

OPEN COURT
CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

ORIGINAL APPLICATION NO. 157 of 2006.

ALLAHABAD THIS THE 06TH DAY OF FEBRUARY 2009.

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

Hon'ble Mr. S.N Shukla, Member (A)

Suresh Gautam, S/o Late R.P. Singh Gautam, R/o 5/10, Labour Colony, Mohaddipur, Gorakhpur, Presently working as Enquiry-cum-Reservation Clerk, North Eastern Railway, Gorakhpur Cantt.

.....Applicant

By Advocate: Shri S.K. Om.

Versus.

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Senior Divisional Commercial Manager, North Eastern Railway, Lucknow.
3. Divisional Commercial Manager, North Eastern Railway, Lucknow.
4. Additional Divisional Manager, North Eastern Railway, Lucknow.

.....Respondents

By Advocate: Shri K.P. Singh

ORDER

Delivered by Justice A.K. Yog, Member (J):

Heard Shri S.K. Om, Advocate appearing on behalf of the applicant and Shri K.P. Singh, Advocate appearing on behalf of the respondents. Perused the pleadings and documents annexed therewith.

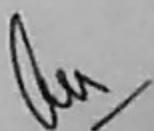
2. The facts of the case briefly stated are that applicant face Disciplinary Proceedings on account of certain

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misconduct viz giving tickets on concessional rates on the basis of fictitious certificates issued by some Hospital. Disciplinary Proceedings were initiated for minor punishment vide memo dated 11.3.2004. Punishment ended up in the order of minor punishment vide order dated 19.4.2004, which the applicant had accepted. Respondents served memorandum dated 12.7.2004 on the basis of same charges proposing major penalty. Applicant submitted his reply on the ground that he had already suffered minor punishment and in this respect, he filed representation dated 04.08.2004. On 13.08.2004, Revisionary Authority issued show cause to the applicant for enhancement of the minor penalty as contemplated under Rule 25, Railway Servants (Discipline and Appeal) Rules, 1968. Punishment proposed was to reduce in pay to the minimum of basic without cumulative effect. Copy of said representation is annexed as Annexure 7. Annexure 7 purports the copy of show cause notice to the applicant enhancing punishment by means of order dated 13.8.2004. Revisionary Authority exercising power of revision decided to enhance the punishment vide order dated 13.8.2004. Subsequently said order dated 13.8.2004 was revoked by means of order dated 16.2.2005/Annexure 1 with right to issue fresh notice. We find no reference to the contention made by the applicant in his revision against show cause notice.

3. Grievance of the applicant is that he has been served with memorandum containing similar charges proposing enhanced punishment for which he has already undergone minor punishment awarded to him. In other words, applicant is subjected to 'double jeopardy', which is illegal, arbitrary and uncalled for.

4. On the other hand, learned counsel for the respondents submits that it is a statutory right of Revisionary Authority to



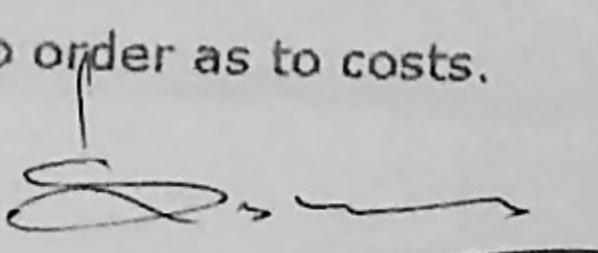
enhance punishment as contemplated under relevant Rules. Learned counsel for the respondents submits that applicant should have challenged order in appeal, but did not file. Further we find that the Respondent-Authorities unnecessarily initiated disciplinary proceedings on- 'charge' for which he cannot be blamed. Interim order passed by this Court on 23.2.2006 has continued from time to time and still operating.

5. We have carefully perused the representation filed by the applicant/Annexure 7 to the O.A as well as charges contained in the 'Memorandum wherein the applicant has clearly mentioned that he acted 'genuinely' and 'bonafidely' without knowing that the 'certificates' in question were fictitious and that he was not involved in committing the offence. Interestingly nothing has been placed on record to show that applicant 'colluded' or 'connived' with those who took advantage of such 'fraudulent act'. There is no allegation of 'negligence'.

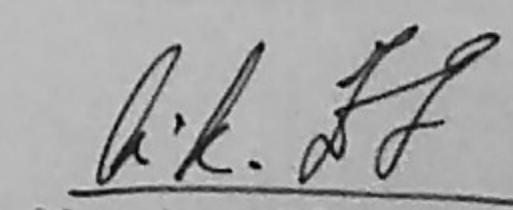
6. It is clear that the applicant has been made to suffer for a 'charge' for which he has not been given opportunity. We find that matter has become 'stale'. Applicant is continuing in service but there is no pleading/material on behalf of the Respondents that he has been found guilty subsequently.

7. In view of the above, we quash the chargesheet dated 12.7.2004 and consequential order dated 16/21.2.2005 issued by the Respondents. O.A stands allowed.

8. No order as to costs.


Member (A)

Manish/-


Member (J)