

(Reserved on 02.04.2014)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 27th day of May, 2014.

Original Application Number. 162 OF 2005.

**HON'BLE MR. SHASHI PRAKASH, MEMBER (A)
HON'BLE DR. MURTAZA ALI, MEMBER (J).**

Ramesh Kumar, S/o Late Ramchandra Pandey, Senior Cashier, Cash and Payment, N.E. Railway, Gorakhpur. Resident of Q. No. 510-B, Bichiya Railway Colony, District - Gorakhpur.

.....Applicant.

VE R S U S

1. Union of India through the General Manager, N.E. Railway, Gorakhpur.
2. The Finance Audit and Chief Accounts Officer, N.E. Railway, Gorakhpur.
3. The Deputy Finance Audit and Chief Accounts Officer / Traffic (Disciplinary Authority), N.E. Railway, Gorakhpur.

.....Respondents

Advocate for the applicant : Shri Vikas Budhawar
Advocate for the Respondents: Shri Prashant Mathur

O R D E R

(Delivered by Hon'ble Mr. Shashi Prakash, A.M.)

By way of the instant Original Application filed under Section 19 of Administrative Tribunals Act 1985, the applicant has prayed for quashing of the Order of penalty of stoppage of annual increment for a period of two years with cumulative effect passed by the Deputy Finance Audit and Chief Accounts Officer / Traffic on 12.05.2004 (Annexure -6) and appellate order dated 29.07.2004 (Annexure -7) as well as order dated 21.12.2004 (Annexure A-8) passed by the Reviewing Authority. Prayer has also been made for a

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direction to the respondents to ensure complete payment of salary without deduction of increment month to month.

2. The facts of the case are that a complaint against the applicant was made by one Shri Asgar Ali, Sweeper alleging therein that another Sweeper Shri Yusuf Ali used to snatch his salary since last 8 months with the help of Anti-Social elements (Annexure -2). Thereafter enquiry was conducted into the complaint in which statement of several employees was recorded (Annexure 3-A, 3-B, 3-C and 3-D). The statement of one Shri Ramanand was recorded on 01.11.2002 and he was cross examined by the enquiry officer on 10.12.2002. The statement of Shri Yusuf Ali was also recorded on 17.11.2003. Thereafter the applicant was served with charge sheet dated 09.03.2004 (Annexure -4) to which he submitted his reply on 22.03.2004 and denied the allegations in the charge sheet (Annexure-5). On receipt of reply from the applicant, the Disciplinary Authority vide order dated 12.05.2004 (Annexure A-6) passed the penalty of stoppage of annual increment with cumulative effect for a period of two years. The order of Disciplinary Authority was upheld by the Appellate Authority vide order dated 29.07.2004 (Annexure-7). Thereafter the applicant filed Revision on 14.09.2004, which has been also been rejected by the Reviewing Authority vide order dated 21.12.2004 (Annexure -8).

4. In the present original application it has been averred on behalf of the applicant that the Disciplinary Authority without



considering the points raised in the reply to the charge sheet had passed the order dated 12.05.2004. It is also averred that the without affording proper opportunity of hearing in the disciplinary enquiry the disciplinary authority has passed the penalty of stoppage of annual increments for a period of two years with cumulative effect. Learned counsel for the applicant further stated that on account of complaint of Shri Asgar Ali dated 01.11.2002 a criminal case no. 1/2002 under section 3 R.P (U.P) Act – State Vs. Yusuf Ali & Ors is pending, hence the parallel proceeding for the same charges is pending therefore, without waiting for the conclusion in the criminal proceeding, the penalty awarded against the applicant is not sustainable..

3. Upon notice the respondents have filed Counter Affidavit. It is contended that the salary bill No. 414 was related to Pay Point No. 28, which was handed over to the applicant by the Divisional Cashier on 01.11.2002 in tagged position to arrange the payment on due date. This fact was admitted by Shri Ramanand, Divisional Cashier in his statement dated 10.12.2002 under Question no. 3. The applicant was responsible for safe custody of page no. 33 relating to salary bill Unit No. 414 and without his personal connivance a Safaiwala working under Health Inspector, Railway Hospital, Gorakhpur could not have obtained the same before the payment date. The statement of Divisional Cashier dated 10.12.2002 is appended at Annexure R-I. It is further contended that the applicant was given full opportunity of hearing before

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passing the penalty order therefore, the orders passed by the respondents are justified and have been passed after taking into account all relevant documents and evidence on record.

4. Heard Shri Vikash Budhwar, learned counsel for the applicant and Shri Prashant Mathur for respondents.

5. It is observed that the charge brought against the applicant was that while he was responsible for safe custody of page no. 33 relating to salary bill Unit No. 414 yet, on account of his negligence, the aforesaid document was found in the personal custody of a Safaiwala working under the Health Inspector, Railway Hospital, Gorakhpur. It has been alleged that this could have only taken place with the connivance of the applicant. A perusal of Annexure A-4 dated 22/24.01.2003 shows that the entire exercise of inquiry was based upon a report which is titled as "Disciplinary Inquiry Report" but in actuality appears as a preliminary inquiry report in which based upon preponderance and probability and statements given by some witnesses, the applicant was held responsible for the alleged misplacement of page no. 33 relating to salary bill Unit No. 414. This so called disciplinary inquiry report cannot be said to be an inquiry report which has been prepared in accordance with the provisions as envisaged under Rule 9(2) of Railway Servant (Discipline & Appeal) Rules 1968. The aforesaid Rule very clearly lays down the procedure to be followed by the disciplinary authority relating to inquiry into the truth of imputation of misconduct or



misbehavior of an employee. This requires service of a regular charge sheet indicating the article of charges leveled against the applicant in the prescribed manner alongwith relied upon documents as well as list of witnesses . In the instant case, instead the respondents have merely forwarded the so called disciplinary inquiry report to the applicant alongwith detailed statement as Annexure, which is nothing but to a reproduction of facts and finding, as emerging out of the so called inquiry . Thereafter the applicant submitted his reply to the aforesaid charge sheet by letter dated 22.03.2004. Based upon the finding of the so called disciplinary inquiry report as well as the reply of the applicant the respondents went ahead and imposed penalty of withholding of annual increment for a period of two years with cumulative effect.

6. From the above it is evident that the penalty of withholding of increments for two years with cumulative effect has been imposed upon the applicant by the respondents without conducting an inquiry in the manner as envisaged under rule 9(2) of Railway Servants (Discipline & Appeal) Rules 1968. Though the withholding of increment is listed as a "minor penalty" under rule 6(4) of the Railway Servants (Discipline & Appeal) Rules 1966, it is to be noted that the Apex Court has taken a view that withholding of increment with cumulative effect virtually amounts to a major penalty as it has an adverse financial implication on the concerned employee during the entire phase of ^{his} service career in future. In fact in the case of **Kulwant Singh Gill Vs. State of Punjab - 1991**



Supp(1) SCC 504, the court has examined the issue in detail. It has gone ahead and overruled the earlier view of the Apex Court in the case of **Sarwan Singh Vs. State of Punjab – 1985 (1) (SLJ) 513 (P&H)**, wherein withholding of increments even with cumulative effect was treated as minor penalty and it was held that it could be imposed without conducting any disciplinary inquiry. In this regard it would be relevant to reproduce the related portion of the judgment of Apex Court in the case of **Kulwant Singh Gill (Supra) :-**

“.....But when penalty was imposed withholding two increments i.e. for two years with cumulative effect, it would indisputably mean that the two increments earned by the employee was cut off as a measure of penalty for ever in his upward march of earning higher scale of pay. In other words the clock is put back to a lower stage in the time scale of pay and on expiry of two years the clock starts working from that stage afresh. The insidious effect of the impugned order , by necessary implication, is that the appellant employee is reduced in his time scale by two places and it is in perpetuity during the rest of the tenure of his service with a direction that two years' increments would not be counted in his time scale of pay as a measure of penalty. The words are the skin to the language which if peeled off its true colour or its resultant effects would



become apparent. But if the effect is kept at the back of the mind it would always be so, the result will be the conclusion as we have arrived at.”

7. It would also be relevant to produce para 5 of the judgment of **Kulwant Singh Gill** (Supra) which explains as to why it is necessary to conduct an detailed inquiry before imposition of punishment of withholding of increment with cumulative effect: -

“5. The further contention of Shri Nayar that the procedure under Rule 8 was followed by issuance of the show cause notice and consideration of the explanation given by the appellant would meet the test of Rules 8 and 9 of the Rules is devoid of any substance. Conducting an enquiry, de hors the rules is no enquiry in the eye of law. It cannot be countenanced that the pretence of an enquiry without reasonable opportunity of adducing evidence both by the department as well as by the appellant in rebuttal, examination and cross-examination of the witnesses, if examined, to be an enquiry within the meaning of Rule 8 and 9 of the Rules. Those rules admittedly envisage, on denial of the charge by the delinquent officer, to conduct an enquiry giving reasonable opportunity to the presenting officer as well as the delinquent officer

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to lead evidence in support of the charge and in rebuttal thereof, giving adequate opportunity to the delinquent officer to cross-examine the witnesses produced by the department and to examine witnesses if intended on his behalf and to place his version, consideration thereof by the enquiry officer, if the disciplinary authority himself is not the enquiry officer. A report of the enquiry in that behalf to be placed before the disciplinary authority who then is to consider it in the manner prescribed and to pass an appropriate order as for the procedure in vogue under the Rules. The gamut of this procedure was not gone through. Therefore, issuance of the notice and consideration of the explanation is not a procedure in accordance with Rule 8 and 9.”.

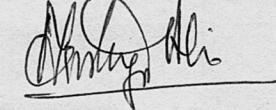
8. This view of the Apex Court was further upheld in the case of **Mohinder Singh Vs. State of Punjab & ors – 1995 Supp (4) SCC 433**, wherein it has been unambiguously held that stoppage of increment with cumulative effect is a major penalty and cannot be imposed without inquiry in terms of the relevant rules.

9. In the instant case it is seen that only a preliminary inquiry report titled as “Disciplinary Inquiry Report” alongwith charge sheet was served upon the applicant but no inquiry as envisaged under rule 9(2) of Railway Servants (D&A) Rules was under taken. In such

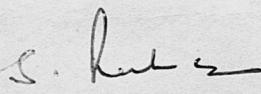
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circumstances, the imposition of penalty of withholding of increment of two years with cumulative effect was clearly against the ratio laid down by the Apex Court in the judgments cited above. Taking into account this fact the impugned order is clearly vitiated therefore, liable to be set aside.

10. Accordingly, the O.A is allowed. The impugned orders dated 12.05.2004 (Annexure-6) , 29.07.2004 (Annexure-7) and 21.12.2004 (Annexure -8) are set aside and the matter is remitted to the respondents for appropriate action in the light of clear ratio laid down by the Apex Court in this regard within a period of three months from the date of receipt of certified copy of the order. No costs.



(DR. MURTAZA ALI)
MEMBER- J.



(SHASHI PRAKASH)
MEMBER- A.

Anand....