of ***Sarguja Transport Service*** (supra) wherein it was

observed that withdrawal of Writ Petition filed in the High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution should be deemed to have been abandoned by the Petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission.

5. On merits, learned counsel for the applicant raised the following contentions:-

i) Perusal of order dated 1.12.1999 would show that applicant was allowed bail but since he could not furnish the required surety, he was sent to judicial custody. In any case, applicant was fined of Rs.200/- for a minor offence and which cannot be made a ground and basis for his removal from service.

ii) The show cause notice dated 31.8.2000 was issued without open mind as the disciplinary authority had already concluded to impose a penalty of removal from service.

iii) He had made a specific request on 27.12.2000 to supply certain documents to enable him to prefer an effective appeal, which remained unattended despite reminder dated 25.1.2001. In such circumstances, appeal preferred was not an effective one and, therefore, a serious prejudice has been caused to him. In any case, various grounds taken therein had not been considered either in the first appellate order dated 19.4.2001 or in the further appellate order dated 16.10.2001. In these

circumstances, there had been an infraction of rule 22 of the Rules in vogue.

iv) Neither the quantum of punishment nor the procedure followed in disciplinary proceedings was examined and commented upon by appellate authority.

v) The appellate as well as revisional orders are neither speaking nor considered all the points raised therein. On the other hand, extraneous matters and material collected at his back were considered, which is impermissible in law. The appellate as well as revisional authorities ought not to have considered past record and "lot of complaints" without confronting him with such materials. He never admitted consumption of alcohol as observed by the revisional authority vide para-6.

6. Strong reliance was placed on following judgments by Shri B.S. Mainee, learned counsel for Applicant:-

i) ATR 1986 (2) SC 252 Ram Chander vs. Union of India & Ors.

ii) AISLJ VI 2001 (2) 222 (Delhi High Court) T.A. Laxmanan vs I.A.A.I. & Anr.

iii) ATJ 2005 (3) 232 (Lucknow Bench) Mahatam vs. UOI & Ors.

iv) ATJ 2005 (3) 116 (Delhi High Court) Pawan Sut vs. Union of India & Others

v) ATJ 2005 (2) 158 (Rajasthan High Court) – Union of India & Ors vs. Vishnu Lal Nai & Anr.

vi) B.C. Chaturvedi vs UOI JT 1995 (8) SC 65

vii) Pawan Kumar vs State of Haryana 1996 (4) SCC 17

7. Respondents on the other hand, on merits forcefully contended that applicant was taken in judicial custody and since he could not pay the fine imposed by the Ld. Railway Magistrate, he underwent simple imprisonment of 15 days. Moreover, applicant's conduct did not warrant any leniency as he made a false and fraudulent statement that due to not feeling well, he could not attend Office from 1.12.1999 to 18.12.1999 as per representation dated 18.12.1999, full text of which reads as follows:-

> *"To*
> *The Supdt/I*
> *D.R.M. Office,*
>
> *I beg to state that I could not attend my office from 1ST Dec 1999 to 18th Dec. 1999 due to not feeling well during that period I was at Kurushetra to my FUFAJEE home.*
>
> *So kindly consider it as a leave that period and allow me to perform my duty.*
>
> *Thanking you for the same,*
>
> *Yours faithfully,*
> *Sd/-*
>
> *18/12/99*
> *Date* *Rajinder Kr. Sharma"*
> (emphasis supplied)

8. There had been specific complaint against him by the Superintendent that on 1.12.1999 he came to Office "in drunken condition. He created nuisance in the exchange." As per medical report dated 1.12.1999, copy of which was placed by Respondents on record, he was medically examined and there was smell of alcohol. The impugned penalty of removal from service was imposed upon him after following prescribed procedure under rule 14 (1) of the Rules. He was afforded an opportunity to make a representation and as per requirement of said rules, proposed penalty was liable to be indicated therein. His appeal as well as revision petition were examined and

dealt with in accordance with rules and law on said subject. His contentions were noticed and not agreed to by passing reasoned and detailed orders. Reliance was also placed on 1994 (27) ATC 20 ***Mahabal Ram (Dr.) vs Union of India & Ors*** to contend that false/suppression of true facts and production of tampered documents disentitle the official to any relief. Reliance was also placed on Order dated 20th Jan, 2005 in OA No 853 of 2005 ***P.S.Vimal vs Union of India*** of this Tribunal to contend that one cannot file a fresh application on the analogy of principles of Order XXIII Rule 1 CPC particularly when he had withdrawn the proceedings without seeking leave.

9. We have considered rival contentions of parties and given thoughtful consideration to same as well as carefully analyzed the judgments relied upon. In our considered view, applicant has not approached this Tribunal with clean hands and, therefore, he deserves no sympathy and leniency. On our pointed query raised to applicant about authenticity of his representation dated 18.12.1999, its factum had not been denied. Neither it was suggested that its contents were factually incorrect. Obviously, in view of the fact that applicant had been in judicial custody in Delhi from 1st December to 15th December, 1999, he could not have been present at "Kurushetra", his Uncle's house, as stated by him in the aforesaid representation. Applicant has not only made a false representation before concerned authority, but suppressed material facts from this Tribunal, which was revealed only when Respondents filed their reply annexing a copy of said representation.

10. Even if applicant's plea that principles of res judicata are not applicable is accepted, it will make no material change to the maintainability of present OA. The principle of public policy based on principles underlying Order XXIII Rule 1 CPC in any case will govern the field. The stress laid by applicant that withdrawal of OA No.111/2002 would not stand in his way of filing subsequent petitions as it did not bar other remedies like a suit or a petition under Article 32 as observed under para-9 of ***Surguja Transport Service*** (supra). We further note that this Tribunal vide order dated 16.9.2003 in OA 1947/2002 has rendered categorical findings vide para 8 that "the principle of res judicata would be applicable in this case", which has attained finality and is binding on us. Mere observation made therein that applicant may file revision petition before competent revisional authority cannot inject a fresh cause of action. As such, we find no force and substance in these contentions of applicant.

11. The procedure underlying under rule 14 of Railway Servants (Discipline & Appeal) Rules is a special procedure applicable only under three eventualities enumerated therein. Said rule reads as under:

> *"14.* ***Special procedure in certain cases***
>
> *Notwithstanding anything contained in Rule 9 to 13:*
>
> *(i) where any penalty is imposed on a Railway servant on the ground of conduct which has led to his conviction on a criminal charge; or*
>
> *(ii) where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or*
>
> *(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules;*

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the Railway servant may be given an opportunity of making representation on the penalty proposed to be imposed before only an order is made in a case falling under Clause (i).

Provided that the Commission shall be consulted where such consultation is necessary, before any orders are made in any case under this rule." (emphasis supplied)

12. We may note that in ***Union of India vs Tulsi Ram Patel,*** AIR 1985 SC 1416, a Constitution Bench judgment, the Hon'ble Supreme Court considered the scope of interpretation of Articles 309, 310 & 311 of the Constitution. At the outset we may note that the language employed under Rule 14 of Railway Servants (D&A) Rules, 1968 is identical with that of Rule 19 of the Central Civil Services (D&A) Rules, 1965. Article 311(2) of the Constitution is the foundation of the above Rules. Under rule 14 (i) of the Rules, 1968, when a disciplinary authority comes to know that a Govt. servant has been convicted on a criminal charge, it must consider whether his conduct, which has led to his conviction, was as such warrants imposition of a penalty and if so, what that penalty should be. For this purpose, it will have to peruse judgment of the criminal court and consider all facts and circumstances of the case and various factors as detailed in **Challappan's** case (AIR 1975 SC 2216). This, cannot be done ex parte and has to be done only after affording an opportunity of hearing by way of representation under first proviso of the said Rules. A Government servant, who is aggrieved by such penalty imposed can agitate in appeal, revision or review as the case may be, that the penalty was too severe or excessive and not warranted by facts and circumstances of the case.

13. Keeping these principles in view, if we examine the facts of present case, we find that applicant was not only afforded an opportunity of hearing but was also allowed to file his appeal. His conduct had also been noticed in specific. The contention raised that there was simple imposition of a fine of Rs.200/- without any conviction cannot be accepted for simple reason that term "conviction" includes imposition of fine and/or imprisonment. It is undisputed fact that applicant was punished under Section 180 of the Indian Railways Act, 1989. Section 145 deals with offence committed by any person including a Railway servant under influence of liquor as well as for nuisance. Section 180 deals with arrest of person likely to abscond etc. It is undisputed that no appeal had been filed against the conviction. Shri Mainee, learned counsel, however, raised the plea that order passed by LD. Railway Magistrate suffered from illegalities as the safeguards provided and as observed by the Hon'ble Supreme Court in ***Pawan Kumar*** (supra) had not been observed. We may observe at once that we are not dealing with the correctness or otherwise of the conviction ordered and punishment imposed by the Ld. Railway Magistrate. The observations made therein as to what procedure is required to be followed in dealing with such proceedings is alien to present proceedings. In our considered view, the said judgment is inapplicable inasmuch as it has not been shown to us that the observations made under para 14 therein had been translated into certain legislation by the Parliament.

14. As far as other contentions raised by applicant, namely, that show cause notice dated 31.08.2000 was issued with a closed mind is concerned, a perusal of rule 14, extracted hereinabove, would establish that it is the mandate of said Rules to notify and disclose "the

penalty proposed" in show cause notice. Therefore, the contention raised is baseless and cannot be accepted. Applicant's contention that despite request made on 27.12.2000 and reminder made on 21.1.2001, he was not supplied certain documents enabling him to submit an effective appeal, we may note that statutory appeal filed under rule 18 of said Rules on 21.02.2001 is an exhaustive and detailed appeal running into 11 pages. A bare look at the details of so-called documents sought from Respondents would show that applicant was seeking certain public documents like Court order dated 1.12.1999, memo sent to RPF for taking action against him on the said date and medical check up report besides attendance register and action taken by Department. As far as action taken by Department is concerned, it took the shape of show cause notice dated 31.08.2000 under rule 14 of aforesaid Rules. As far as orders passed by the Court and action taken by the Court is concerned, we may note that he could have applied for certified copies from said Court, which had not been done. During the course of oral hearing, applicant failed to establish any prejudice caused to him on such account. We do not find merit and substance in said contention and accordingly it is over-ruled. Similarly, for contention that there had been infraction of rule 22, the penalty imposed is not commensurate with finding and appellate and revisional authorities' orders are bald and non-speaking, we do not find any substance and reasons to accept said contentions. On perusal of orders dated 16.10.2001 and 31.12.2003, which were passed by appellate and revisional authorities respectively, we find that mandate of rules had been followed and said orders cannot be circumscribed as non-peaking and bald orders, as projected. Applicant's further contention that past record had been taken into consideration while

imposing punishment is also not justified for reason that it was a mere passing remark. Revisional authority had rightly observed in para 6 that he, in a signed statement, had accepted the fact of having consumed alcohol and, therefore, his subsequent arguments are after-thoughts. On careful analysis of facts of the case vis-à-vis judgments relied upon, we do not find any reason to accept applicant's contention that penalty imposed needs any interference. Judgments relied upon were rendered in different sets of circumstances and the issue raised herein is not similar to the one raised in present case.

15. Taking a cumulative view of the matter, particularly about the conduct of applicant of making false and misleading statement that he could not attend office from 01.12.1999 to 18.12.1999 "due to not feeling well" and being away at Kurushetra, which are ex-facie baseless and untenable, we are of the considered view that applicant deserves no leniency. In result, OA is dismissed. There shall be no order as to costs.

(Mukesh Kumar Gupta)
Member (J)

(V.K. Majotra)
Vice Chairman (A)
5-7-06

/PKR/