

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 10th day of May, 2001.

Original Application No. 416 of 2001.

CORAM :-

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

Hon'ble Maj Gen KK Srivastava, A.M.

K.R. Rajput Son of Shri Naim Singh,

Resident of 1118, Issai Tola, Jhansi.

(Sri R.K. Nigam, Advocate)

..... Petitioner

Versus

1. Union of India through General Manager,
Central Railway, Mumbai CST.

2. Financial Adviser and Chief Accounts Officer (S&W),
Central Railway, Mumbai CST.

3. Dy. Financial Adviser & Chief Accounts Officer (S&W),
Central Railway, Mumbai CST,

4. Workshop Accounts Officer, Central Railway
Workshop, Jhansi.

(Sri K.P. Singh, Advocate)

..... Respondents

O R D E R (O_r_a_1)

By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

By this OA under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for a declaration that the proceedings emanating from the memo of charge dated 31-3-1995 and the punishment awarded till date and issuance of the impugned order of February, 2001 (Annexure-16 to the OA) are void and illegal on the ground of unexplained delay and being in breach of the

mandatory provisions for finalization of the proceeding under DAR, 1968.

2. The facts in short giving rise to this application are that the applicant was served with a memo of charge on 31-3-1995 consisting of three charges. The Inquiry Officer submitted the report dated 29-02-2000 concluding that Article of Charges I and III are proved and Charge No. II is not proved. The disciplinary authority by order dated 30-8-2000 imposed the penalty against the applicant by reduction to a lower stage in similar pay scale and reduced the basic pay from Rs.8500/- to Rs.7500/- p.m. for a period of five years, commencing from 01-9-2000. The order further contemplated that on expiry of the aforesaid period reduction will not have the effect on postponing future increments. Against the aforesaid order the applicant filed an appeal on 24-10-2000 which according to the learned counsel for the applicant is still pending. The disciplinary authority, however, by the order of February, 2001 withdrew his order dated 30-8-2000 imposing the penalty on the applicant and serving the report of the Inquiry Officer. The order further states that the applicant may acknowledge the receipt of enquiry report and may submit his representation, if any, within 15 days. It further says that if representation is not filed within time allowed it will be assumed that the applicant has nothing to say in this connection and penalty will be communicated to him accordingly.

3. Learned counsel for the applicant has made submission that the applicant has not yet filed representation after service of the enquiry report in response to the impugned order of February, 2001.

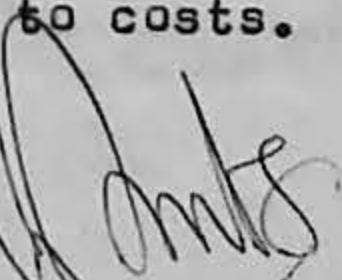
4. Learned counsel for the applicant has submitted

that disciplinary authority had no authority to withdraw his order as he had become ~~functioner~~ ^{functioner} ~~of~~ ⁱⁿ officio, after he passed the order of punishment on completion of the enquiry. We are not satisfied with the submission made by the counsel for the applicant. It cannot be disputed that after the judgement of the Hon'ble Supreme Court in Mohd. Ramzan Khan case reported in ^v Jt 1990 (4) S.C. 456, it became obligatory to serve the copy of the enquiry report on the delinquent employee. If the disciplinary authority subsequent to his passing of the order realised his mistake and reviewed the order, we do not think that he has done illegality. Normally a disciplinary authority after he passed the order, ^{can} ~~cannot~~ review the same unless specifically authorised by law but if the disciplinary authority is convinced that the order passed by him suffers from serious illegality on account of mistake committed by him, such an order may be recalled and we do not find any prohibition in law against such course. It is well settled that every authority has power to recall his order or review his order if it has been obtained by concealment of facts and misrepresentation of facts. In such a case the authority commits ^a mistake ^v on the representation of others. In the present case similar mistake has been committed by the disciplinary authority on his own, which he has realised subsequently. In our opinion the mistake committed in the present case is of the similar nature.

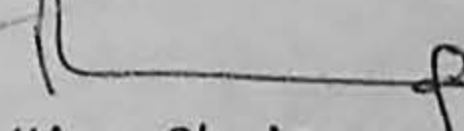
5. Learned counsel for the applicant has submitted that the applicant filed an appeal against the order of punishment and during the pendency of the appeal the disciplinary authority could not review the order. We do not find force on this submission also. Once an order of punishment has been withdrawn, nothing is ^{left} ~~left~~ to be decided on merit, until a fresh order is passed by the disciplinary authority after complying with the mandatory provisions of law.

6. In this OA it has also been prayed that the Memo of Charge may be quashed. As proceedings have already been concluded and enquiry report has been submitted, there is no question of quashing the Memo of Charge at this stage. Learned counsel for the applicant also submitted that his appeal may be directed to be decided at an early date. However, as the order of penalty stands withdrawn, such a direction cannot be issued until a fresh order is passed by the disciplinary authority.

7. Learned counsel for the applicant at the end submitted that the applicant may be permitted an opportunity to make representation in pursuance of the impugned order of February, 2001 and the disciplinary authority may be directed to decide the same in accordance with law. Sri KP Singh, counsel for the applicant has no objection to this course. The OA is disposed of accordingly finally with the liberty to the applicant to file the representation within a week from the date of receipt of the copy of this order. The representation so filed will be decided by the disciplinary authority in accordance with law. There shall be no order as to costs.



Member (A)



Vice Chairman

Dube/