

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 70 of 1987

Kapil Deo Pandey Applicant.

Versus

Addl. Divisional Railway Manager,
Northern Railway, Allahabad & others .. Respondents.

Hon'ble Ajay Johri, Member (A).

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. The applicant, Kapil Deo Pandey, is a retired Station Master (SM) of the Northern Railway, Allahabad Division. On an alleged charge of unauthorised absence during 1981 the Divisional Safety Officer (DSO) imposed a penalty of withholding one set of passes of the applicant on 24.3.1982. On his appeal against the punishment the Senior Divisional Safety Officer (Sr.DSO) enhanced the punishment to withholding of three sets of passes on 21.11.1983. His second appeal against that order was rejected on 30.7.1986. The applicant has sought relief for setting aside the order dated 30.7.1986 and the order dated 21.11.1983 as well as the order dated 24.3.1982 and has prayed for payment of the salary for the period 25.6.1981 to 8.11.1981, the period during which he was treated as being on unauthorised absence.

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2. The applicant has challenged ~~these~~³ orders on the grounds that he belongs to the Operating Department and he cannot be punished by any one else but an officer belonging to that Department and since he has been punished by the Divisional Safety Officer the punishment is ab initio wrong. The applicant has further said that he fell ill on 24.5.1981

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and was under the treatment of the Railway Doctors and proceeded on leave upto 10.6.1981. After getting fitness certificate he reported for work and he was granted one month's leave upto 10.6.1981. The applicant says that he fell seriously ill on 25.6.1981 and he informed the working SM regarding the same and since he continued to be ill upto 8.11.1981 he could only report after being declared fit by the Doctors at the Sir Tej Bahadur Sapru Hospital. Accordingly he reported for duty on 9.11.1981. He had been sending his periodical certificates and they were received by the working SM at Manauri. But still he was served a charge-sheet on 1.12.1982 by DSO for unauthorised absence and ultimately the punishment was imposed on him. He was also not paid the salary for this period. The applicant has alleged that DSO imposed the penalty without recording any reason and the order is also non-speaking. Similarly, the appellate order and the order on the second appeal ^{or made} by him have also been rejected by non-speaking orders. Therefore all of them are bad in law. According to him the punishing authorities must record the reasons for rejecting the defence. He was also not given any opportunity by the appellate authority when it enhanced the punishment. According to him the medical certificates submitted by him could only be rejected on the advice of the Divisional Medical Officer (DMO) and these certificates were from a Government Hospital. Therefore, they should not have been rejected summarily by the disciplinary authority.

3. The respondents in their reply have said that DSO is an officer of the Operating Department (OD) and he can take disciplinary action against the applicant under the Discipline and Appeal Rules. They have further said that the applicant remained on leave on 25th & 26th June,

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1981. The applicant had also not got the medical certificates counter signed by the Railway Doctors. Therefore, these certificates were not accepted and since the absence was not supported by valid medical certificates, he was rightly punished. The applicant had also fully submitted himself to the jurisdiction of DSO and at no time took objection that DSO had no jurisdiction to punish him. They have further said that the delay in disposal of his appeal was on account of the mis-placing of the applicant's file and since the applicant has already retired and the punishment was withholding of privilege passes he will in any case not be entitled to get the privilege passes now, so the application is infructuous.

4. I have heard the learned counsel for the parties. The learned counsel for the applicant made the contentions that the orders are non-speaking and that there are three different departments, viz. Commercial, Operating and Safety, and since a Railway servant belongs to only one department, the applicant could not have been punished by the Safety Officer (SO) as he belonged to the Operating Department (OD) ^{and not Safety Department}. On behalf of the respondents it was submitted that even if the punishment is set aside the applicant will not be due any privilege passes now as he has already been retired. Nothing else was pressed before me. I have also seen the case file.

5. The Railway Board vide their letter of 17.10.1973 have said that railway servant essentially belongs to only one department and even though in the course of performance of his day to day duties he may violate certain rules and regulations administered by some other department, the disciplinary authority in ^{his} ~~his~~ cases would only be the authority which controls ^{him} ~~him~~. According to this letter

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disciplinary action could only be initiated and finalised by the authorities under whose administration and control the delinquent employees may be working. The applicant was taken up by DSO. The respondents have said that safety Department also belongs to OD. This is being challenged by the applicant on the ground that the set up of the various departments right from divisional level upto the Board's level is entirely different and the Safety, Commercial and Operating Departments have a distinct entity of their own. The fact that the SO, Commercial Officers (CO) and operating officers (OO) belong to a combined cadre and can be put to work in any department does not mean that the three departments are one. The Railway Board in any case have specifically mentioned about the Commercial and Operating Departments and the full-fledged Safety Organisation exists. But there is no mention of the same in the Board's orders of 1962 and 1974 and 1979 & this strengthens respondents version. However, the very fact that it is headed by separate Head of the Department, who is designated as Chief Safety Superintendent, does create an anomalous situation. In these³¹ circumstances that a Assistant Station Master (ASM)/SM, who belongs to OD will also belong to SD, will also tend to become a debatable position. However, since it is the executive who are the best judge to organize their services and it is their version that Safety Department is a part of Operating Department this tribunal will not like to sit in judgment on this issue³² at this stage.

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6. As far as the punishment order (Annexure 5) is concerned the disciplinary authority has mentioned that the representation is not satisfactory because the defence is not acceptable. In his representation, in reply to the charge-sheet, the applicant had mentioned about his sickness and about the certificates sent by him from Sir Tej Bahadur Sapru Hospital, Allahabad, which is a Government Hospital. The punishment order only indicates that 'the defence has not been accepted'. Therefore, it does suffer from a lacuna that it is not a correct speaking order. Similarly the appellate order (Annexure '7'), which enhanced the punishment, has also been issued without following the procedure laid down for enhancement of punishment. When an appeal is submitted by a delinquent the appellate authority has to consider whether the procedure laid down has been properly followed whether the findings are warranted by evidence on record, and whether the penalty imposed is adequate and thereafter confirm enhance or reduce or set aside the penalty. In case the appellate authority decides to enhance the penalty and impose a punishment under clauses (1) to (4) of Rule 6 of the Railway Servants (Discipline and Appeal) Rules, 1968, no order imposing an enhanced penalty can be made unless the appellant has been given a reasonable opportunity in accordance with the provisions of Rule 11 for making a representation against such enhanced penalty. The appellate order enhancing the penalty was issued without this opportunity having been given

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and, therefore, it is also bad in law. Therefore, not only the orders of the disciplinary authority but of the first appellate authority both are liable to be set aside on this account.

7. Second prayer made by the applicant is for payment of the salary for the period 25.6.1981 to 8.11.81. The applicant was taken up for unauthorized absence. It has been said that the medical certificate issued by the T.B.S. Hospital was required to be countersigned by the Railway Doctor, Since it had no counter signature it was not accepted and the period treated as unauthorized absence. If for the same period the respondents have punished him by imposing a punishment they cannot at the same time deprive the applicant of the due payment for this period. This period should have been regularised as leave due and the denial of payment for the same, if any leave was due to the applicant, would amount to double jeopardy.

8. In the normal circumstances the case would have been remanded back to the disciplinary authority for passing a speaking order according to law. But in this case the applicant has already retired long back & no useful purpose will be served by reopening the case. So the case needs to be given a ³⁰quietus and no denuovo proceedings are required to be taken.

9. In the above view, I allow the application to the extent that for the period 25.6.81 to 8.11.81 the applicant's salary, which was withheld, would be released by treating the period as leave of any kind

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due to him. This would be done within 3 months of receipt of this order. Parties will bear their own costs.

अजय जैसवाल
MEMBER (A).

Dated: December 14th, 1988.
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