

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD.

O.A.No/T.A.No 1545/03

Date of decision 30/3/05

J. Lal Applicant(s)

Sri A.A. Khan Counsel for the applicant(s)

Versus

Union of India & ors. Respondent(s)


Sri K.P. Singh Counsel for the respondent(s)

CORAM

Hon'ble Mr: A.R. Tiwari Member(A)

Hon'ble Mr: KBS. Rajan Member(J)

1. Whether Reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporters or not? Yes
3. Whether their Lordship wish to see the fair copy of the judgment? Yes
4. Whether to be circulated to all Benches? Y


SIGNATURE

Manish/-

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 30th day of March 2005.

Original Application No. 1545 of 2003

Hon'ble Mr. D.R. Twiari, Member (A)
Hon'ble Mr. K.B.S. Rajan, Member (J)

Jawahar Lal, S/o late Sri Chhotey Lal,
R/o Quarter no. 27-B, Railway Colony,
Kathgodam, District Nainital, working as
Technician-I, Samadi (Sawari Mall Dibba Vibhag)
N.E. Railway, Kathgodam Railway Depot.

... Applicant

By Adv: Sri A.A. Khan.

V E R S U S

1. Union of India through Secretary,
Ministry of Railways,
NEW DELHI.
2. Divisional Railway Manager,
Izatnagar,
BAREILLY.
3. Mandal Yantrik Engineer (Samadi)
N.E. Rly., Izatnagar,
BAREILLY.
4. Sahayak Mandal Yantrik Engineer,
S.M.Y.E. (Samadi), Izatnagar,
BAREILLY.
5. Mechanical Engineer (Samadi), Izatnagar,
BAREILLY.

...Respondents

By Adv: Sri K.P. Singh

O R D E R

By K.B.S. Rajan, JM

In view of the fact that none for the applicant was present both on the earlier date of hearing (17.12.2004 & 2.3.2005), this OA is being decided under the provisions of Rule 15 of the CATR(Procedure) Rules 1987.

2

Brief facts of the case are as under :-

- a. The applicant at the relevant point of time (April 2003) was working as Technician-I, at SAMADI (Sawari Maal Dibha Vibhag) Kathogodam Railwad Depot, NE Rly., in the scale of pay of Rs. 4500-7000 and was at the basic pay of Rs. 5750/-.
- b. On 10.4.2003, the applicant was served with a show cause notice by respondent no. 4 under the provisions of Rule 11 of Railway Servants (D&A) Rules, 1968. The show cause notice contained the following charge:-

“श्री जवाहर लाल, पद टैक्नी-1 /समाडि/काठगोदाम के विरुद्ध दोषारोपण का विवरण

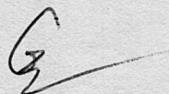
दिनांक 26/2/2003 को अधोहस्ताक्षरी द्वारा काठगोदाम डिपो का निरीक्षण किया गया। निरीक्षण के दौरान सिक लाइन में यान सं0 8715 एस एल आर का शिड्यूल/सी परीक्षण किया जा रहा था, जिसका विवरण निम्नानुसार है।

1, यान की एक टूली की बोलस्टर स्प्रिंग लोवर स्प्रिंग जीग और इन्क्लाइन्ड हैंगर्स के परीक्षण के लिये डिब्बे को एक तरफ से लिफ्ट किया गया था जिससे पूरी टूली सेन्टर पिक्ट पर भरा चक्कों के लटकी हुई थी। जब कि उक्त कार्य को बिना यान की टूली सहित लिफ्ट किये किया जा सकता था।

2, काटर व चीरा पिन ठीक से नहीं चीरी गई थी और नॉयलान बुश लगी पिनो में तेल डाला गया था। जब कि काटर व चीरा पिन 45 पर चीरने के निदेश बहुत पहले से प्रचलन में है तथा नॉयलान बुश युक्त पिनो में तेल डालना वर्जित है।

3, लोवर बीम को एक कर्मचारी हथौड़े से बुरी तरह पोट कर साफ कर रहा था जिससे जंगरोधी पेन्ट भी उखड़ रहा था। जब कि इस पुर्जे पर शिड्यूल/सी बाहर लाईन पर किया जा रहा था जब कि शैड खाली था उसका उपयोग नहीं किया गया।

जबकि उक्त सभी कार्य नियम विरुद्ध तरीके से आप श्री जवाहर लाल के निदेशन में किया जा रहा था। यह आपकी कार्य प्रणाली के प्रति उदासीनता का घोटक है अतः आपके विरुद्ध अनुशासनात्मक कार्यवाही की जाती है।



दोषारोपण:- आप श्री जवाहर लाल पद टैक्नी:-1 /समाडि डिपो/काठ द्वारा गलत कार्य प्रणाली से कार्य करवा कर रेल सेवा आचरण नियम 1966 के उप नियम 3,1 (II) को उल्लंघन करने के आरोप से आरोपित किया जाता है।

आधार समयांइ/समाडि का निरीक्षण नोट दिनांक 27/3/2003”.

- c. The applicant submitted his explanation on 25.4.2003 denying the charges. It was alleged by the applicant that without holding any inquiry, the Disciplinary Authority passed an order of penalty reducing the basic pay of the applicant to Rs. 4500/- for a period of 2 years, vide order dated 28.5.2003.
- d. The applicant had preferred an appeal against the aforesaid order dated 28.5.2003 to the Appellate Authority on 27.6.2003. Certain important legal questions were raised in the said appeal.
- e. The Appellate Authority, according to the applicant, without application of mind rejected the appeal vide order dated 10.9.2003.
- f. It is against the initial penalty order dated 28.5.2003 and subsequent appellate order dated 10.9.2003 that the applicant has filed this OA.

3. Amongst the grounds, the applicant has raised the following:-

- a. The penalty order having been passed by the persons who had conducted the inspection, the order is vitiated by principles of law that no person can be a judge in his own case.



b. While the show cause notice was issued for a minor penalty, the penalty imposed namely reduction to the lowest stage in the time scale of pay for a specified period is a major punishment under the rules and hence the order is bad in law.

c. When the charges were denied, the respondents cannot passed the penalty order without conducting due enquiry.


d. The penalty order evidently is a non speaking order and is against principles of natural justice.

e. The Appellate Authority has not applied his mind and none of the legal issues raised in the appeal was discussed, much less decided.

f. The charges are so baseless that it is a case of no evidence.

4. The respondents have contested the OA by filing their counter. The reply reflects that according to the respondents a surprise inspection was conducted when various lacunae in the performance of the work by the applicant were detected and as these were grave, infringing upon the safety of working staff, show cause notice was issued. After meeting the averments contained in para 4 of the OA, the respondents in their counter denied the grounds as untenable and unsustainable, vide para 23 of the reply. They had ultimately prayed for dismissal of the OA.

5. The applicant has filed his rejoinder affidavit by and large ~~was~~ to reiterate his earlier contentions raised in the OA, thereby denying the version of the respondents ~~where~~ there was no admission of the averments of the applicants.



6. At the time of final hearing, after the pleadings were perused and order dictated that judgment this OA was reserved, the counsel for the applicant appears at that stage and he was informed of the decision that rule 15 was invoked in this case. The respondents did not appear through their counsel or otherwise.

7. The case has been considered. In the reply, a preliminary objection was raised to the effect that the OA has not been prepared as per CAT procedure and as such it is liable to be dismissed. This contention being without any merits is rejected. Again in reply to para 3 it has been contended that this OA has been barred by limitation. This is also equally merit-less since the impugned appellate order in which the Disciplinary Authority's order merges, is dated 10.9.2003 and this OA has been filed in the Tribunal on 4.12.2003.

8. The show cause notice dated 10.4.2003 though does not reflect the relevant authority, the same is presumed as per minor penalty under Rule 11 of the 1968 Rules. Sufficient explanation was given by the applicant to the show cause notice. The show cause notice was in the wake of a surprise inspection conducted by the Disciplinary Authority. The point of law raised by the applicant is that no one can be a judge in his own case. This contention has to be rejected in this case because the Disciplinary Authority has full powers to pass the order and that he had conducted the inspection cannot bar him from imposing the penalty.

9. The contention of the applicant that the proceedings were initiated under minor penalty proceedings but the penalty imposed is of major penalty is also incorrect since the penalty imposed falls squarely under minor penalties (Rule 6 (III) (b)) under minor penalties which reads "reduction to a lower stage in the time scale for a ^{period} ~~prior~~ not



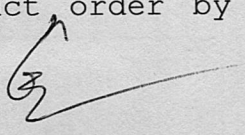
exceeding 3 years, without cumulative effect and not adversely effecting his pension.

10. As regards the ground that no charge sheet was issued, the same does not hold water since for minor penalty proceedings the detailed enquiry is not a sine-qua-non. The next ground by the applicant is that the Disciplinary Authority order is non-speaking. There is full substance in this ground. The order of the DA dated 28.5.2003 is cryptic and does not reflect any semblance of having fully considered the explanation dated 26.4.2003 furnished by the applicants, even though a reference to the explanation is contained in the penalty order. The penalty order does not even contain the scale of pay as well as the basic pay of the applicant and thus it is evident that the penalty order has not been passed with application of mind.

11. In view of the above the penalty order is liable to be quashed and set aside. Consequently, the subsequent events such as appeal and appellate order do not survive and hence the appellate order is to be treated as nonest.

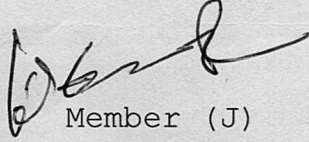
12. The applicant has prayed for quashing and setting aside order dated 28.5.2003 and 10.9.2003 and has also prayed for further relief as may be deemed fit.

13. In view of the above discussion, order dated 28.5.2003 is quashed and set aside. The appellate order also is rendered as nonest. The OA is allowed. The respondents are directed to restore the pay of the applicant to its original status prior to the date of imposition of penalty and accordingly disburse the amount withheld on account of implementation of the penalty order. However, it is open to the respondents to consider the explanation given by the applicant and proceed further with the case and if the applicant is found guilty of any misconduct order by D.A. may be passed by meeting

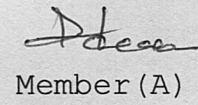


all the points raised in the explanation furnished by the applicant.

14. Under the circumstances there shall be no order as to costs.



Member (J)



Member (A)

Girish/-