

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

original Application No.747 of 2002.

wednesday, this the 1st day of September, 2004.

Hon'ble Mrs. Meera Chhibber, J.M.

Heera Lal Agrawal,  
S/o Shri Ram Nath Agrawal,  
Working as unloading and loading  
Foreman Jhansi Division, Central  
Railway, Jhansi.  
R/o 600/2 Mashih Ganj,  
Sipri Bazar, Jhansi.

.....Applicant.

(By Advocate : Shri A.K. Dave)

Versus

1. Union of India,  
through General Manager,  
Central Railway,  
C.S.T. Mumbai.
2. Additional Divisional Railway Manager,  
Appellate Authority II Jhansi Division,  
Central Railway, D.R.M.'s Office, Jhansi.
3. Senior Divisional Commercial Manager  
(Disciplinary Authority) Jhansi,  
Division Central Railway, D.R.M.'s  
Office, Jhansi.

.....Respondents.

(By Advocate ; Shri D.C. Saxena)

ORDER

By this O.A., applicant has challenged the order dated 18.9.2000 (page 17) whereby penalty of reduction the scale of to lower grade from/RS.5000-8000/- (RPS) to the scale of Rs.4000-6000/- (RPS) for a period of two years NC months without future effect from the date of the order, was imposed on the applicant. His pay was fixed at Rs.5000/- He has further challenged the order dated 10.5.2001 whereby the appellate authority reduced the period from two years to one year (NC), however, maintained the earlier penalty imposed by the disciplinary authority (page 16).

2. The brief facts, as alleged by the applicant in this case, are that while working as Delivery Clerk



Goods Shed at Banda, the applicant was served with a chargesheet dated 25.9.1998 under Rule 5 on the ground that while working as Delivery Clerk Sri H.L. Agarwal had claimed over time allowance (in short OTA) of Rs. 15110/- instead of 1930.32/- for a period from 28.11.1993 to 21.1.1995. He claimed OTA illegally and wrongly. The charge was denied by the applicant and, therefore, <sup>an</sup> enquiry was held and the Enquiry Officer gave his report holding therein that Sri H.L. Agarwal, HBC, BNDA, the then delivery clerk BNDA Goods Shed is not found guilty for claiming over time Rs.15110/- instead of Rs.1932.32/- in irregular, unjustified and illegal manner. However, he failed to take prior permission for working as CGC during the said period from any competent/higher authority( page 30). It is submitted by the applicant that the charge was not found proved against the applicant, therefore, no penalty could not have been imposed on him, yet the disciplinary authority imposed the penalty on the applicant by reverting the applicant to the next lower grade for a period of two years and by fixing his pay at Rs.5000/- p.m. Being aggrieved, applicant filed an appeal before the appellate authority, but ~~the~~ appellate authority also upheld the penalty imposed by the disciplinary authority , but reduced the period from two years to one year (page 16). Being aggrieved, applicant filed revision on 19.7.2001 (page 37), but the same was not decided, therefore, he has no other option, but to file the present O.A.

3. Counsel for the applicant has challenged the impugned orders on the ground that since the Enquiry Officer had held not ~~for~~ guilty of the charge against the applicant, therefore, no penalty could have been imposed on a different charge, that too without giving dis-agreement note to the applicant. He has next contended that the penalty could not be based on the different charge.

B

4. Counsel for the respondents has, on the other hand, submitted that since revision is still pending for consideration in this case, therefore, this O.A. is premature and it may be disposed off by giving a direction to the revisionary authority to decide the revision of the applicant within a stipulated period. He has further submitted that since the appellate authority has reduced the period of punishment, which was accepted by the applicant therefore, he is now stopped from challenging the said order. In support of his contention, he has relied upon a decision given by the Hon'ble Supreme Court in the case of State of Punjab Vs. Krishna Nivas reported in 1997 SCC (L&S) 998 and also the judgment dated 20.8.2000 given by this Tribunal in O.A. no. 537 of 1992 in the case of Ram Milan Gupta Vs. U.O.I. & Ors.

5. I have heard both the counsel and perused the pleadings as well.

6. The second contention of the learned counsel for the respondents cannot be sustained in the present case because the order passed by the appellate authority was not accepted by the applicant, which is evident from the pleadings <sup>as</sup> ~~that~~ he had first filed revision petition before the revisionary authority and when the same was not decided, he filed the present O.A. challenging the orders passed by the disciplinary as well as appellate authorities. In these circumstances, the judgment in the case of Krishna Nivas would not be applicable to the present case, accordingly that contention is rejected. Coming to the first contention, once again it is seen that the revision was filed by the applicant on 19.7.2001 but the same was not decided till 6.6.2002, therefore, applicant has filed the O.A. almost after 11 months after filing of the revision petition. In these circumstances, it can hardly be said that the applicant has not exhausted

B


the departmental remedy. The applicant can only file the revision petition, but the decision of the same was not in his hands as the same has to be decided by the authorities concerned. Counsel for the respondents has next submitted that since the applicant had filed the present O.A., the authorities could not have decided the revision petition in view of Section 19(4) of the A.T. Act, 1985. Even that contention cannot be sustained in law because perusal of the ordersheets show that this case has not been admitted by the Tribunal till date. ~~Therefore~~, Section 19(4) of the AT Act, 1985 comes into play <sup>only B</sup> after the case is admitted by the Tribunal, therefore, this contention of the respondents is also rejected.

7. Coming to the merits of the case. The only charge levelled against the applicant was that he had claimed OTA of Rs.15110/- instead of Rs.1930.32/- illegally and wrongly. As far as this charge is concerned, Enquiry Officer had given a clear finding that the applicant was not found guilty for claiming OTA of Rs.15110/- instead of Rs.1930.32/- in irregular, unjustified and illegal manner, that should have <sup>been B</sup> end of the enquiry report because the Enquiry Officer cannot travel beyond the charge levelled against the delinquent officer. once he had recorded that the charge as framed against him, was not proved, other findings recorded by the Enquiry Officer is of no consequence in law. Interestingly, the disciplinary authority has stated that he accepted the findings of the Enquiry Officer, meaning thereby that the delinquent <sup>of</sup> was exonerated the charge levelled against him. Therefore, once the charge which was levelled against the applicant was held not found <sup>proved B</sup> guilty and the same was accepted by the disciplinary authority, there was absolutely no justification to impose the punishment upon the applicant. Therefore, the order passed by the disciplinary authority is held to

B

be bad in law. The same is accordingly quashed and set-aside. As far as the appellate order is concerned, he has observed that the applicant has wrongly claimed OTA for the extended period of time, nor he had taken any written order from the superior authority. This observation is contrary to the findings given by the Enquiry Officer on the charge levelled against the applicant, therefore, this order is also bad in law. The same is accordingly quashed and set-aside. Since the revision petition was filed in July, 2001 and the same has not been decided by the authorities concerned till date, I do not think ~~that~~ any purpose would be served by remitting back the matter to the revisionary authority at this stage after over three years. Therefore, in view of the above discussions, the O.A. is allowed. The respondents are directed to place the applicant at his proper grade and shall draw the <sup>of salary</sup> arrears/by giving the details to the applicant within a period of three months from the date of receipt of copy of this order and <sup>also</sup> make the payment to the applicant.

8. In view of the above directions, the O.A. stands <sup>to</sup> allowed with no order as <sup>to</sup> costs.

  
MEMBER (J)

GIRISH/-