

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD.**

Original Application No. 284 of 2004

Friday, this the, 7th, day of November, 2008

Hon'ble Mr. K.S. Menon, Member (A)

Janardan Ram Son of Late Sri Lal Mani, Presently working as Junior Engineer, Grade-I, Bridge Workshop, Northern Eastern Railway, Gorakhpur Cantt.

Applicant

By Advocate: Sri S.K. Om

Vs.

1. Union of India through General Manager, Northern Eastern Railway, Gorakhpur.
2. Chief Workshop Manager (Bridge) Northern Eastern Railway, Gorakhpur.
3. Executive Engineer (Bridge), Northern Eastern Railway, Gorakhpur.
4. Assistant Engineer, Open Line, Northern Eastern Railway, Gorakhpur.

Respondents

By Advocate: Sri D.S. Shukla

ORDER

By K.S. Menon, Member (A)

This O.A. has been filed against the Punishment order dated 30.03.2001 (Annexure-3 to the O.A.), Appellate Authority's Order dated 11.02.2002 (Annexure-5 to the O.A.) and the Revisional Authority's Order dated 24.05.2002 (Annexure No. 7) by which the applicant was awarded a penalty of reduction in pay from Rs. 7075/- per month to Rs.5500/- per month for a period of 35 months with non-cumulative effect w.e.f. 01.04.2001. The period of 35 months has subsequently reduced to 24 months by the Appellate Authority.

2. The facts of the case in brief are that the applicant was working as a Junior Engineer at Sonpur under N.E. Railway with additional

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charge of supervising a Foot Over bridge at Khagaria Railway Station a site Railway Station which is about 200 km. from Sonpur.

3. The applicant ^{was} issued a charge sheet on 20.03.2001 by respondent No. 3 alleging that when a surprise inspection was made at Khagaria Railway Station, it was found that Muster Sheets No. 789, 799 and 802 dated 18.02.2001 to 22.02.2001 did not show any attendance, besides all columns were blank thus showing negligence of duties (annexure No. 1). The applicant in his reply to the charge sheet submitted that during the aforesaid period 18.02.2001 to 22.02.2001 he performed duties at Sonpur, hence he is not responsible for non-recording of attendance at Khagaria station. He contended that even if there was an anomaly in the Muster sheet, then the senior most employee present at Khagaria Station should be held responsible and the applicant cannot be blamed for the omission on the part of that officer and accordingly he requested the charge sheet to be dropped. Despite the above the respondents arbitrarily passed the order dated 30.03.2001, by which his pay was reduced from Rs.7075/- to Rs. 5500/- i.e. the minimum of the scale Rs.5500-9000/- for 35 months without cumulative effect.

4. Applicant filed an appeal against the said punishment order on 16.04.2001 reiterating the point that the responsibility of recording attendance is that of the senior most officer at Khagaria station and he alone should be held responsible if there is any lapse in recording the attendance. The applicant's grievance is that without taking into consideration his reply or without controverting the points contained in his reply, the respondents have awarded him the above punishment. The appeal was decided by the Appellate Authority i.e. respondent No. 2, who reduced the currency of the punishment from 35 months to 24 months with non cumulative effect vide order dated 11.02.2002 (Annexure No. 5 to compilation No. I) Being aggrieved the applicant submitted a Revision petition to the authorities concerned this was also rejected by the Revision Authority vide Order dated 24.05.2002 on the grounds that there was no justification to reduce the punishment awarded by the Appellate Authority (annexure-7 to Compilation II to the O.A.)

[Signature]

5. The applicant submits that the above orders are arbitrary and illegal in as much as the document 'C-20' relied upon by the Appellate Authority was not made available to the applicant. He also maintains the order dated 24.05.2002 is non speaking and has been passed without application of mind and is therefore liable to be quashed and also prays that his position should be restored to the position prior to the imposition of punishment, with all consequential benefits.

6. The respondents at the outset in their Counter Reply state the O.A. is time barred and no grounds have been made out for condonation of delay and the O.A. deserves to be dismissed on grounds of laches alone. Respondents submit prior to the present incident also the applicant was awarded the penalty of Censure for certain irregularities noticed during a surprise inspection by the Chief Workshop Manager (Bridge) Gorakhpur on 12.02.2001. Therefore the applicant's contention that his record was excellent prior to the present charge sheet is without any basis. The present charge sheet was issued and punishment awarded after considering the lapses, the applicant's reply and all other facts in his defence. The same punishment was reduced on appeal by the Appellate Authority considering the hardship faced by the applicant's family and not on merits of the case.

7. The respondents further point out that two S.F. 5 are also pending against the applicant which reflects on the poor performance of the applicant (Annexure CA III). Respondents in reply to para-4 (10) of the O.A. claims that as per DAR Rule 1968 for minor penalties there is no need for an inquiry and it is ^{at} ~~up to~~ the discretion of the Disciplinary Authority. The respondents state that the applicant has not availed the second revision that was available to him under Rule 25 of the Railway Servants (D&A) Rules, 1968 and has therefore not exhausted the statutory remedies available to him. They contend that the O.A. is liable to be dismissed on this ground also.

8. In view of the above the respondents are of the view that there is no illegality, arbitrariness violation of principles of natural justice or infringement of Article 311 of the Constitution of India, as alleged by the applicant, in the orders passed by them. On the other hand,

they contend that the applicant has failed to make out a case for grant of relief, as prayed for in this O.A.

9. Heard Shri S.K. Om, learned counsel for the applicant and Shri D.S. Shukla, learned counsel for the respondents and perused the pleadings in detail.

10. This O.A. has been filed alongwith a delay condonation application No. 920 of 2004. Reasons adduced are considered sufficient and in the interest of justice the delay was condoned and the case was heard on merits.

11. The applicant's complaint that respondents have relied upon Noting No. 20 while deciding on the punishment awarded to him, yet a copy of the same was not made available to him. This document was not made available to him as it was a confidential document. Any document relied upon in an inquiry on the basis of which an employee is awarded a punishment should be made available to him in the interest of fair play and natural justice. The respondents have erred in not making the said Noting available to the applicant.

12. The rule with regard to attendance stipulates that every Railway servant should have to present himself before his Supervisor by marking their attendance every day and the Supervisor will also certify their attendance everyday ^{he} ~~and the Supervisor will also certify~~ ^q ~~their attendance~~ by signing the same. Staffs are not allowed to perform duties without such attendance being marked. The applicant was awarded the punishment because the columns in the attendance register for the said period at Khagaria Station was blank and hence he had failed to perform his duties. Refuting the above, the applicant maintains that 18.02.2001 was pay day hence everyone was at Headquarters and 19.02.2001 to 21.02.2001 was taken as compensatory leave as the staff worked on 04.02.2001, 11.02.2001 and 18.02.2001 and those who were absent on 22.03.2001 were marked absent therefore the attendance sheet was complete. This contention of the applicant in the O.A. and reiterated in his Rejoinder Affidavit is not tenable as he being the Supervisor for the Khagaria Station Foot bridge ^{he} ~~was~~ responsible for proper entries in the muster sheet, besides if the staff were present at Headquarters on

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18.02.2001 for salary the attendance register should have been at Headquarters, which was not the case. Applicant admits he was not at Khagaria Railway Station, but the senior most employee at the site should have ensured proper entries in the muster sheet despite this no action has been taken against that Supervisor. There is no dispute that the applicant was at Headquarters which is his primary duty station. It therefore stands to reason he was not at Khagaria Railway Station, which is an additional charge and 200 kms away. No explanations have been given by either party as to what the normal practice is regarding maintaining the muster sheet when the applicant is at Headquarters. The practice certainly cannot be that the muster sheets are taken to Headquarter, daily for his signature. The total period involved for which no attendance has been marked is four days i.e. 18.02.2001 to 21.02.2001. The markings for these days should have been made by the senior most employee at the site (Khagaria Railway Station) and then got it ratified or endorsed by the applicant subsequently if that was the procedure. The respondents have not been able to bring out the role of the senior most employee at the site while deciding the applicant's case. The pleas taken by the applicant in his appeal and revision petition have also not been adequately addressed while disposing off the same.

13. The respondents have tried to make out that on an earlier occasion, the applicant was awarded a penalty of Censure for certain lapses on his part during a surprise inspection, hence his version cannot be accepted as correct. I do not accept this contention as it is well accepted in law that each case has to be examined and adjudicated on its merits and what happened earlier cannot be allowed to cloud ^{the} ~~over~~ Judgment in the case on hand.

14. Admittedly the Tribunal cannot interfere with the quantum of punishment awarded to an employee, but it can certainly step in ^{when or} ~~which~~ the punishment awarded is prima facie not commensurate with the charges as proved. From the above analysis, it is very evident that the applicant's case has not been dealt with fairly. Respondents have not been able to clearly establish how the applicant is responsible for daily muster sheet entries when he is at the Headquarters, which is 200 kms. away from the station concerned where the entries had to be made. The appellate and

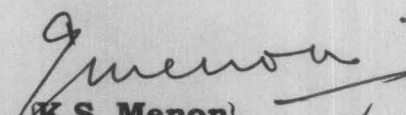
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revision orders are also not reasoned and speaking orders to the extent that it does not indicate how the applicant is guilty of misconduct given the facts and circumstances of the case and the correlation between the severity of the misconduct and the quantum of punishment. No doubt the period of punishment was reduced on grounds other than merit, here again no clear analysis exists for coming to such a conclusion.

15. In view of the above, it is very evident that the applicant has not been dealt with fairly and though the period of punishment was reduced by 11 months, the severity of the lapse on his part, if any, is not commensurate with the impact of the punishment so awarded.

16. In the result, O.A. is allowed. The impugned orders dated 30.03.2001, 11.02.2002 and 24.05.2002 are quashed and set aside with all consequential benefits. The respondents are directed to reconsider the applicant's case in the light of the above observations of this Court.

17. There shall be no order as to costs.


K.S. Menon
Member 'A'

/M.M/