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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD

(THIS THE 5th DAY OF OCTOBER, 2012)

Hon'ble Mr. G. Shanthappa, Member (J)
Hon'ble Mr. Shashi Prakash, Member (A)

Original Application No.197 of 2007
(Under Section 19 of Administrative Tribunal Act, 1985)

Mahesh Chandra Mishra, Aged about 63 years, Son of Late Shyam
Lal Mishra, Resident of Indra Nagar, Shahjahanpur;
..... Applicant

By Advocate: Shri A.K. Srivastava

Versus

1. Union of India through General Manager, Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Moradabad
Division, Moradabad.
3. Senior Divisional Commercial Manager, Northern Railway,
Moradabad Division, Moradabad.
4. Senior Divisional Personnel Officer, Northern Railway,
Moradabad Division, Moradabad.

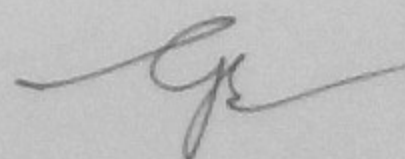
..... Respondents

By Advocate: Shri P. Mathur

ORDER

(Delivered by Hon'ble Mr. G. Shanthappa, J.M.)

The above application is filed under Section 19 of
Administrative Tribunal Act, 1985 challenging the legality and



propriety of the order dated 04.02.2002 passed by Disciplinary Authority (Annexure A-1), 12.4.2002 passed by Appellate Authority (Annexure A-2) and order of the Revisional Authority dated 15.1.2003 (Annexure A-3).

2. We have heard learned counsel for the respective parties.

3. It is an admitted fact from either side that the applicant was served with a charge memo under Rule 9 of Railway Servant (Disciplinary & Appeal) Rules, 1968 along with the imputation of misconduct (Annexure-I), Statement of Article of Charge (Annexure - II), Statement of imposition of misconduct (Annexure - III), List of document (10 in number) (Annexure - IV), List of witness (10 in number) (Annexure - V).

4. Preliminary inquiry was conducted on 27.6.2000 in respect of the information regarding charging excess fare other than the actually due fare from passengers by various TTEs in Train No.4265 U.P., Janta Express. Subsequently, Inquiry Officer was appointed to inquire into the charges. The Inquiry Officer conducted the inquiry. The applicant was given opportunity to participated in the inquiry and the applicant cross examined the witness. The Inquiry Officer submitted his inquiry report with a finding that the charge stands proved vide his inquiry report dated 14.12.2001. The applicant was served with a copy of the inquiry report. The applicant submitted his representation dated 2.1.2002 against the E.O's finding. After considering the charge memo and the inquiry report, the Disciplinary Authority imposed the penalty vide order dated 4.2.2002 by exercising the power vested. The penalty imposed is as under:-



"I, therefore, hold you guilty of the above charges and have decided to impose upon you the penalty of reduction to the bottom of lowest grade. You are, therefore, reduced to the lowest grade on pay Rs.3050/- in the scale of Rs.3050-4590 until you are found fit by the Competent Authority, after a period of two years from the date of the order, with postponing future increments.

5. The applicant being aggrieved by the said order preferred an Appeal dated 8.3.2002. The Appellate Authority has considered the Appeal and dismissed vide order dated 12.4.2002. The applicant being aggrieved by the order of the Appellate Authority, he filed a revision petition dated Nil. The Revisional Authority has decided the revision petition and modified the penalty imposed by the Disciplinary Authority vide order dated 15.1.2003. To the extent "I change the punishment to cash debarring and reduction from Rs.5450/- to 4590/- in the lowest grade of Rs.3050 to 4590 for the same period with cumulative effect." The present O.A. has been filed on 21.6.2007. The delay from 15.1.2003 to 20.6.2007 has not been explained. Hence, O.A. is barred by limitation.

6. It is the grievance of the applicant, the applicant has been denying principle of nature justice while conducting the inquiry. The departmental inquiry was completed after 1 year 4 months, which is against the rule and no reasons for delay has been given by the authority. The Divisional Commercial Manager has acted as Disciplinary Authority, whereas Senior Divisional Commercial Manager is the competent authority to initiate the proceedings. The entire departmental proceedings is illegal and vitiated. The surprise check up was made against the Rule as prescribed in Para 704 and 705 Indian Railways Vigilance Manual.



The statement of the passengers by whom excess amount was alleged to have been collected or any complaint by any passenger is brought before the inquiry. Only three CBI inspectors were examined as prosecution witnesses along with three RPF staff. The departmental inquiry was conducted in CBI Office; but not in the Department. The Appellate Authority and the Revisional Authority has not exercise the power vested in them. The impugned orders are not speaking order no reasons are assigned. Hence, all the orders passed by the authorities are liable to be quashed.

7. To support his case the applicant relying on the judgment of Hon'ble Supreme Court in the Case of M.R. Gupta v. Union of India and Others reported in 1995 SCC (L&S) 1273. The judgment of CAT, Hyderabad Bench in O.A. No.301 of 2001 (Sk. Abdul Salam v. The Divisional Railway Manager. S.C. Railway, Guntakal & ors, reported in 2003(2) ATJ 118. Judgment of the Principal Bench of CAT in O.A. No.3042 of 2003 decided on 13.07.2004 in the case of M.P. Meena vs. Union of India & Ors.

8. The respondents after service of notice have filed the Counter Affidavit, denying the allegations made in the O.A. except the facts admitted based on record. The applicant, while working as Senior T.T.E. AC Sleeper Coach No.14003 of Train No.4265 Janta Express on 23.6.2000, fail to maintain absolute integrity, devotion to duty and committed gross misconduct inasmuch as he was found in possession of Rs.2720/- undeclared cash at the time when surprise check up was conducted by the CBI/SPE team/ Dehradun for which, he could not give satisfactory account. A charge sheet dated 19.10.2000 for alleged dereliction and maintaining absolute



integrity, devotion to duty was served on the applicant. In pursuance to the charge sheet, the Inquiry Officer was appointed. All reasonable opportunity was given to the applicant. Applicant was allowed to participate in the inquiry and he cross examined the witness. The Inquiry Officer submitted a finding that the charge leveled against the applicant are proved vide inquiry report dated 14.12.2001. The applicant submitted his representation to the inquiry report. The applicant has contended the procedure of inquiry was not correct there was no proper opportunity was given to the applicant. The Disciplinary Authority has not considered the representation of the applicant and imposed the penalty vide order dated 4.2.2002. The contention of the applicant that the Divisional Commercial Manager has not authority to impose the penalty, he is not the Disciplinary Authority of the applicant is denied.

9. The respondents submitted the procedure under rule 9 of Railway Servant (Disciplinary & Appeal) Rule 1968 has been followed. The Disciplinary Authority has taken the decision for imposing the penalty based on the inquiry report, in which the applicant has been given ample opportunity to participate in the inquiry. There is no violation of procedure, the Divisional Commercial Manager, is only the Disciplinary Authority against the Senior TTE. The applicant being aggrieved by the said order preferred a statutory appeal dated 8.3.2002 before the Appellate Authority. The Appellate Authority did consider the ground of appeal. Hence, the impugned order of the Appellate Authority is perfect and in accordance with law. The applicant preferred the revision petition being aggrieved by the orders of the Appellate Authority vide revision petition Nil. The Revisional Authority has



considered the grounds urged in the revision petition and reduced the penalty. The Revisional Authority has exercised the powers vested in him and reduced the penalty. There is no illegality or irregularity while exercising the powers. The O.A. is barred by limitation. The revisional order dated 15.1.2003 has been challenged in the present OA on 26.2.2007. The said delay has not been explained. Hence, O.A. is liable to be dismissed as barred by limitation.

10. The applicant has not filed any Rejoinder Affidavit which shows that he has no clarification to the reply statement filed by the respondents.

11. We have carefully considered the submission of the learned counsel for either side. Perused the pleading available on record and citations relied upon.

12. The applicant has filed M.A. for condonation of delay in filing the O.A.

Order on M.A. No.392 of 2007

13. In support of the application, he has stated that "the applicant was given advice to file this O.A. for our right for getting correct grade seniority with a due date for which the applicant is entitled." The M.A. for condonation of delay is filed having the reason for recurring cause of action. Hence, the applicant prayed for condonation the delay in filing the present O.A.



14. The respondents have filed Counter Affidavit to the M.A. for condonation of delay. The Revisional Authority has passed the order on 15.1.2003. The applicant superannuated in the year 2004. The present O.A. was filed on 26.2.2007. There is no cogent reason for condonation of delay of more than 3 years. Hence, the M.A. for condonation of delay has to be dismissed. Consequently, the O.A. has to be dismissed.

15. We have carefully considered the averments made in the MA for condonation of delay and also the objection to the application filed by the respondents to the MA.

16. Before we consider the MA for condonation of delay, we have to test whether the impugned order of the Disciplinary Authority, the Appellate Authority and the Revisional Authority are in accordance with the Railway Servant (Disciplinary & Appeal) Rules, 1968? If the said orders are legally valid then only we condone the delay in filing the O.A..

17. We have carefully considered the rival contentions, perused the pleadings available on record including the impugned orders and the judgments relied on by the learned counsel for the applicant.


18. On the admitted fact narrated in the earlier paras, it is evident; the applicant did not submit his representation to the charge memo. He was allowed to participate in the inquiry. An ample opportunity was given to cross examine the witness. The applicant did not raise any objection during the course of inquiry.



The applicant failed to establish the charges are illegal. Accordingly, the Inquiry Officer had submitted the inquiry report with the finding the charge stands proved. We have carefully examined the charge memo and the procedure adopted by inquiry officer and the Disciplinary Authority i.e. Divisional Commercial Manager. The counsel for the applicant raised the legal issue that Divisional Commercial Manager is not the Disciplinary Authority, Senior Divisional Commercial Manager is the competent authority. We have examined the schedule to the Railway Servant (Disciplinary & Appeal) Rules, 1968 in which the Disciplinary Authority to impose the penalty on the Senior TTE, is the Divisional Commercial Manager. The stand taken by the applicant is against the said schedule, hence the objection raised supra is rejected.

19. We have carefully examined the inquiry report. The Inquiry Officer has conducted the inquiry and he has produced the inquiry report and discussed the evidences produced on record during the course of inquiry. The opportunity was given to the applicant. There is no violation of principles of natural justice. We find there is no illegality or error in conducting the inquiry proceedings.


20. The applicant was served with a copy of the inquiry report for which he had submitted his representation to the inquiry report. He did not raise any legal infirmity or procedural lapse while conducting the inquiry. The Disciplinary Authority has considered the representation submitted by the applicant to the inquiry report and based on the charges framed against the applicant and penalty was imposed vide order dated 4.2.2002. The Disciplinary



Authority though has issued short order which is reasoned and convincing. We have carefully considered the reasons given by the Disciplinary Authority and power exercised by the Divisional Commercial Manager. We are of the view, that there is no illegality or irregularity while imposing the penalty.

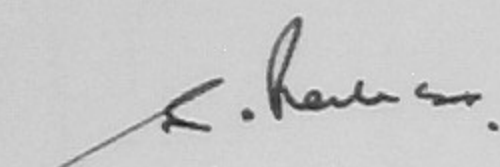
21. The Appellate Authority has decided the appeal dated 8.3.2002. Though, order is a cryptic order, He has considered the grounds urged in the appeal. We have examined the appeal submitted by the applicant. The applicant has not raised any legal ground in the appeal, only on factual things he has challenged the order of the Disciplinary Authority. The Appellate Authority has considered the appeal and dismissed without interfering in the orders of the Disciplinary Authority. The applicant has filed the revision petition dated Nil. We have carefully considered the revision petition and also the orders of the Revisional Authority. The Revisional Authority has exercised the powers vested in him and modified the penalty imposed upon the applicant. The modified order of the Revisional Authority is "*I change the punishment to cash debarring and reduction from Rs.5450/- to 4590/- in the lowest grade of Rs.3050 to 4590 for the same period with cumulative effect.*" The Revisional Authority has exercised the powers vested in him and considered the revision petition and reduced the penalty. Since, the authority has exercised the power, this Tribunal cannot interfere with the quantum of punishment.

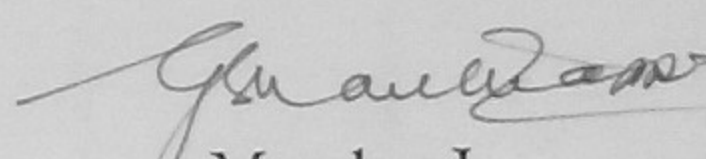
22. For the foregoing reasons, we are of the considered view, there is no illegality or irregularity or infirmity while imposing the penalty upon the applicant that has been confirmed by the Appellate



Authority and modified by the Revisional Authority. Since, the applicant failed to establish his case on merits, we have to decide the M.A. No. 392 of 2007 for condonation of delay. Since the applicant is not assigned the reasons on condonation of delay of more than three years, no cogent reasons are assigned in the affidavit. The reasons given in the affidavit ^{are} ~~is~~ bald. The stands ^{up} ~~is~~ taken by the respondents in their defense is perfect and is in accordance to law and legally valid. Accordingly, we are of the view the applicant failed to convince us for condonation of delay in filing the O.A. M.A. for condonation of delay is liable to be rejected. Accordingly, M.A. is rejected. Consequently, the O.A. is also dismissed.

23. O.A. is dismissed. No costs.


Member-A


Member-J

Sushil