

(Reserve)

Central Administrative Tribunal, Allahabad Bench,
Allahabad

O.A. No. 330/00559/2018

This the 8th day of October, 2021

Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)

Hon'ble Mr. Devendra Chaudhry, Member (A)

S.S. Tiwari age 64 years son of Surya Mani Tiwari r/o Subhas Nagar, P.O. Mughalsarai, Dist. Chandauli.

Applicant

By Advocate:- Sri Vinod Kumar

Versus

1. Union of India through the General Manager, E.C. Railway, Hajipur.
2. The Chief Mechanical Engineer, E.C. Railway, Hajipur
3. The ADRM/E.C. Railway, Mughalsarai, Dist. Chandauli

Respondents

By Advocate: Sri Amit Kumar Rai

ORDER

HON'BLE MRS. JUSTICE VIJAY LAKSHMI, MEMBER (J)

By means of the present O.A. the applicant has challenged the legality and correctness of two orders passed by the respondents. The first impugned order is dated 18.9.2014, passed by the disciplinary authority, whereby the applicant has been removed from service. The 2nd order is dated 1.6.2017, whereby the department has rejected the appeal, preferred against the order dated 18.9.2014, by the applicant. The applicant has prayed to quash both the orders and to continue his service till his retirement as well as to pay him entire pensionary benefits.

2. We have heard Sri Vinod Kumar, learned counsel for applicant and Sri Amit Kumar Rai, learned counsel for respondents. Perused the records.

3. The facts emerging from the O.A. are that the applicant entered into Railway Service on 21.6.1990 and was promoted as Technician Gr. III/ SSE/DSL/E.C. Railway Mughalsarai, in the year 1993.

3.1 Applicant was served with a major penalty charge sheet on 4.8.2010 with the allegation that he married for the second time with one Vishnu Devi alias Binita Tiwari, in the life time of his first wife Pushpa Devi.

The applicant submitted reply to the charge sheet whereby denying his marriage with Smt. Pushpa Devi and submitted an affidavit regarding his marriage with Smt. Vishnu Devi @ Binita Tiwari, only..

3.2 Enquiry officer was appointed to conduct the enquiry vide letter dated 23.2.2011. The enquiry officer conducted the enquiry. During enquiry, neither the complainant Smt. Pushpa Devi, claiming herself to be first wife of the applicant, nor any witness appeared to give evidence before the enquiry officer. The enquiry was concluded and findings were submitted on 14.6.2013, by the enquiry Officer that due to lack of evidence, the charges could not be proved against the applicant.

3.3 On the basis of finding of the enquiry officer, the Disciplinary Authority exonerated the applicant from all the charges vide order dated 18.2.2014.

3.4 As during the pendency of the disciplinary proceedings, the applicant was denied his due promotion, yearly increment etc., he after his exoneration from the charge, claimed his promotion and increments by means of an application dated 14.4.2014 and prayed that as his retirement is due on 31.12.2014, he may be granted his due promotion and increments, before his retirement.

3.5 However, instead of receiving any promotion order or increment, the applicant received a show cause notice issued by respondent No. 2, proposing imposition of penalty on the applicant, by reviewing the order of exoneration passed by the disciplinary authority on 18.2.2014.

3.6 Applicant submitted reply to the show cause notice on 13.8.2014, but without paying any heed, the respondent No. 2 issued impugned order of his removal from service on 18.9.2014.

3.7 The applicant preferred departmental appeal against his removal order, but when it was not decided in time, he filed an OA no. 1657/2014, which was decided vide order dated 01.02.2017, whereby directing the respondent department to decide his pending appeal within one month.

3.8 Thus, the instant OA is the 2nd round of litigation, by the applicant, challenging the entire disciplinary proceedings and both the impugned orders.

3.9. Both the impugned orders have been challenged by the applicant mainly on the following grounds:-

(i) that the respondent No. 2 has exercised power to review under Rule 25 of Railway Servants Discipline and Appeal Rules, 1968, beyond his competency/jurisdiction.

(ii) That there is neither any oral evidence nor any documentary evidence against the applicant. During the course of enquiry, neither the alleged complainant Smt. Pushpa Devi nor any other witness appeared. Infact, there is no such complaint in existence. Had there been any such complaint in existence, the enquiry officer would have annexed it's copy with the charge memo and would have mentioned it in the list of documentry evidence.

(iii) The alleged complainant Smt. Pushpa Devi never filed any case u/s 125 Cr.P.C. for maintenance nor filed any case u/s 494 IPC for offence of bigamy against him, which substantiates the finding of exoneration of applicant, recorded by enquiry officer.

iv) There is a delay of more than after 8 years in issuing charge sheet from the date of alleged complaint.

- v) Copy of complaint was never supplied to the applicant at any stage.
- vi) Charge sheet is not supported by the complaint. The list of witness reflects the name of only one witness, who never appeared during enquiry.
- vii) During enquiry, neither complaint was examined nor any other witness of fact was examined by the learned enquiry officer which is evident from the report itself.
- viii) Enquiry was conducted by the vigilance officer namely Sri Vijay Krishna Rai, which is not permissible as per the law laid down by Hon'ble Apex Court in the case of **UOI Vs. Prakash Kumar Tandon, 2008 LawSuits (SC) 1858.**
- ix) The order of disciplinary authority dated 18.2.2014 has been revised by an incompetent authority.

4. Notices were issued to the respondents who in turn filed the Counter Reply whereby contesting the claim of the applicant on the following grounds :-

- (i) That the applicant, while working as Technician Gr. III was issued a major penalty charge sheet dated 4.8.2010 with the allegation that the applicant has married for the second time with one Vinita Tiwari whereas his first wife named Pushpa Devi is alive. No intimation about his second marriage was given to the Railway Administration. As such the applicant has violated the norms of the conduct rules being a Govt. servant.
- (ii) Enquiry officer was nominated and charge sheet was issued to the applicant. It is admitted by the respondents in their counter affidavit that on conclusion of the enquiry, the Disciplinary Authority exonerated the applicant from charges and the same was communicated to the applicant.

(iii) As per the respondents, as the order passed by the Disciplinary Authority was not commensurate with the gravity of the offence, revisionary action was initiated and a show cause notice was issued to the applicant by the A.D.R.M. on 20.6.2014 in the same matter.

(iv) On receipt of the reply of the applicant, the A.D.R.M. in the capacity of Revisioning Authority, decided the matter and removed the applicant from service by a reasoned and speaking order dated 18.9.2014.

(v) Thereafter, the applicant preferred an appeal which was also dismissed.

(vi) That there is photo copy of marriage card of applicant showing his marriage with Pushpa Devi. Moreover, the applicant was asked to inform about his relation with Smt. Pushpa Devi. But the applicant did not give any reply. The applicant also failed to tell the name of his father-in-law, when asked by the letter dated 27.8.2014.

(vii).It is contended by Id. Counsel for the respondents that all these documents are sufficient to prove the charge against the applicant.

5. We have given our thoughtful consideration to the rival contentions of learned counsel for the parties and have carefully gone through the record.

6. The applicant has filed written submissions and has placed reliance on the following judgments in support of his arguments:-

i) **State of Andhra Pradesh Vs. N.Radhakishan, 1998 LawSuit (SC) 430.**

ii) **Union of India and others Vs. Prakash Kumar Tandon, 2008 LawSuit (SC) 1858.**

iii) **Hardwari Lal Vs. State of U.P. and others decided o 27th October, 1999 by Hon'ble Supreme Court.**

iv) Union of India Vs. Mohd. Ramzan Khan 1990 LawSuit (SC) 664.

7. It is vehemently contended by the learned counsel for applicant that the impugned removal order has been passed at the time when the applicant was at the verge of his retirement. The applicant had served the department for about 24 years and at the fag end of his service, he was penalized with extreme penalty of removal from service and has been left to die from starvation along with his family members, without any pension, due to his removal from service just three months prior to his retirement.

8. On the aforesaid grounds, Learned counsel for the applicant has prayed that the impugned order dated 18.9.2014 and Appellate order dated 1.6.2017, both being wholly illegal and being violative of principles of natural justice, be quashed.

9. Our attention has also been drawn to Annexure No.A-10, which is a copy of the appeal preferred by the applicant to show that none of the grounds taken by the applicant, in his appeal, has been discussed/decided by the Appellate authority, while deciding the appeal.

Findings:-

10. The impugned order of removal passed by ADRM, dated 18.9.14, copy whereof has been annexed as Annexure no. 9, shows that the ADRM has revised and has reversed the order passed by disciplinary authority, exonerating the applicant, only on the ground that the applicant has not given proper reply to the a letter dated 27.8.13 of the department asking some clarification.(Annexure CA-2), whereas the annexure no.CA-4, filed by the respondents themselves, clearly shows that the applicant, in reply to the letter has given an affidavit that his only wife is Vishnu Devi alias Vineeta Tewari.

11. There is no complaint of Pushpa Devi or even its photo copy in existence, which is clearly evident from a perusal of charge memo (Annexure no.A-1)

The list of documentry evidence annexed with the charge memo consists of only 3 documents, including a photo copy of marriage card. Neither the copy of any complaint to be used as documentry evidence, in the enquiry was supplied to the applicant nor Pushpa Devi herself or any of her near or distant relative was examined during course of enquiry.

12. In the written arguments filed by the applicant there is a mention that an undated complaint was received by the department prior to year 2002 and on that basis, the Vigilance Officer recorded the statement of complainant Smt. Pushpa Devi and other villagers in the year 2002, but the major charge sheet was issued to the applicant with an inordinate delay on 4.8.2010. No explanation was given to show the reason of delay of more than 8 years in issuing the chrgesheet with regard to a complaint received 8 years ago. In this regard Id.counsel for the applicant has relied upon a judgement of Hon'ble Apex Court, rendered in the case of **State of Andhra Pradesh Vs. N. Radhakishan (supra)**, laying down the law that disciplinary proceedings related to an incident which occurred 10 years back, without any explanation for the delay and when the delay was not attributable to the delinquent employee, are liable to be quashed.

13. In a catena of judgments, Hon'ble Supreme Court has held that non-supply of copy of documentary evidence to the charge sheeted officers/officials vitiate the whole enquiry. In the present case, neither the copies of the documentary evidence were supplied to the applicant nor the applicant was provided any opportunity to cross examine any witness, because no witness was

produced before the enquiry officer. Moreover, the enquiry has been conducted by the same Vigilance Officer, whereas the enquiry officer cannot be appointed from the vigilance department as per the law laid down by the Hon'ble Apex Court in the case of **Union of India and others Vs. Prakash Kumar Tandon, 2008 LawSuit (SC) 1858**. In the aforesaid case, Hon'ble Apex Court has held that if the disciplinary proceedings have been initiated on the basis of a report from the Vigilance Department, the enquiry officer should not be appointed from Vigilance Department.

14. Admittedly, the disciplinary authority, earlier, vide order dated 18.2.2014, had completely exonerated the applicant from the charges. However, when the applicant asked the department for payment of his regular annual increment, which was withheld due to pendency of disciplinary proceedings, he received a notice dated 20.6.2014 issued by ADRM, Mughalsarai, who assumed himself as a Revisionary Authority, totally against the provision of Rule 25 (iv) of Railway Servants (Disciplinary and Appeal) Rules, 1968, which provides that "The Appellate Authority should not be below the rank of a Divisional Railway Manager (DRM) where no appeal has been preferred.

15. In the instant case, the applicant after his exoneration from the charges had no reason to prefer any appeal and no appeal was preferred by him. Therefore, the competent authority, to review or revise the order of disciplinary authority, was the Divisional Railway Manager (DRM) but an officer below the rank of DRM i.e. ADRM (EC), Mughalsarai, has reviewed the order of disciplinary authority against the statutory provision.

16. A perusal of impugned appellate order shows that the appellate authority has decided the appeal of the applicant by a

cryptic and non-speaking order, without considering the grounds taken in the appeal by the applicant.

17. It is noteworthy that the revisionary authority and the appellate authority, both have recorded a finding that the applicant is also guilty of not intimating to the Railway Administration, that he was in police custody from 29.3.2005 to 7.4.2005. Ld. Counsel for the applicant has vehemently contended that the aforesaid finding recorded by the Revisionary and Appellate authority are totally baseless and the applicant has been double jeopardized for an incident occurred in the year 2005 for which he has already received punishment. In this regard, he has drawn our attention to Annexure No. 15, to show that on the issue of police custody from 29.3.2005 to 7.4.2005, the applicant has already been penalized by withholding his increment for a period of 3 years with cumulative effect, vide order dated 27.6.2008. Thus, there appears substance in the argument of learned counsel for applicant that the applicant has been penalized on the basis of an offence, which is not the subject matter of the charge sheet in the instant case, which was related to the year 2005 and for which the applicant has already been punished.

18. The most important witness in this case was the alleged first wife of applicant namely Pushpa Devi, However, she has not been examined as a witness in this case. There is no denial by the respondents of the averments made in para 4.15 of the O.A. that no witness has appeared before enquiry officer to give evidence against the applicant. Only on the basis of photo copy of a wedding card, it has been assumed that the applicant had earlier performed his marriage with Pushpa Devi. Photo copy of a document is not admissible in evidence.

19. As per the law laid down by the Hon'ble Apex Court in the case of **Hardwari Lal Vs. Sate of U.P. and others and Union of India Vs. Mohd. Ramzan Khan** cited above, the enquiry proceedings cannot be held legal.

20. Learned counsel for respondents has not filed any written submission and has only orally contested the matter. A careful perusal of counter affidavit filed by respondents show that the respondents have failed to submit any proper reply to para 4.27 to para 4.28 of the O.A., in which the applicant has stated that the question of detention of the applicant in police custody from 29.3.2005 to 7.4.2005 has already been decided earlier, in which he has received punishment of withholding of 3 increments with cumulative effect vide order dated 1.3.2008.

21. Para 14 of the Counter reply, which is the reply of para 4.27 to para 4.32 of the O.A. , only states that the order dated 1.3.2008 is concerned with another disciplinary proceedings against the applicant, whereas the punishment of removal from service is related to another charge. However, the impugned order dated 18.9.2014 and Appellate order dated 1.6.2017, both these orders show that the aforesaid incident of the year 2005 has also been made a ground to punish the applicant.

22. In para 4.30 of the O.A., the applicant has stated that neither any oral evidence nor any documentary evidence was produced in proof of the charge of solemnizing second marriage during the life time of first wife. During the course of enquiry, no witness appeared in support of this allegation. No specific denial has been made to the contention of para 4.30 of the O.A. by the respondents in the Counter reply.

23. Admittedly, the applicant had served for 24 years in the respondents' department and just three months prior to his

retirement, he has been removed from his service, without giving him a proper opportunity of hearing on the findings recorded without any cogent evidence and only on the basis of surmises and conjectures.

24. There is no doubt that as per settled legal position, the Tribunals or a court of law should not interfere in the order of punishment passed by the disciplinary authority, but the Tribunals or Courts of law has the power to interfere in the order of punishment when it appears that the rules of natural justice have not been followed during the course of enquiry. It appears strange that despite a direction of this Tribunal, the appellate authority has decided the appeal by a cryptic and non-speaking order, instead of reasoned and speaking order.

25. The applicant has been awarded harshest punishment of removal at the fag end of his service, depriving him from pensionary benefits, that too on the basis of a highly delayed enquiry, without any explanation and without giving the applicant proper opportunity of hearing.

26. On the basis of above discussion, the impugned order of removal of applicant cannot be sustained. It is liable to be quashed. Accordingly, impugned order is quashed. The respondents are directed to treat the applicant in service from the date, he was removed from service and to provide all consequential benefits admissible to him including the arrears with 6% interest, within a period of two months from the date of this order.

27. No order as to costs.

(Devendra Chaudhry)
Member (A)
HLS/-

(Justice Vijay Lakshmi)m
Member (J)