

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 960 of 1998

Allahabad this the 18th day of May, 2015

**Hon'ble Ms. Jasmine Ahmed, Member-J
Hon'ble Mr. U.K. Bansal, Member-A**

- 70/3/5/17
Saurabh 3/5/17
Tg
- (a) Kamla Singh, a/a 60 years, w/o Late M.B. Singh.
(b) Shri S.P. Singh, a/a 50 years, S/o Late M.B. Singh.
(c) Shri Rakesh Singh, a/a 45 years, S/o Late M.B. Singh.
(d) Shri Rajesh Singh, a/a 42 years, S/o Late M.B. Singh.
(e) Shri Parvesh Singh, a/a 30 years, S/o Late M.B. Singh.

Applicants

By Advocate: Mr. A.K. Singh

Vs.

1. Union of India, through The Divisional Railway Manager, Northern Railway, Lucknow Division, Lucknow.
2. The Assistant Divisional Railway Manager-1, Northern Railway, Lucknow Division, Lucknow.
3. The Senior Divisional Operating Manager, Northern Railway, Lucknow Division, Lucknow.
4. The Divisional Operating Manager -1, Northern Railway, Lucknow Division, Lucknow.
5. The Senior Divisional Safety Officer, Northern Railway, Lucknow Division, Lucknow.

Respondents

**By Advocates: Mr. Saurabh
Mr. Prashant Mathur**

ORDER

Delivered by Hon'ble Ms. Jasmine Ahmed, Member-J

The original applicant here, in this case has expired on
01.06.2012. The deceased left behind wife and four sons.

Jasmine Ahmed

The legal heirs of the deceased have filed a Substitution Application before this Bench for bringing them on record and to contest this case which was allowed by Order dated 03.09.2013. After the death of deceased, the wife and children are residing at village Suruvar Patti, Tehsil Sadar, District Jaunpur and as they are residing at Jaunpur, after the death of deceased, which is their native place hence the opposition of Counsel for the respondents on the point of jurisdiction, does not hold any good as the jurisdiction of Jaunpur comes under this Bench.

2. This matter has been filed before this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief(s): -

"(i) To quash the order dated 28.2.1996 (Annexure No. A) passed by the respondent no. 4 and the order dated 13.7.1998 (Annexure No. 1) passed by the respondent no. 2.

(ii) To direct the respondents to pay the arrears of the difference of the salary paid to the applicant.

(iii) To pass any such other suitable order, which this Hon'ble Tribunal may deem fit and proper.

(iv) To award cost of this application to the applicant."

3. The factual matrix of this case is that the original applicant, who was appointed by the respondents as Assistant ^{Station Allow} ~~Post~~ Master, was served with a charge sheet dated 21.01.1985 for committing certain misconducts. The inquiry was held/conducted by the respondent No. 4-Divisional

Jasim Ahmed

Operating Manager-1, Northern Railway, Lucknow Division, Lucknow who was the Disciplinary Authority and passed the order dated 28.02.1996 punishing the applicant with reduction into lowest grade i.e. ₹1200-2040/- and fixing pay scale of ₹1200/- for five years with cumulative effect. The applicant preferred an Appeal under Rule 18 of Railway Servants (Discipline and Appeal) Rules, 1968 before the Appellate Authority who was the Divisional Operating Manager and the Appellate Authority by its order dated 20.02.1997 passed an order for enhancement of penalty to that of removal from service. The order of removal from service dated 20.02.1997 reads as under: -

"In terms of Rule 22 (2) of the Railway Servants D & AR-1968, Sr. DOM/LKO the appellate authority has given a show cause notice for enhancing the penalty of 'Removal from Service' vide show cause notice of even no. Dt. 18.6.96 against DOM's punishment notice of reduction into lowest grade Rs.1200-2040 and fixing pay Rs.1200/- for five years with cumulative effect vide punishment notice of even No. dt. 28.2.96, on your representation dt. 18.6.96, the competent authority viz Sr. DOM/LKO has passed the following orders: -

"Due to said missing relied upon documents, it is not possible to review the punishment on the basis of documentary evidence. Hence, the present punishment may be accepted. Action is required against the agency responsible for loss of relied upon documents.

Please acknowledge receipt."

After that, being aggrieved, the applicant moved a Review Petition before respondent No. 3 which was also

Jasmin Ahmed

rejected by order dated 13.07.1998. The order dated 13.07.1998 reads as under: -

"I have gone through the review appeal carefully.

The penalty imposed earlier is quite stiff, adequate and commensurate with the offence committed - Infact it is exemplary and sufficient.

Thus the penalty imposed earlier to stand."

The aforesaid order resulted in filing the present O.A. before this Tribunal.

4. Briefly stated the facts of the case are that the applicant while posted at Koiripur Railway Station in District Sultanpur was served with a charge sheet dated 21.01.1985 which was received by the applicant on 12.02.1985. The charges/ allegations levelled against the applicant was that he has pocketed the Government cash by making false passenger foils of blank papers ticketing. After receiving the charge sheet, the applicant submitted his explanation denying all the charges levelled against him. The respondents after receiving the explanation from the applicant ordered to conduct an inquiry against him. Counsel for the applicant states that the respondent No. 5 without having any jurisdiction, acted as a Disciplinary Authority and appointed the Inquiry Officer to conduct the inquiry against the applicant, which is in clear violation of Railway Board's letter No. E (D&A) 78 RG-6-16 of 10.01.1979 (N.R. S. No. 7299). He contends that one Shri

Jasvire Ahluwalia

J.N. Sharma-a Vigilance Officer was appointed for the first time as an Inquiry Officer vide order No. VIG/53/C/85/LCS dated 15.05.1985 to enquire into the charges levelled against the applicant but, as he retired one Shri R.D. Chaudhari was appointed as an Inquiry Officer who was also transferred and, therefore, one Shri Sita Ram was appointed as the Inquiry Officer to proceed into the matter vide order Vig. 53/C-84/LCS dated 28.07.1994 who conducted the inquiry and also submitted the inquiry report to the Disciplinary Authority. Counsel for the applicant states that the respondents never given the relied upon documents to the applicant nor those documents were ever produced before the Inquiry Officer. He states that the Inquiry Officer has given his findings that the documents relied upon, which were produced by the Disciplinary Authority, were not the same as mentioned at the time of levelling the charges against the applicant. He also states that the documents relied upon were handed over to the Vigilance Inspector by Shri S.K. Sagar who was a Coaching Officer and said Shri Sagar, during the enquiry on 27.02.1987, stated before the Inquiry Officer that the documents produced by the Disciplinary Authority are not the same foils which were given to the Vigilance Inspector along with other documents. He puts emphasis that since the relied upon documents were neither given to the applicant nor they were produced before the Inquiry Officer hence, there was nothing on record

Jasmin Shrivastava

before the Inquiry Officer for inquiry and the Inquiry Officer illegally and in arbitrary manner has recorded his findings and came to presumption that the relied upon documents were changed in the security cell of the Divisional Railway Manager's office, Lucknow with the vague documents and he again presumed that the applicant himself colluded with the dealer in the security cell of D.R.M. Office and managed to replace the original documents which would have proved the misconduct of applicant. He also stressed that the presumption of respondents about change of original document with vague document is nothing but unnecessary allegation on the applicant. He also mentioned that the prosecutions named eight witnesses in support of their case but in place of eight witnesses only four witnesses were placed before the Inquiry Officer and all the four witnesses have given contradictory statements at the time of recording their statements. He took the plea that the main witness Shri R.N. Thacker, basing on whose report the departmental inquiry was initiated, has not been examined and, as such, the order passed against the applicant is without any evidence. After the submission of inquiry report by the Inquiry Officer, the applicant was punished with reduction to lowest grade i.e. Rs.1200-2040/- and fixing the pay scale of Rs.1200/- for five years with cumulative effect by order dated 28.02.1996. The applicant preferred an Appeal to respondent No. 5 on 17.04.1996 after receiving the order

Tasmin Ahmed

dated 28.02.1996. The respondent No. 5 without examining the irregularities pointed out by the applicant in the inquiry proceeding, issued a show cause notice dated 18.06.1996 directing the applicant to give reply as to why the punishment may not be enhanced to the penalty of removal. In reply to the show cause notice, the applicant submitted his representation/explanation dated 22.08.1996 to respondent No. 3. The respondent No. 4 without considering the case of applicant as well as without going through the material on record, in an arbitrary manner, rejected the Appeal of applicant vide order dated 20.02.1997 only on the ground that due to missing of relied upon documents it was not possible to review the punishment on the basis of documentary evidence. The applicant preferred the Review of the Appeal against the order of respondent No. 3/4 before the respondent No. 2. It is the contention of Counsel for the applicant that the respondent No. 2 without considering the case of applicant and without perusing the record of the case illegally and in arbitrary manner rejected the Review Petition by his order dated 13.07.1998 holding the penalty imposed earlier to stand. Counsel for the applicant states that the respondent No. 2 has passed non-speaking order which is bad in law and accordingly it is prayed that the orders passed by the respondents may be quashed and set aside. Counsel for the applicant also states that the inquiry of applicant was completed by the respondents after a lapse of

Tasneem Akhane

11 years without reflecting the cause of delay, while as per Railway Board's letter No. RBS No. E (D&A) 69 RG 6-17 dated 08.01.1971 the departmental inquiry should be completed within the stipulated period of 202 days and, as such, he states that the inquiry initiated against the applicant is vitiated and he also states that the disciplinary authority has taken into consideration extraneous matter which is beyond the scope of charge sheet as nobody can travel beyond the charge sheet hence the illegal and arbitrary orders of the respondents be quashed by this Tribunal. He puts emphasis that no order of punishment can be passed on the basis of conjectures and surmises and the presumption that the applicant has colluded with the dealer of security cell of the D.R.M's office, Lucknow is nothing but a presumption and also an allegation not only on him but also on other employees also which has never been proved by means of any evidence. He also stated that the material witness and material document were never placed before the Inquiry Office while the material witness and material documents are two very essential components of inquiry which cannot be dispensed with for coming into a concrete proof against any delinquent officer hence the entire proceeding is a case of no evidence or misplaced evidence. Accordingly, the punishment imposed upon the applicant is completely arbitrary, illegal and without following the proper course of law.

Jaswant Singh

5. We find that there is no detailed Counter Affidavit on record, only a Short Counter Reply was filed on behalf of the respondents objecting the Substitution Application but on the direction of this Court they have filed a Written Submission. The main plea of Counsel for the respondents was that the Substitution Application is not maintainable as the matter was dismissed in default vide order dated 20.02.2002 and also subsequent restoration application was dismissed in default vide order dated 26.08.2002 and the M.A. for recalling the Order dated 26.08.2002 was also rejected by this Tribunal vide Order dated 06.01.2004. He states that this matter has been restored by the Order of the Hon'ble High Court with further direction to decide this O.A. on merits. Counsel for the respondents states that the inquiry proceeding against the applicant was initiated on account of misconduct committed by him while working as Assistant Station Master, Koiripur and before awarding the punishment, the respondents have followed the proper procedure of law as per the D&A Rules. He states that the charge sheet was served upon the applicant and he could not give reply to the charge sheet. The inquiry was conducted and after that the Disciplinary Authority imposed the punishment and the Appellate Authority gave a show cause notice to the applicant for enhancement of punishment from reduction to lowest grade and fixing ₹1200/- for five years

Jasmeet Sharma

wit cumulative effect to removal from service, and not being satisfied by his reply removed him from service and the Reviewing Authority confirmed the order of removal, as such, there is no illegality in the procedure which was to be followed in a case of disciplinary proceeding. He states that the respondents have not acted illegally or arbitrarily in any manner.

6. Heard, the learned counsel for the parties and perused the documents on record and also the Written Submissions filed by the parties' counsel.

7. The charges against the applicant, served with the charge sheet, are quoted below: -

"(i) He presented passenger foil of BPT No. 273173 on 24.2.83 for two adults Ex KEPR to Ludhiana for Rs.110.00 against Accounts Record Foil in favour of one child ex KEPR to Zafrabad and accounted Rs.2.50 in DTC Book of KEPR on 24.2.83 and thus pocketed the Government cash amounting Rs.107.50.

(ii) He embezzled Government cash amounting Rs.106/- by preparing accounts and record Foils of BPT No. A 273182 for one child ex KEPR to Nihalgarh for Rs.4.00 only against passenger foil in favour of two adult ex KEPR to Ludhiana for Rs.110.00 on 4.3.83.

(iii) He pocketed Government cash amount Rs.108.50 by preparing passenger foils of BPT No. 273233 dated 28.4.83 for two adult ex KEPR to Rajpura for Rs.112.00 against Account and Record foil of Rs.3.50 in favour of one child ex KEPR to Musafir Khane.

(iv) He failed to mention fare in words in BPT's foils.

Tasmin Ali

(v) *He failed to indicate number of BPT's while accounting Cash against them in DTC Book."*

The charge sheet was dated 21.01.1985 and the inquiry report was submitted on 15.11.1995, after a lapse of about 11 years. We find there was no reasonable cause for such a long delay. Even while going through the statements of prosecution witnesses, we find that out of eight witnesses, only five witnesses have been examined and the other named witnesses have not attended the inquiry on several dates fixed for the same. We also find that the Disciplinary Authority/Presenting Officer has failed to produce complete relied upon documents which were received from the Vigilance branch. Though it was the allegation against the applicant that he had shown less amount in Record and account foils than the actual amount charged from the passenger and shown in the passenger foils and keeping in pocket the difference of money but the witnesses stated that those documents were not the original one and they could not identify where were those original foils. The witnesses also expressed that the exhibits in the inquiry appeared to be fake as the style of printing as well as the quality of paper and design of paper was different from those bearing on record and account foils. The PW-Kuldip Singh was also stated in his statement that the station stamp affixed in those exhibits is in English whereas on the actual account foils Ex. R-7 the stamp is in Hindi. While cross examining

Jasmeel

the PW-2, he remained on his statement and also stated that he did not even initial the counter foil and record foils of BPTs during his investigation. Shri Avdhesh Rai, who was also the prosecution witness, stated that he had no knowledge about the charges levelled against the delinquent official and during cross examination he told that he was never shown the passenger foils, account foils and record foils of BPTs and he had no idea about the amount recorded on these foils. He also told that he has no idea whether any BPTs were prepared or available at that point of time. Shri M.P. Mishra-another prosecution witness also stated that he had no knowledge about who was performing booking duty at that time. Shri Jamil Ahmad, who was also a prosecution witness, stated in his statement that the BPTs and passenger foils were not the same which were investigated at that point of time in the inquiry. He also stated that he has no knowledge how and when the passenger foils have been replaced. On his cross examination, the PW-Jamil Ahmad stated that he does not remember whether he initialled any document during checking. He also admitted that no statement was verified by him of the charged officer as it was conducted by Mr. R.M. Thackar. He also stated that as he was quite new at that point of time, he did not investigate but the same was done by Mr. Thackar hence having no knowledge. After perusing the statement of witnesses, it is amply clear that during the investigation, no original

Jasmin Ahmed

document could have been produced by the respondents and they proceeded on the basis of presumption that the applicant has colluded with the security cell and manipulated the documents which is beyond the ambit of charge sheet hence proceeding with the conjectures and surmises leads to travel beyond the charge sheet is not permissible under the law. Hence, it seems to be a case of no evidence or not proper evidence.

8. Counsel for the applicant, in his Written Statement, has relied on various Judgments of the Hon'ble Apex Court wherein it has categorically held that the delay vitiates justice as it cause prejudice to the delinquent officer. More so, in this case, as the Hon'ble Apex Court held in ***State of A.P. vs. M. Radhakishan (1998) 4 SC 154*** that when the delay is not convincing and the delay is unexplained and inordinate, same vitiates the inquiry. The Hon'ble Apex Court in various Judgments has laid down that the delay defeats justice. Here in this case, the completion of inquiry took more than 11 years which is a long time and the delinquent employee had to undergo mental agony and torture and also had to face social stigma which caused due to unnecessary prolonged inquiry. The Hon'ble Apex Court has held that it has to be seen whether the delay has caused prejudice or not. Here in this case, we find that for obvious reasons, due to delay, the PWs could not remember or

Jasvire Sharma

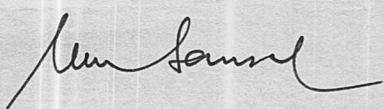
identify the relied upon documents and the respondents came to the conclusion that the applicant has colluded with the dealer of security cell and on the basis of this presumption, they have imposed punishment on the applicant. All the records were with the respondents and the applicant nowhere was custodian of those records hence it is unreasonable to proceed on conjectures and surmises and ultimately after 11 years of delay, the punishment was imposed upon the applicant. We have also seen that the respondents have not taken into account the reply given by applicant while enhancing the punishment. They have passed the order very mechanically without considering the points raised by the applicant and enhanced the punishment to that of removal from service. The removal from service not only punishes the delinquent official but also punishes the entire family hence while imposing the punishment of removal, the respondents had to be more clear and more vigilant on their own documents and the reply to the show cause notice should be dealt categorically and specifically.

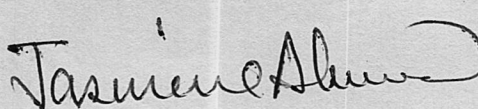
9. Taking into consideration all these above facts, circumstances and discussions, we find that the entire proceeding, first of all is vitiated by delay on the part of respondents and the respondents have travelled beyond the charge sheet and not taking into account the reply given by the applicant categorically while removing him from service.

Jasmine Khan

The order of removal from service is not at all descriptive or reasoned in nature. Accordingly, we quash the order dated 28.02.1996 and also the order dated 13.07.1998 passed by the respondents. We direct the respondents to pay the arrears of salary/pension w.e.f. the date of removal from service till the date of death of original applicant-Main Bahadur Singh, to legal heirs substituted and brought on record, as per law. Further, the family pension, as per service rules, be paid to the present applicants. The aforesaid exercise should be completed within a period of three months from the date of receipt of a certified copy of this Order.

10. With the above directions, O.A. stands allowed. No order as to cost.


(Mr. U.K. Bansal)
Member - A


(Ms. Jasmine Ahmed)
Member - J

/M.M/