

26

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHBAD BENCH : ALLAHABAD**

Original Application No.848 of 2002

Allahabad, this the 4/11 day of June, 2009.

**Hon'ble Mr. A.K. Gaur, Member-J
Hon'ble Mr. S.N. Shukla, Member-A**

Ram Dayal aged about 43 years, Son of Shri Ghurka Resident of Mohalla Gharwampura, Mauranipur, District Jhansi.

..Applicant.

By Advocate : Shri R.K. Nigam

Versus

1. Union of India, through General Manager, Central Raiwlay, Mumbai CST.
2. Chief Workshop Engineer, Central Railway, General Manager's Office, Central Railway, Mumbai CST.
3. Chief Workshop Manager, Central Railway Workshop, Jhansi.

...Respondents

By Advocate : Shri P. Mathur.

O R D E R

By Hon'ble Mr. S.N. Shukla, Member-A :

By means of this OA, the applicant has claimed the following relief(s) :-

- (i) *To issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 19.4.2002 (Annexure-A-1) and also quashing Appellate order (Annexure-10) in so far as they relate to the reduction in rank loss of lien promotion, seniority back wages etc.*
- (ii) *To issue another writ, order or direction in the nature of mandamus thereby commanding the respondents to restore the petitioner to his original post of Helper Khalasi grade Rs.2650-4000 (RSRP) with all consequential benefits of increment, lien seniority/promotion and bonus etc. and further commanding the respondents to take exercise of paying the entire back wages from the date of dismissal to the date of reinstatement*

CSN

(27)

alongwith interest for which time bound direction be given.

- (iii) ***To issue any other suitable order in favour of the petitioner as deemed fit by this Hon'ble Tribunal in the facts and circumstances of the case.***
- (iv) ***To award cost of the petition in favour of the applicant.***

2. The facts of the case as stated in the pleadings, if brief, are as under:

(i) The applicant is a handicapped person with an impaired left leg. He was appointed as Khalasi against the handicapped quota on 30.5.1981 (Annexure-XII) and subsequently promoted as Helper Khalasi . It all started with the applicant expressing his inability to lift the axle guard on 29.2.1983 and allegedly threatening and assaulting the Supervisor for which he was issued major penalty charge sheet (SF-5) on the complaint of Section Supervisor Shri Ganga Charan (Annexure-A-V).

(ii) The applicant was, however, exonerated of charge of threatening and assaulting the Section Supervisor. The charge of not lifting the axle guard on 29.2.1983 however survived. Inquiry was conducted and the applicant was dismissed from service. Aggrieved the applicant approached this Tribunal through OA No.504/89 in which the following directions were given :-

"As a matter of fact the applicant was not given reasonable opportunity to give his representation against the Enquiry Officer's report as it was not given to the applicant which amounted to denial of principles of natural justice to the applicant.

Accordingly, the punishment order dated 31.10.88 is

CON

quashed. However, it is open for the disciplinary authorities to go ahead with the enquiry proceedings giving a reasonable opportunity to the applicant to give his representation against the same, and pass a speaking order.”

(iii) On receipt of the above judgment and order dated 24.4.1992, the applicant was given a show cause notice dated 15.9.1993 in response to which the applicant submitted comprehensive reply dated 30.9.93 (Annexure-AVI). After considering his reply, the authorities passed an order dated 7.3.1994 imposing penalty of removal from service.

(iv) Against the order of dismissal the applicant agitated the matter through OA No.626/1994 Ram Dayal Vs. Union of India and others which was disposed of vide judgment and order dated 10.4.2001 (Annexure-A-IX). The Tribunal directed the respondents to dispose of the appeal to be filed by the applicant against his dismissal.

(v) In pursuance of the above judgment, the applicant submitted statutory appeal dated 18.6.2001 duly addressed to Chief Workshop Manager, Jhansi in which he made submission, dwelling upon the facts starting from his appointment against the handicapped quota to the stage of his dismissal. He also pleaded for his case to be considered in the light of exhaustive list of jobs of group 'D' (Technical) and non technical on which a handicapped person can be posted vide



Railway Board letter No.E (NG)II/86/RC-2/18/Policy dated 10.7.87, RBE 175/87) (Annexure-A-IV).

(vi) The Appellate Authority modified the punishment of 'dismissal' to 'reduction in rank' from the post of Helper Khalasi grade Rs. 2650-4000/- to the post of Khalasi Grade Rs.2550-3200 (RSRP) and further reduced applicant's pay to the minimum of the grade i.e. Rs.2550/- and finally it was also held that the entire period from the date of dismissal to the date of reinstatement shall be treated as break in service.

(vii) In terms of Rule 25 (1) of Railway Servants (Discipline & Appeal) Rules, 1968 the applicant submitted his revision dated 21.2.2002 (Annexure-A-XI). The Revisionary Authority confirmed the punishment awarded by the Appellate Authority vide impugned order dated 19.4.2002 (Annexure-A-1). The Revisionary Authority however converted the punishment of 'break in service' into 'leave without pay' as per concluding paragraph of the order dated 19.4.2002.

(viii) It is argued by the learned counsel for the applicant that in the wake of penalty of dismissal having been set aside the applicant ought to have been re-instated on his original post of Helper Khalasi in the pay scale of Rs.2650-4000/- instead the Appellate Authority deprived the applicant of his lien/seniority as well as higher grade of Shop Floor and posted him as Canteen Bearer. As a result the applicant has been deprived of his wages from the date of his removal to the date of his reinstatement by virtue of treatment of the entire period of duty

201

in the teeth of rule 2044 of Indian Railway Establishment Code Volume II. Neither the Appellate Authority nor the Revisionary Authority realized the above statutory provisions of the Code, which have the force of law.

(ix) It is further submitted that there is no provision in the Railway Servants (Discipline & Appeal) Rules 1968 or Indian Railway Establishment Code to treat the period as 'break in service' in the event of dismissal order being set aside and subsequent reinstatement of the employee in a lower grade. The applicant held in lien and seniority in WR-1 and according to his seniority, he would have been promoted as Skilled and Highly Skilled but for his illegal dismissal which has been subsequently set aside.

(x) The Railway Board vide their letter No.E(NG) I-99/PM-1/10 dated 6.10.99 have categorically held that the persons who are initially appointed against the handicapped quota, the policy or giving them promotional opportunities should be scrupulous followed (Annexure-A-VII). It has not been followed in the Appellate order as also the Revisionary order and the applicant has been deliberately thrown out of the cadre depriving him of his lien, seniority and promotions.

(xi) It is pointed out that the Hon'ble Supreme Court in (U.P. State Road Transport Corporation and others Vs. Mahesh Kumar Mishra and others) have clearly held that where the punishment awarded is disproportionate and the same shocks the conscience of the Court/Tribunal, the Court can interfere in

SDM

the quantum of punishment. In the instant case the applicant has not been given any show cause notice for depriving him of his entire back wages and other benefits. Similarly the applicant has not been given any show cause notice for depriving him of his lien, seniority and promotions on the shop floor and therefore it is a clear case which is squarely covered under the above judgment of Hon'ble Supreme Court reported in AIR 2000 SC 1151.

2. The respondents have made the following averments in their counter affidavit:

(i) Admittedly the applicant is physically handicapped in so far his left leg is concerned. The applicant is however fit to perform all kinds of duties. He has also been found fit in C-I category

(ii) The applicant was appointed as Khalasi in the physically handicapped quota. The Medical Doctor (despite physically disability) declared the applicant fit in category C-I while being appointed as Khalasi. The Railway doctor did not make any endorsement or remark to the effect that the applicant cannot lift heavy weights.

(iii) Perusal of Annexure-A-IV to the petition will reveal that in the said document there is no specification of the work that is to be taken from Khalasi in Group D. The applicant should have pointed out his disability at the time of appointment as Khalasi, if he was indeed handicapped to that extent. The applicant



having failed to raise any objection, is now estopped under the law to raise the plea in question.

(iv) It was clarified that the axle guard weights only 21 kg. (as per drawing) and not 40 Kg as alleged. It was also clarified that lifting of Axle guard is a part of duty of the Khalasi and the applicant has been lifting the axle guards as a part of his routine duty. It is totally wrong to allege that he had on the very first day refused to lift the axle guard.

(v) It is admitted that Appellate Authority considered the applicant's appeal dated 18.6.2001 and came to the conclusion that the punishment awarded to the applicant was excessive. Accordingly the Appellate Authority vide order dated 22.12.2001, reduced the punishment. It was ordered that the applicant shall be posted as Canteen Bearer in the pay scale of Rs.2550-3200/- in the lowest of the pay grade and as Junior most. The intervening period was ordered to be treated as break in service. The applicant submitted a Revision dated 21.2.2002 against the Appellate order dated 22.12.2001 and the Revisionary Authority modified the order of Appellate Authority holding that the period of 'Break in Service' shall be treated as Leave without pay.

(vi) The applicant was appointed in Class IV category as Khalasi and he was further promoted as Helper Khalasi in Class-IV category. It was pointed out that in case of urgency the services of a Class IV employee can always be utilized in any other shop in the workshop. Under these circumstances the

62

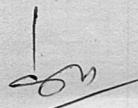
applicant's alleged claim of lien in Fitters category is wholly untenable.

(vii) At the time of dismissal the applicant was serving in Class IV category and the Appellate Authority while reducing the penalty of dismissal, reinstated the applicant and ordered that the applicant shall be posted as Canteen Bearer. The order passed by the Appellate Authority is perfectly valid and is in accordance with the provisions of Railway Servant (Discipline and Appeal) Rules, 1968. While being reinstated the applicant was sent for Medical Examination and the Railway Doctor submitted the report as follows :-

"(a) Unfit for A-2, A-3, B-I category.
(b) Fit for B-2 category with glasses with certain conditions, such as long Distances vision. Under these circumstances the Appellate Authority taking into consideration the disability of the applicant, reinstated the applicant on a Light duty of Canteen Bearer."

(viii) It was submitted that the Appellate Authority has not exonerated the applicant but has merely reduced the penalty and as such the provisions of Rule 2044 of IREM Vol.II are not at all attracted. In fact the intervening period has been treated as Leave without pay under this very provision. It is further stated that the Hon'ble Supreme Court's decision referred to (supra) has no application with reference to the facts of the instant case.

(ix) It was argued that the applicant in pursuance of the order passed by the authority had joined the post and has accepted his charge as Canteen Bearer and had derived the advantage of



34

both the Appellate order as well as the Revisional order and as such the applicant has no legal enforceable right to challenge the same.

(x) To buttress the contention the respondents relied on the Hon'ble Supreme Court decision in the case of **State of Punjab Vs. Shree Krishna Niwas - 1997 SCC (L&S) page 998**, reproduced below :

"Departmental Enquiry- Penalty - Judicial review- Bar against, when the employee initially accepted the penalty and later on challenged it- Estoppel- Evidence Act, 1872, S.115

The respondent was removed from service as a result of his conviction under Section 302 of the Indian Penal Code. On appeal, his conviction was altered to one under Section 325 and he was awarded imprisonment for 1-1/2 years. After undergoing imprisonment, the respondent appealed to the appellate authority which reduced punishment of removal from service to lower pay scale but back wages were denied. The respondent accepted the reduced penalty and joined duty but subsequently filed a suit for declaration that his removal from service, reduction in rank and denial of back wages were illegal.

Held :

The respondent having accepted the order of the appellate authority and joined the post, it was not open to him to challenge the order subsequently. By his conduct, he has accepted the correctness of the order and acted upon it. Under these circumstances, the civil court should not have gone into the merits and decided the matter against the appellants."

3. We have heard the learned counsels for the parties and perused the pleadings available on record. We have gone through the applicants prayers before the appellate authority as well as the revisionary authority. We have also gone through rule 2044 of Indian Railway Establishment Code Volume II. The relevant portion is extracted below :

82

35

"2044.(F.R. 54) – (1) When a railway servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension preceding the dismissal, removal or compulsory retirement, the authority competent to order re-instatement shall consider and make a specific order –

- (a) regarding the pay and allowances to be paid to the railway servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and**
- (b) whether or not the said period shall be treated as a period spent on duty."**

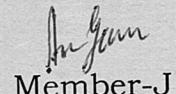
We find that all the issues raised by the applicant with respect to the severity of punishment and the provision of rule 2044 relating to the treatment of the period between the dismissal and reinstatement have been dealt with. On the facts, therefore, there is no case for this Tribunal to interfere in orders of the Appellate or the Revisionary Authority.

4. The only other issue i.e. the maintenance of the applicant's lien in his original trade i.e. shop floor is concerned, we are of the view that the case is squarely covered by the Hon'ble Supreme Court decision in the case of **State of Punjab & others Vs. Krishan Niwas, reported in 1997 SCC (L&S) 998, (supra) .**

5. In view of the above discussion, the OA is dismissed. No order as to costs.



Member-A



Member-J

RKM/