

OA No. 291/11/2017

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/11/2017

Order reserved on 10.08.2021

DATE OF ORDER: 17.08.2021

CORAM

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

Dina Nath Yadav Son of Late Shri Gunni Bha, aged about 57 years, resident of Gali No. 2, Panchwati Colony, Near Adarsh Nagar Railway Station, Ajmer and presently working as Senior Section Engineer, Under Deputy Chief Engineer, Track Machine-II (TMC-II), Railway Station Daurai, North Western Railway, Ajmer.

....Applicant

Shri C.B. Sharma, counsel for applicant (through Video Conferencing).

VERSUS

1. Union of India through General Manager, North Western Zone, North Western Railway (Head Quarter), Near Jawahar Circle, Jagatpura, Jaipur-302017.
2. Principal Chief Engineer, North Western Zone, North Western Railway (Head Quarter), Near Jawahar Circle, Jagatpura, Jaipur-302017.
3. Chief Engineer (TMC), North Western Zone, North Western Railway (Head Quarter), Near Jawahar Circle, Jagatpura, Jaipur-302017.

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4. Deputy Chief Engineer, Track Machine-II (TMC-II), Railway Station Daurai, North Western Railway, Ajmer.

.... Respondents

Shri Anupam Agarwal, counsel for respondents (through Video Conferencing)

ORDER

Per: Hina P. Shah, Judicial Member

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

"(i) That letter dated 17/08/2016, order dated 01/03/2016 and 29/12/2015 (Annexure-A/1, A/3 & A/4) be quashed and set aside being issued against procedure with all consequential benefits.

(ii) That charge memo dated 30/10/2015 (annexure-A/9) be quashed and set aside, as the same nowhere justified as per facts & circumstances with all consequential benefits.

(iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.

(iv) That the costs of this application may be awarded."

2. The brief facts of the case, as stated by the applicant, are that the applicant joined respondent-Railways as Junior Engineer Grade II in Kota Division

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on 22.03.1995 and thereafter became Junior Engineer Grade-I in the year 2003 and after merger of Junior Engineer Grade-I & II, and Section Engineer and Senior Section Engineer became Senior Section Engineer in April 2011 on regular basis and is working with respondents with entire satisfaction. The applicant was working with the work of track machine under the Deputy Chief Engineer, TMC-II (respondent No. 4) and time to time deputed staff of lower cadre i.e. Khallasi etc. instead of Fitter, who is familiar with the work of machine and the applicant always objected of posting of unsuitable employees and time to time also demanded staff as per requirement/sanctioned strength and by this action of the applicant, the respondent No. 4 became annoyed and time and again issued charge memo even on minor shortcomings. The respondent No. 4 purposely deployed the applicant as machine in-charge though the applicant was senior-most Senior Section Engineer and in pursuance of the order dated 29.10.2015, Assistant Engineer relieved the applicant on 29.10.2015 (A/N) for which the applicant protested but he was served with minor penalty charge sheet dated 30.10.2015 on the allegations that he refused

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to accept letters/orders passed by office. Against the same, the applicant submitted his version vide letter dated 17.11.2015 and prayed for justice. The respondent No. 4 imposed punishment of withholding of increment for three years without future effect vide punishment order dated 29.12.2015, (Annexure A/4), which shows malafide attitude of respondent No. 4. Against the same, the applicant preferred an appeal on 26.01.2016 but the respondent No. 3 without due consideration and without taking into consideration of facts and circumstances, rejected the appeal vide order dated 01.03.2016, (Annexure A/3). Thereafter, the applicant preferred Revision Petition before the respondent No. 2 on 05.07.2016 but the Revisionary Authority rejected the Revision Petition vide order dated 17.08.2016 (Annexure A/1). Time and again, the applicant was harassed by the respondents and without following proper procedure, action has been taken by the respondents. Therefore, the applicant has preferred the present Original Application for quashing and setting aside the impugned orders as the penalty imposed upon the applicant is totally illegal and arbitrary.

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3. Respondents vide their reply stated that the applicant had been served with 19 major/minor charge sheets and punished 12 number of penalties in his service tenure. Further two major penalty charge sheets are under process. Also he remained without pay for absence from duty around 800 days. Therefore, contention of the applicant with regard to his satisfactory work is denied. As Deputy Chief Engineer, TMC-II is the controlling officer of A.En./TMC and the staff / supervisors working under their sub-division and he is the controlling officer of the applicant. Based on sanctioned strength and existing vacancies the minimum essential staff is available on all machines including UTV and DGS machines. As per para 1.4.1 of Indian Railway Track Machine Manual, Machine Supervisor i.e. JE/SE/SSE can only operate the machine, but the applicant always operates his machine through the technician and Khallasi for which he was warned and counseled on several occasions. Yet he did not change his attitude/habit. As clarified, all the staff deputed during the tenure of the applicant is exactly similar as that was deputed before and after the deployment of the applicant and other machines of the same category

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working in North Western Railway from last many years irrespective of the posting of the machine operator as well as the Deputy Chief Engineer / Track Machines. The applicant has been charge sheeted and punished on several occasions as he would operate the machines only from those Khallasis/ Technicians, who are close to him and were not authorized to operate the machines and he would operate the machines only as per his orders breaching all rules of safety to the running trains and passengers as the same may lead to serious accident someday. Thus, the allegations levelled by the applicant that he was not provided suitable staff is denied. Copies of inspection reports dated 29.09.2015, 16.10.2015 and 23.10.2015 substantiating various incidences disclosing lapse of duties of the applicant are enclosed and marked as Annexure R/1 with the reply to O.A. In fact, applicant as per previous practice of breaching of safety norms was operating the machines with non-competent staff for which he was counseled/warned. Yet the applicant failed to improve and, hence, he was deputed over another track machine i.e. DGS 398 vide office order dated 29.10.2015. He however refused to receive the same stating that he will follow only orders

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of Dy. CE/TMC-I rather than his controlling officer i.e. Dy. CE/TMC-II which clearly demonstrates his insubordination and violation of service conduct rules. Accordingly, issuance of charge Memorandum cannot be said to be illegal or unwarranted. A copy of the Note Sheet substantiating the refusal by the applicant is enclosed and marked as Annexure R/3 with the reply to O.A. The applicant was given ample opportunity to submit his defence but he did not bother to submit his reply. The Competent Authority, finding no reply, has given again an opportunity vide letter dated 11.12.2015 though it was duly acknowledged by the applicant on 12.12.2015 to submit his defence against the charge memorandum but yet he did not submit his defence till 29.12.2015. Therefore, the Competent Authority passed order of penalty dated 29.12.2015 as per rules. Thus, no lapse or ill-will can be attributed in the action of the respondents. Sequence of events alleged by the applicant do not reflect any malice on behalf of respondent No. 4, it rather proves the adamant attitude of the applicant and gross indiscipline towards his duties. His appeal dated 26.01.2016 was forwarded through proper channel to the competent

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authority i.e. Chief Engineer (Track Machines). The Appellate Authority after due consideration has passed a reasoned speaking order vide letter dated 01.03.2016. The Revision Petition of the applicant was also duly considered and as no new ground was raised by the applicant, the said revision petition was rejected vide order dated 17.08.2016. As the authorities have passed orders as per rules affording ample opportunities to refute the allegations levelled against him, so the action of the respondents cannot be said to be illegal or arbitrary and, therefore, the penalty is just and legal and the present Original Application deserves to be dismissed being bereft of merits.

4. The applicant has not filed any rejoinder rebutting the claim of the respondents.

5. We have heard learned counsels for the parties at length through Video Conferencing and examined the pleadings.

6. The applicant reiterated the submissions made earlier and raised several grounds. The grounds raised by the applicant are that the action of the respondents

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is in violation of Article 14 and 16 of the Constitution of India as well as against the provisions of Railway Servants (Discipline & Appeal) Rules, 1968 as no prior opportunity was granted before initiation of any action. The respondent No. 4 has malafidely acted against him and without any base or fault has put the applicant in mental agony and financial loss. Punishment order was without any reasons/findings and the same is not sustainable in the eyes of law. Also the Appellate as well as the Revising Authority has nowhere considered the matter on quantum of punishment and punishing the applicant at the verge of retirement is unjustified and against the procedure and, therefore, the same deserves to be quashed and set aside.

7. The respondents besides reiterating the submissions made earlier further stated that acting as per rules they have not violated provisions of any rules nor provisions of the Constitution of India. The applicant was afforded ample opportunities to reply the charge memo to refute the allegations but he failed to do so. The allegation raised against respondent No. 4 about acting malafidely towards the

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applicant in serving the charge memo cannot be accepted as bare perusal of the request dated 17.11.2015 would disclose that the applicant submitted his inability to rebut the charge while relying upon his submission made during the course of interview dated 14.11.2015 and in spite of this, he was given further opportunity to reply but the same went in vain. Thus, the competent authority had no option but to pass the order of penalty. Then the applicant preferred an Appeal followed by Revision which were duly considered by the Appellate Authority and the Revising Authority, respectively, and thereafter orders were passed. The applicant has rightly been punished as per rules and the age & impending retirement of an employee has no role in the matters of disciplinary matters. Even bare perusal of the charge sheet would show that the applicant was alleged for defiance of the orders of his superior which is a serious misconduct and the same has further consequences in working atmosphere and for other employees. Also the applicant has the habit of disobeying the orders, which can be perused from the service records of the applicant as he has been issued several punishments and charge sheets. Therefore,

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the penalty awarded to the applicant is just and proper and as per rules and, thus, the present Original Application deserves to be dismissed.

8. The question which requires to be adjudicated is whether the action of respondents in passing the impugned orders in the case of the applicant is justified and as per rules.

9. The facts as seen are that the applicant had joined the Railways as Junior Engineer Grade-II in Kota Division on 22.03.1995 and thereafter getting further promotions became Senior Section Engineer in April 2011 on regular basis. As per distribution of duties, Deputy Chief Engineer, TMC-II is the controlling officer of A.En./TMC and the staff / supervisors working under their sub-division and, accordingly, he was the controlling officer of the applicant. The applicant always objected of posting of unsuitable employees and time to time also demanded staff as per requirement/sanctioned strength. But on the other hand, respondents state that the applicant did not bother to follow the instructions and orders of his superiors and always had a habit to work only as he wished and would engage employees only as per his

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choice and liking time and again and by this action of the applicant, respondent No. 4 issued charge memo. As applicant failed to follow instructions, respondent No. 4 deployed the applicant as machine in-charge in pursuance of the order dated 29.10.2015. The applicant failed to reply to the charge memo dated 30.10.2015 though further time was extended to refute the charges but in spite of giving further opportunity, the applicant failed to reply within the time frame and, accordingly, penalty was imposed upon the applicant by the respondent No. 4 vide order dated 29.12.2015, (Annexure A/4), imposing punishment of withholding of increment for three years without future effect. Thereafter, applicant preferred an Appeal dated 26.01.2016 which was rejected by the Appellate Authority vide order dated 01.03.2016, (Annexure A/3) and thereafter Revision Petition filed by applicant was also rejected by Revisionary Authority vide order dated 17.08.2016 (Annexure A/1).

10. From the material available on record, we have observed that the applicant was working under respondent No. 4 who was his controlling officer and

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he was required to follow the instructions of his superiors. But as noticed, the applicant would work only as per his wish and would also deploy staff of his choice though they were not competent. He was very adamant and would breach safety norms with regard to passengers as well as running trains and operate machines without following proper procedure. He was warned on several occasions and was also counseled, but yet he failed to improve his attitude / habit and so he was deputed over another machine i.e. DGS 398 vide office order dated 29.10.2015. But he refused to receive the said order which proves his violation of service conduct rules. Accordingly, he was served with charge memorandum dated 30.10.2015, (Annexure A/9), for misconduct in discharge of official duties and was given time as per rules for which he was supposed to give his say reply on the said notice within ten days. Since no reply/say was received, he was given further time to give his say but as till 29.12.2015 no reply was received, respondent No. 4 was forced to issue penalty order dated 29.12.2015, (Annexure A/4), imposing punishment of withholding of increment for three years whenever due without future effect. Thereafter, the applicant preferred an

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Appeal which was rejected by Appellate Authority vide order dated 01.03.2016, (Annexure A/3), which is self-explanatory where each and every ground raised by the applicant was taken note of and proper explanation was given on the same as well as Revision Petition was rejected by Revising Authority vide order dated 17.08.2016 (Annexure A/1).

11. We have noted that ample opportunities were given to the applicant to defend himself and give his explanation as per rules. Proper procedure has been followed by the Authorities and we do not find violation of any rules at any stage. It was the duty of the applicant to obey the orders of his superiors and cannot act and work as per his whims and wishes as safety of the passengers as well as running trains have to be taken care of. Also the applicant is seen constantly violating the orders, though counselling was given to him to improve but he has not changed and as the same would set an example to the others so he has been correctly issued show cause notice but for the reasons best known to him, he did not bother to give reply within the time frame prescribed as per rules. It was also brought to our notice that he has

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been given several charge sheets as well as he has been imposed with several punishments, be that as it may, but the adamant nature and behaviour of the applicant is visualised and failing to obey orders is violation of service conduct rules. So far as the grounds raised by the applicant cannot be accepted as it is the applicant himself who is guilty of misconduct and has refused to obey orders and follow the instructions of the higher authorities, in fact, the respondents have followed all procedure and enough opportunities were provided to the applicant to defend himself as per rules and it is thereafter only the respondents have issued orders which are just and legal.

12. As observed by various judgments of the Hon'ble Apex Court, the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made

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under the proviso to Article 309 of the Constitution of India. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the Authority. The Tribunal cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.

13. We are in agreement with the judgments of the Hon'ble Supreme Court, relied by the respondents, in the case of **Union of India vs. Parma Nanda**, reported in (1989) 2 SCC 177 : 1989 SCC (L&S) 303 and in the case of **Union of India & another vs. B.C. Chaturvedi**, reported in (1995) 6 SCC 751 : (1995) 6 SCC 749, wherein it is clear that Court/Tribunal in exercise of judicial review cannot normally interfere with the punishment imposed by disciplinary/appellate authority, except where it

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shocks the judicial conscience in which case it can mould the relief either by directing the authority to reconsider the punishment / penalty imposed or in exceptional cases by itself imposing an appropriate punishment recording cogent reasons. In the present case, the respondents have not violated any rules nor procedure and have provided every opportunity to the applicant to defend his case.

14. In view of the observations made herein-above, we are of the opinion that the applicant has not made any case for interference and the Original Application is devoid of any merits. Accordingly, the impugned order dated 17.08.2016, (Annexure A/1), order dated 01.03.2016, (Annexure A/3), and order dated 29.12.2015, (Annexure A/4), as well as charge memo dated 30.10.2015, (Annexure A/9), cannot be quashed as the same are just and proper. Therefore, the Original Application is dismissed. No order as to costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER