

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

Original Application No. 506 of 2003

Wednesday, this the **07th** day of **May**, 2008

Hon'ble Mr. Justice A. K. Yog, Member (J)
Hon'ble Mr. K. S. Menon, Member (A)

Vishwa Nath Mahadev Urf,
V.P. Srivastava ex Assistant
Guard, Central Railway Satna,
R/o Near Meja Road Station, P.O.-
Meja, District Allahabad.

Applicant

By Advocate Sri Sudama Ram

Versus

1. Union of India through THE General Manager,
West Central Railway, Head quarter
Jabalpur.
2. Divisional Railway Manager, West Central Railway,
Jabalpur.
3. D.O.M. (Central Railway) West Central Railway,
Jabalpur.
4. Area Manager, (Central Railway) now
West Central Railway, Satna.

Respondents

By Advocate Sri K. P. Singh

O R D E R

By K.S. Menon, Member (A)

Operative para of this Order was dictated in Open Court on
07.05.2008 subject to the reasons to be given later.

This OA has been filed seeking direction of this court to
quash the impugned orders viz. charge sheet (SF-5) dated
20.02.1998 (Annexure A-1), Inquiry Report dated 01.09.1999
(Annexure A-2), Punishment order dated 27.04.2000 (annexure
A-3) and Appellate order dated 09.12.2000 (Annexure A-4) and

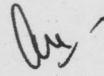


pass orders allowing all consequential benefits including pensionary benefits.

2. Facts of the case in brief are that the applicant, while working as Assistant Guard (Rs.4000-6000) under Station Manager, Central Railway, (now West Central Railway) Satna, was placed under suspension on 09.10.1997 by the Area Manager, West Central Railway Satna, which was revoked by the Area Manager after 54 days (i.e. on 10.11.1997). According to the applicant no subsistence allowance was paid despite representation dated 18.12.1997. The applicant was subsequently on 20.02.1998 served with charge sheet proposing to impose a Major penalty for alleged absence from duty on 15.09.1997 (Annexure A-I). The applicant filed reply on 13.04.1998 and denied the charges leveled against him, stating that he had submitted application on 14.09.1997 for 'due rest' on 15.09.1997 due to extreme compulsion. The Area Manager, Central Railway, Satna nominated Sri Ramesh Chandra Chief Yard Master, Satna as the Inquiry Officer. The applicant in writing requested for changing the Enquiry Officer as he felt that the 'Enquiry Officer' (who belonged to Transport Department) would be biased. Ignoring said objection, inquiry was held wherein the applicant also participated. The applicant submits that the Inquiry proceedings stand vitiated as there were several procedural flaws in the proceedings, consequently the inquiry proceedings are prejudiced and not a fair one. The Inquiry Report was submitted on 01.09.1999, a copy of which was communicated to the applicant by the Disciplinary Authority on



19.10.1999 (Annexure A-3). The Inquiry report showed that the only charge against the applicant of being unauthorisedly absent from duty on 15.09.1997 stood proved hence he was guilty of violating Rule 3(1) (i) (ii) and (iii) of the Railway Servant (Conduct) Rules. Applicant maintains that he had applied for due rest on 14.09.1997, for which no sanction is required and prior information is sufficient to the in charge on duty concerned. Applicant contends that the Deputy Station Superintendent who was holding charge had verbally permitted him to avail the said rest on 15.09.1997, hence the applicant was in no way responsible guilty of any violation of the Conduct rules. The respondents subsequently on 27.04.2000 imposed a major penalty of reduction in basic pay from Rs.5800 to Rs.5700 in the same grade for a period of three months with cumulative effect w.e.f. 01.05.2000. Applicant appealed against the punishment order to the DOM, Central Railway (West Central Railway) Jabalpur. Thereafter an OA was filed before this Tribunal, which was disposed off with direction to the respondents to decide the applicant's appeal, vide order dated 11.10.2002. In compliance of the Tribunal's order the appeal was considered by the respondents and rejected on 09.12.2002. According to the case of the applicant he filed a revision petition before ADRM, Jabalpur on 18.01.2003 (Annexure A-11 to the OA) on the ground that the impugned appellate order has been passed without affording him a personal hearing in a mechanical manner without application of mind and it contains no reasons. He contends that 'revision petition' is still pending and not decided. Hence the present O.A.



4. The respondents in their counter have refuted the averments made by the applicant. They submit that the suspension order was passed by the Competent Authority as per Rule No.4, Sub Rule (2) of Rule 7 of the Railway Servant (Disciplinary & Appeal) Rules 1968. The charge sheet was issued after the suspension order was revoked and after the charges were denied by the applicant, thereafter an Inquiry was ordered as per rules. The Inquiry Officer i.e. Chief Yard Manager, Satna was appointed as he holds an independent post and is a fairly senior person and as the applicant had not provided concrete evidence of bias against the Inquiry Officer as contended, the Inquiry Officer was not changed. The respondents maintain that absence on duty is a serious charge and the inquiry was conducted in a proper and fair manner as per procedures laid down and concluded after affording the applicant a reasonable opportunity. The punishment awarded is considered commensurate with the gravity of the charge. The appeal of the applicant was decided by giving sufficient reasons following the direction of the Tribunal in its order dated 11.10.2002 in OA No.238 of 2000. No revision, as alleged by the applicant, was received by the respondents.

5. Heard, learned counsel for the parties and perused the pleadings on record.

6. Para 4.21 of the OA in this connection is as under;

"That the applicant also submitted a revision petition to ADRM/ Central Railway, Jabalpur on 18.01.2003 but no response has been made.

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Photocopy of revision petition dated 18.01.2003 is filed herewith as Annexure A-11 to compilation-II to this Original Application."

VERIFICATION

I, V.N. Mahadeo urf Vishwanath Prasad Srivastava S/o Late Mahadeo, aged about 62 years retired Assistant Guard r/o Near Meja Road Station, P.O. Meja Road, District-Allahabad do hereby verify that the contents of paras 4 partly 6, 7, of the O.A. are true to my personal knowledge and that of Paras 1, 4, partly, 5 of paras 2, 3, 5, 8 and 9 are believed to be true based on legal advice. Nothing has been concealed.

SO HELP ME GOD."

The applicant has however, failed to disclose whether this alleged Revision petition (Annexure A-11 to the O.A.) was submitted/communicated to the respondents by hand or by Post/Registered Post and if it was received 'by hand'- where is the acknowledgement or receipt/endorsement in lieu thereof. Details/documentary proof (e.g. Postal receipt) of such a communication not been given/annexed with the OA and the same are conspicuously missing and absent in the pleadings.

7. The respondents on their part have categorically denied receipt of any such revision petition, in Para 28 of their CA, which reads as under:-

"That the contents of paragraph 4.21 of original application are not correct hence denied. In reply it is submitted that no revision petition is received in this office till date."

VERIFICATION

I, the above named deponent do hereby swear and verify that the contents of the para nos. 1 to 35 of the counter are true to my personal knowledge, and that also correct on perusal of record, and the also is correct on the basis of legal advice, information received, which I believe to be true. No part of it is false and nothing material has been concealed.

So help me God."

(Signature)

(Signature)

The above contention of the respondents has not been specifically rebutted by the applicant in the Rejoinder. Relevant para 18 of the rejoinder is reproduced below:-

"That the contents of paras 23 and 28 of the counter reply are not admitted, hence denied and in reply contents of paras 4.16 to 4.21 of the original application are reiterated and reaffirmed with the submission that the penalty imposed against the applicant was not only harsh and disproportionate for his no fault but also on account of negligence and inaction of the immediate controlling officials viz. Dy. SS and SS which is evident from the observations of the Inquiry Officer itself and also the major penalty imposed vide NIP dated 27.04.2000 reducing his pay from Rs,5800/- to Rs.5700/- in grade Rs.4000-6000 for the period of three months with cumulative effect w.e.f. 01.05.2000 are not permissible in the rules and law. Besides it, it is not practicable to be imposed as per rules as the applicant had retired from service on 30.06.2000 and it would adversely affect his pensionary benefits for ever as it was affecting the average of 10 months pay for the pensionary benefits and the pensionary benefits cannot be curtailed in the garb of wrong imposition of penalty as held in V.V. Ramaiah case."

Verification clause of the Rejoinder reads: -

"I, V.N. Mahadeo urf Vishwanath Prasad Srivastava aged about 63 years S/o Late Mahadeo, retired Asstt Guard r/o village near Meja road Station, P.O. Meja Road, District-Allahabad do hereby verify that the contents of para 20 are true to my personal knowledge and paras 2 to 17, 18 (p) believed to be true based on records and that of paras 1, 18 (p), 19, 21, 22 23 are believed to be true based on legal advice and that nothing material has been concealed."

From the above status of the pleadings, existence of the revision petition cannot be efficaciously adjudicated.

8. Be that as it may, in the interest of justice we direct the applicant to submit a fresh 'revision petition' to the competent authority alongwith a certified copy of this order within a period of one month from the date of receipt of a certified copy of this order and on receipt of the same the respondents shall consider the said revision petition on merit in accordance with relevant

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Act, Rules etc. and pass a reasoned/speaking order within a period of four months of receipt of the revision petition-if filed as stipulated above, without taking objection or exception on the ground of delay/limitation.

9. The OA is disposed off with the above observations/directions.

No Costs.

Member-A
Member-A

A.K.S
Member-J

/ns/