

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 5TH DAY OF DECEMBER, 2002

Original Application No.577 of 2002

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MAJ.GEN.K.K.SRIVASTAVA, MEMBER(A)

Jalil Ahmad, son of Late Sikandar Khan, resident of Mohalla Mahalia, Post Dharmeer Deer, District Deoria, working as Station Master at Bilthara Road, N.E.R. Varanasi.

... Applicant

(By Adv: Shri A.B.Singh)

Versus

1. Union of India through General Manager, North Eastern Railway Gorakhpur, U.P.
2. The Divisional Railway Manager, N.E.R., Varanasi.
3. The Senior Divisional Operational Manager, N.E.R., Varanasi.
4. The Additional Divisional Railway Manager, N.E.R., Varanasi.

... Respondents

(By Adv: Shri D.P.Singh)

O R D E R(Oral)

JUSTICE R.R.K.TRIVEDI,v.c.

By this application u/s 19 of A.T.Act 1985, applicant has challenged the order dated 4.3.02(Annexure4) by which Appellate Authority ~~has~~ directed to hold an inquiry under Rule 9 and then to put up the case for orders.

The facts of the case are that applicant Jalil Ahmad while working as Station Master at Railway station Bilthara Road, N.E.R Varanasi, a memo of charge was served on him for imposing minor punishment. The applicant submitted his reply after consideration of which a minor punishment reducing his pay from Rs 2125 to Rs 1775/- in the time scale of pay of Rs 5500-9000 was imposed for a period of three years temporarily vide order dated 26.9.2000. Against the

:: 2 ::

aforesaid order applicant filed appeal under Rule 18(ii) of Indian Railway Servants (D&A) Rules 1968 on 28.11.2000. As the appeal was not decided expeditiously applicant filed OA No.1519/01 which was disposed of finally on 24.12.01 and direction was given to the Appellate Authority to decide the appeal within a period of two months from the date of communication of the order. The Appellate Authority has passed the order dated 4.3.02 and has given the following direction:

"The undersigned, as appellate authority, in terms of Rule 22 of Railway Servant (D&A) Rule 1968, consider that the earlier penalty is inadequate. It is, therefore, considered that in the circumstances of the case ends of justice would be met if a higher penalty as specified in rule 6 of D&AR is imposed on him. As no inquiry has been held in this case earlier, it is directed to hold the inquiry under Rule 9 and case be thereafter put up accordingly."

Learned counsel for the applicant has submitted that the direction given to hold a fresh inquiry is arbitrary and unjustified, <sup>in</sup> the facts and circumstances of the case. It is submitted that the applicant has almost served the penalty which was imposed against him vide order dated 26.9.2000 as more than two years have already passed. It is further submitted that the order of punishment has been <sup>allowed to</sup> continued and a fresh inquiry under Rule 9 has been directed. It is also submitted that the order is not in terms of Rule 22 as no penalty specified in clauses V to IX of Rule 6 has been proposed by the Appellate Authority.

Lastly, it has been submitted that the applicant is attaining the age of superannuation in the month of November, 2003 and if the fresh inquiry under Rule 9 is directed at this stage he shall suffer irreparable loss and injury. It is also submitted that the minor penalty was going to effect the pension of the applicant, therefore, he filed an appeal, <sup>as</sup> ~~as~~ amounted to a major punishment and there was no justification for enhancing the penalty.

Shri D.P.Singh learned counsel for the respondents on the other hand, submitted that under Rule 22 Proviso (II) Appellate Authority has power to hold inquiry for itself and order does not suffer from any error of law.

We have carefully considered the submissions of the counsel for the parties. The relevant provision in rule 22 of Railway Servants (D&A) Rule 1968 reads as under:-

"If the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses(v) to(ix) of Rule 6 and an inquiry under Rule 9 has not already been held in the Case, the appellate authority shall, subject to the provisions of Rule 14, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry make such orders as it may deem fit."

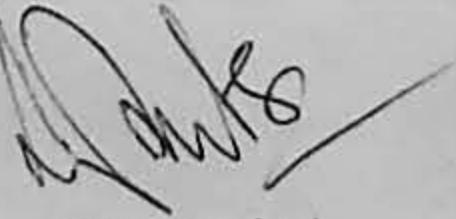
From the aforesaid it is clear that it was necessary for the appellate authority to propose the penalty as specified in clauses (v) to(ix). In the present case the appellate authority has not proposed any penalty mentioned in clauses (v) to (ix). Thus the order of the appellate authority is not in consonance with the provisions contained in proviso (II) of Rule 22 of the Rules. It may be further mentioned



:: 4 ::

that the applicant has already suffered the punishment for more than two years and period of three years may be over soon, but no step has been taken to prevent a situation the applicant shall be awarded another punishment after he served out punishment or a major portion of it. There is yet another angle which required consideration of the appellate authority that the applicant has been served the memo of charge for the minor penalty but the disciplinary authority awarded major punishment, as the punishment is likely to effect the pension of the applicant. Thus the order of appellate authority impugned in this OA suffers from apparent error of law.

For the reasons stated above, this OA is allowed. The order dated 4.3.02(Annexure 4) is quashed. The appeal of the applicant shall stand restored before the appellate authority and shall be considered and decided in accordance with law and in the light of observations made above within a period of three months from the date a copy of this order is filed before him. No order as to costs.



MEMBER(A)



VICE CHAIRMAN

Dated: Dec: 5th, 2002

Uv/