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Central Administrative Tribunal
Principal Bench: New Delhi

OA No.2425/93

New Delhi this the 25th Day of March, 1994.

Shri N.V. Krishnan, Vice-Chairman(A)
Shri B.S. Hegde, Member (J)

H.S. Rawat,
Diesel Assistant
under Loco Foreman,
Northern Railway,
Laksar (U.P.).

...Applicant

(By Advocates Sh. R.K. Kamal with Sh. S.K. Gupta)

Versus

1. The Secretary, Railway Board,
Rail Bhavan, Rafi Marg,
New Delhi-110 001.

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

3. The Senior Divisional
Mechanical Engineer,
Northern Railway,
Moradabad (U.P.)

...Respondents

(By Advocate Sh. P.S. Mahendru)

ORDER (ORAL)

Mr. N.V. Krishnan:

The applicant is aggrieved by the order dated 1.10.93 (Annexure A-2) of the disciplinary authority whereby he has been reduced to the lower grade of Fireman 'C' in the scale of Rs.825-1200 at pay Rs.1120/- until he is found fit by the competent authority after a period of one year from the date of the order to be restored to the higher post of first Fireman in the scale of Rs.950-1500 without postponing his future increments on the ground that he has already suffered this penalty earlier.

2. It is pointed out that, in the first instance, by the order dated 25.7.91 (Annexure A-3) of the same disciplinary authority, an identical penalty was imposed. That penalty has been suffered by him for one year.

It is stated that in the lower post of Fireman 'C' arduous manual labour is involved as the Fireman 'C' has to stove coal in the boiler which is an arduous physical labour.

3. After suffering this penalty the applicant was restored as first Fireman by the order dated 31.7.92 (Annexure A-4).

4. In the meanwhile, the applicant had preferred a revision petition against the Annexure A-3 order of penalty, which was allowed on technical grounds by the order dated 28.11.92 (Annexure A-6). The order of penalty dated 25.7.91, i.e., Annexure A-3 was set aside, though by that time the applicant had already suffered the penalty. The revisionary authority directed the disciplinary authority to continue the disciplinary proceedings. That has now ended in the imposition of the Annexure A-2 penalty by the order dated 1.10.93 which is identical with the penalty imposed on 25.7.91.

5. The applicant prays that in the circumstances the penalty already suffered by him under the Annexure A-3 penalty order should be taken into account and this should be set off against the identical penalty imposed by the Annexure A-2 order.

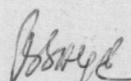
6. The application is opposed by the respondents. The learned counsel for the respondents submitted that the applicant has not exhausted the legal remedies available to him by way of an appeal and that, therefore, his application should be dismissed. He also contended that the applicant could very well have moved the appellate authority on the same grounds on which he has filed this O.A. for relief.

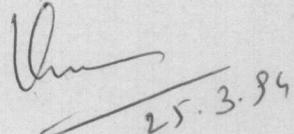
7. We have heard the learned counsel and perused the records. When the O.A. was filed we found that *prima facie* there was merit in the application and, therefore, we suspended the impugned order dated 1.10.93 for 14 days, which direction is since continuing.

8. This is a case of a punishment which has two aspects. One has to do with the kind of work required to be done as a result of *order* of penalty reducing the applicant to a lower rank. The other is a con-*commitent* aspect which entitles him to pay in the reduced pay scale. The important point made by the learned counsel is that the physical aspect of *punishment* is very important. The punishment already having been suffered by actually working on the lower post involving arduous physical labour he cannot be required to undergo that penalty all over again in the above circumstances. We find considerable merit in this claim. The objections of the learned counsel for the respondents are of a technical nature, which, in our view, should not stand in the way of rendering substantial justice.

9. In this view of the matter, we allow this application with the following declaration/directions:-
i) We declare that the applicant is deemed to have already suffered the penalty imposed by the Annexure A-2 order on him on 1.10.93 and that there is no need for him to suffer this penalty once again.
ii) Accordingly, the respondents are directed to employ the applicant now on the same post on which he was restored by the Annexure A-4 order dated 31.7.92, after physically suffering the penalty imposed earlier.

- iii) If it is found that giving effect to the financial aspect of the penalty with effect from 1.10.93 in pursuance of the Annexure A-2 order for a period of one year would be more severe than the financial effect of the penalty already suffered for the period from 25.7.91 to 25.7.92 under the Annexure A-5 order, it is open to the respondents to work out the difference in the financial impact and if, on that account, any recovery is due, it could be recovered from the applicant.
- iv) The O.A. is disposed of as above, with no order as to costs.


(B.S. Hegde)
Member(J)


25.3.94
(N.V. Krishnan)
Vice-Chairman

Sanju.