

(RESERVED on 16.3.2012)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

Allahabad, this the 10 day of May, 2012

Hon'ble Mr. Sanjeev Kaushik, Member-J
Hon'ble Ms. Jayati Chandra, Member-A

Original Application No.42 of 2006
(U/s 19 of Administrative Tribunal Act,
1985)

M.L. Murmu S/o Dewan Murmu,
R/o Railway Bungalow No.128,
Dairy Railway Colony, Loco Ground,
Gorakhpur, Presently working as Senior System Analyst N.E.
Railway, Gorakhpur.

..... *Applicant.*

By Advocate : Shri S.K. Om

V E R S U S

1. Union of India through General Manager, N.E. Railway, Gorakhpur.
2. Chairman, Railway Board, Rail Bhawan, New Delhi.
3. Secretary, Railway Board, Rail Bhawan, New Delhi.
4. General Manager, North Eastern Railway, Gorakhpur.

..... *Respondents*

By Advocate : Shri K.P. Singh

O R D E R

Delivered by Mr. Sanjeev Kaushik, Member-J

The applicant is aggrieved against the memorandum dated 26.12.2005 (Annexure A-9) proposing to enhance the penalty earlier imposed by the disciplinary authority.

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2. The facts are not in dispute, therefore, brief note is sufficient. The applicant initially appointed as Khalasi on 13.4.1976. He was promoted in Group 'B' category of Assistant Controller of Stores on 8.2.1990. While he was working as Divisional Controller of Stores, he was served with a chargesheet on 24.10.2001 alleging therein that he has mis-appreciated an amount of Rs.11,880/- by showing false payment. It is also alleged that on 29.10.1998 the applicant purchased Jute mat at higher rate from Samastipur market whereas it was available at Gorakhpur market on lesser rate. He filed reply on 28.12.2001 denying all the charges leveled against him. Being not satisfied with his reply the disciplinary authority appointed enquiry officer to look into the charges. It is averred that neither the relied upon documents nor the sample collected by vigilance regarding jute Mat were ever supplied to the applicant. The enquiry officer submitted his report on 14.10.2002 (Annexure A-3). The General Manager, North Central Railway did not agree with the findings of the enquiry officer and recorded disagreement note on 8.5.2003 (Annexure A-4). The applicant submitted his reply to the above show cause notice dated 8.5.2003 by General Manager, North Central Railway on 4.6.2003 (Annexure A-5). The respondent no.4 thereafter forwarded entire file to respondent no.2 for taking appropriate action against the applicant. On 20.1.2004 respondent no.2 issued punishment order whereby the applicant was ordered to be reduced by two stages below in the time scale of pay for

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a period of one year which shall have the effect of postponing further increments (Annexure A-6). Against the order dated 20.1.2004 the applicant filed appeal before Appellate Authority i.e. the Hon'ble President of India on 20.2.2004 (Annexure A-7). During the pendency of the appeal for consideration before the Hon'ble President, the currency of punishment imposed by the disciplinary authority was completed as it was started w.e.f. April 2004 to March 2005. The applicant was also restored his original salary from 1.4.2005 vide communication dated 11.4.2005 (Annexure A-8). The applicant was served with a impugned memorandum dated 26.12.2005 issued by respondent no.2 wherein it has been disclosed that the Hon'ble President has proposed to enhance the punishment (Annexure A-9). Hence the OA.

3. Pursuance to notice respondents appeared and resisted the claim of the applicant by filing detailed counter affidavit by taking preliminary objection that the instant original application is against the show cause notice and the applicant is having opportunity to file his reply, therefore, the OA be dismissed on the ground of alternative remedy. It is also averred that in term of Rule 22(2) (c) of the Railway Servant (Discipline and Appeal) Rules 1968 the applicant has given an opportunity to file its reply before modify/enhancing the penalty. On merit, it is submitted that on an appeal preferred by the applicant the appellate authority after taking into account the relevant factor found that the punishment

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imposed upon the applicant is not commensurate with the gravity of charges, therefore, proposed to enhance the punishment and accordingly, the impugned show cause notice was issued on 26.3.2005. It is further averred that General Manager as per rule 10(2) (a) of Rules of 1968 is competent to issue disagreement note.

4. The applicant has also filed rejoinder affidavit in which he has stated that General Manager is neither disciplinary authority nor was/is having any jurisdiction to pass disagreement note. It is only the Railway Board who is competent.

5. We have heard Shri S.K. Om, learned counsel for the applicant and Shri K.P. Singh, representing the respondents. Shri Om learned counsel for the applicant vehemently argued that the impugned memorandum proposing enhancement of punishment on the appeal preferred by the applicant is totally illegal, arbitrary as on the appeal preferred by the applicant no order can be passed enhancing the punishment. He placed reliance upon judgment reported as 1971(1) SCC 662. Subsequently he argued that after the expiry of currency of punishment period no punishment can be enhanced. To substantiate his arguments he argued that the punishment was inflicted w.e.f. 20.1.2004 for one year and his pay was restored to original on 11.4.2005. Therefore, after expiry of the currency period no punishment can be inflicted on the same very allegation for which the applicant has already

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undergone the punishment. In this regard he referred to case reported as 2008(1) ADJ 391. He argued that even the appeal preferred by the applicant is to be decided within two months as per Rule 22(2) (c) of the Railway Servant (Discipline and Appeal) Rules 1968 whereas in the present case he filed appeal on 20.2.2004 which has not been decided within the time stipulated and the impugned memorandum has been issued on 26.12.2005 which is also contrary to the rules. Thus, the same is also liable to be set aside. Lastly, he argued that even the General Manager who recorded the disagreement note on the punishment order of the disciplinary authority is not authority who can record the disagreement. It is only the Board in the case of the applicant who can disagree with the orders of the disciplinary authority. Therefore, also the impugned order is liable to be set aside. On the other hand, Shri K.P. Singh learned counsel representing the respondents argued that the instant original application be dismissed as it is directed against the show cause notice and the applicant is having the alternative efficacious remedy. He placed reliance upon the judgment of Hon'ble Apex Court reported as AIR 2007 SC 806. He argued that on appeal of the applicant dated 20.2.2004 to the appellate authority after having the consultation with UPSC issued the impugned show cause notice proposing enhancement of penalty.

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6. We have given our thoughtful consideration to the arguments advanced by the learned counsel for the respective parties.

7. Learned counsel for the applicant contended that the impugned memorandum dated 26.12.2005 proposing to enhance the penalty earlier imposed on 20.01.2004 amounts to double jeopardy as the currency of the punishment order inflicted on 20.01.2004 is already completed. Thereafter on completion of punishment the pay of the applicant was also re-fixed. Therefore, by impugned Notice the respondents wanted to undone which has already been settled.

8. We are agree with the submissions of learned counsel for the applicant that the impugned Notice for enhancement of punishment amounts to double jeopardy hence the impugned Memorandum does not sustain. Our view finds support from the judgment of Apex Court in the case of **Lt. Governor, Delhi and Others Vs. HC Narinder Singh - 2004(13) SCC 342.**

9. The second contention is that the appeal against the order dated 20.01.2004 has not been decided within time. Undisputedly the appeal was preferred on 20.07.2004. The same is to be decided within one month from the date of filing of appeal as per the circular dated 11.06.1971. If the Appellate Authority feels that more time is required then he

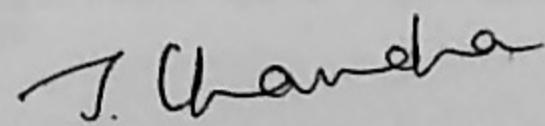
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has to seek approval from the higher authority with reasons for not deciding the appeal within time. The impugned notice was issued almost after approximately two years from the date of filing of appeal. The respondents have not given reasons for not deciding the applicant preferred by the applicant within time. No peace of paper has been shown that whether the Appellate Authority has recorded any reason for not deciding the appeal within time. Therefore, in view of the law laid down by the Apex Court in the case of **Canara Bank and Others Vs. Swapan Kumar Pani and Another – 2006(3) SCC 251**, we find force in the averments made by the applicant.

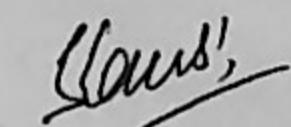
10. With regard to the contention raised by the respondents that against the show cause notice the Original application is not maintainable. There is no absolute bar that O.A against show cause notice is not maintainable. Though a show cause notice does give rise any cause of action but in the instant case, the impugned show cause notice gives the pre-determine mind of the respondent for enhancement of punishment, which is *ex-facie* is illegal. Our view finds support from the judgment of Hon'ble supreme court in case Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others, (1998) SCO 1. In Siemens Ltd. v. State of Maharashtra and others, [2006] 12 SCC 33, the Hon'ble Supreme Court has held that even in cases where show cause

notices are given, if such notices are given with premeditation, the authority having formed an opinion regarding the liability, the writ petition is maintainable. therefore, the objection raised by the respondents is rejected.

11. In view above narration the impugned Notice dated 26.12.2005 is liable to be quashed. Accordingly, it is quashed and set aside . No Costs.



Member-A



Member-J

/Anand/