

RESERVED.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ORIGINAL APPLICATION NUMBER 947 OF 2003.

ALLAHABAD, THIS THE ^{9th} DAY OF ^{Dec.} 2005

Hon'ble Mr. A.K. Bhatnagar, Member-J
Hon'ble Mr. D.R. Tiwari, Member-A

Kedar Nath S/o Shri Moti Lal,
R/o House No.4, Bhola Ka Pura,
Sulem Sarai,
District Allahabad.

.....Applicant.

(By Advocate: Shri Satish Mandhyan)

Versus.

1. Union of India through General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Allahabad.
3. Sr. Divl. Personnel Officer, North Central Railway, Allahabad.
4. Shri Ganga Prasad,
Sr. Divl. Personnel Officer,
North Central Railway,
Allahabad.

.....Respondents.

(By Advocate : Sri A.K. Gaur)

ORDER

By HON. MR. D.R. TIWARI, A.M. ✓

By this O.A. filed under section 19 of the A.T. Act, the applicant has prayed for the following relief(s):

- "(i) to quash the order dated 5.8.2003 passed by respondent NO.3
- (ii) to issue a writ, order or direction in the nature of mandamus not to give effect the order dated 5.8.2003.
- (iii) to issue a writ, order or direction in the nature of mandamus commanding respondents to comply with the judgment dated 1.4.2003 in letter and in spirit and to impart justice to the applicant who is retired employee since 28.2.1995 and is languishing at the hands of respondents for non fault of him".

2. Briefly stated, this is a second round of litigation by the applicant. On an earlier occasion,

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the applicant filed O.A. No. 653/96 which was decided on 1.4.2003 remitting back the matter to respondents ^{to} passed a detailed and reasoned order within a period of four months from the date of receipt of the order. It was also provided that in case the respondents come to the decision that the applicant's pay was wrongly fixed at the time of final settlement, they should correct the mistake after taking applicant's representation and also pay the arrears to the applicant within 3 months. While deciding the representation the respondents have passed an order dated 5th August 2003 (Annexure A-1) which has been impugned by this O.A.

3. The O.A. has been assailed on various ground mentioned in para 5 of the O.A. mainly on the ground that the impugned order is ex-facie illegal and arbitrary. It has been pointed out that despite the assertion of the applicant that his penalty of 3 years W.I.P. which was reduced in an appeal to 1 year W.I.P. This fact has been ignored by the respondents while passing the impugned order and they have taken the stand that as per the records, no paper relating to appeal is available on records.

4. Respondents, on the other hand, have asserted the fact that the applicant did not file an appeal and the question ^{of} reducing the penalty of 3 years W.I.P to that of 1 year W.I.P. does not arise. They have specifically asserted in para 10 of the counter affidavit that no such appeal was filed and no reduction of punishment by the applicant is available

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on record. Hence, they have submitted that O.A is devoid of any merit and may be dismissed.

5. During the course of the argument, the counsel for the applicant as well as the counsel for the respondents reiterated the facts and legal pleas of the O.A. of the applicant and counter affidavit of the respondents respectively. The court directed the counsel for the respondents to produce the original record as the copy of the reduced penalty order has been filed by the applicant.

6. We have heard the rival submissions of the counsel and perused the pleadings on record. We have also gone through the original records produced by the counsel for the respondents.

7. The main question for decision is whether the penalty was reduced by the appellate authority or not. In order to verify the contention of the respondents, we have gone through the original records. P.P.8 and page 52 bear enough testimony to the fact that the applicant filed an appeal and his penalty was reduced. P.P.8 is the Note portion of the original records wherein the Competent Authority has passed the order and in pursuance of that order, the Authority has issued a letter conveying the decision of the Competent Authority, which is available at page 52 of the original records. In view of the above, the contention of the respondents that nothing relating to appeal and reduction of penalty was available on the

J. J. J.

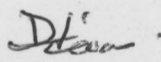
record is falsified. The order at page 52 of the original records is as under:-

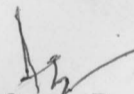
"The Sr. Divl. Safety Officer, N. Rly., Allahabad after careful consideration of your appeal quoted above in terms of Rule 22 of (2) of R.S. (D&A) Rules of 1968 has passed the following orders.

I have gone through the appeal of Shri Kedar Nath Switchman in which he stated that Shri Tripathi has fired the witness which can't be accepted. This is that Shri Kedar Nath misbehaved ASM on duty. However, looking to Shri Kedar Nath safety performance the punishment reduced to 1 year (WIP one year)"

8. In view of the facts and circumstances of the case, the O.A. succeeds on merit and is allowed. The impugned order is quashed and set aside. The respondents are directed to take necessary action in accordance with the order contained in preceding para and applicant is entitled to arrears of pay as well as re-fixation of his pension. The entire exercise should be completed within a period of three months from the date of receipt of a copy of the order.

No order as to costs.


Member-A


Member-J

Manish/-