

13
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.487 of 2003
CUTTACK, THIS THE 05th DAY OF July, 2006

Choudhury Ashutosh Mishra..... Applicant

Vs.

Union of India & Others..... Respondents

FOR INSTRUCTIONS

3. Whether it be referred to reporters or not? *yes*
4. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *yes*

B.B.M.
(B.B.MISHRA)
MEMBER (ADMN.)

B.P.
(B. PANIGRAHI)
CHAIRMAN

14
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CORAM:

HON'BLE JUSTICE SHRI B.PANIGRAHI, CHAIRMAN

HON'BLE SHRI B.B.MISHRA, MEMBER (ADMN.)

Choudhury Ashutosh Mishra, aged about 35 years, S/o. Radhanatha Choudhury. Jr. Booking Clerk now working in Commercial Control under Divisional Commercial Manager, Sambalpur East Coast Rly., Sambalpur, At/P.O./Dist./-Sambalpur

.....Applicant

Advocate(s) for the Applicant - Mr. U.B.Mohapatra.

VERSUS

1. Union of India represented through the General Manager, East Coast Rly. At/P.O.-Railvihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. Senior Divisional Traffic Manager, Sambalpur Division, East Coast Rly. At/P.O./Dist.-Sambalpur.
3. Divisional Commercial Manager, East Coast Rly., Sambalpur. At/P.O./Dist.-Sambalpur.
4. Enquiry Officer & Commercial Inspector, Sambalpur East Coast Railway, Sambalpur, At/P.O./Dist.-Sambalpur.

.....Respondents.

Advocate(s) for the Respondents - Mr. C.R.Mishra (A.S.C.).

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ORIGINAL APPLICATION NO. 487 OF 2003

ORDER DATED: 05.07.2006

Shri B.B.Mishra, Member(Admn.): The plea of the Applicant is that he was Jr. Booking Clerk and was promoted to the rank of Sr. Booking Clerk in December, 1998. On 24.01.1999, he was transferred from Keshinga to Sambalpur as Sr. Clerk and was asked to do supervisory duty. On 27.09.1999, cash of Rs. 1,20,000/- was snatched away by the miscreants while the Applicant was going for depositing the cash in the Bank. He was suspended from service due to "false allegation of misappropriation of Rs. 1,20,000/-." The Applicant deposited the lost amount of Rs. 1,20,000/-. On 20.08.2000, charge sheet was framed against him on the allegation of shortage of cash (Rs. 1,20,000/-). On 11.12.2000, enquiry report was submitted and on 20.12.2000 Divisional Commercial Manager imposed major punishment i.e., reversion to the next lower grade for a period of 5 years with cumulative effect. There was an additional order that the Applicant should not be utilized for cash handling duties for his entire service period. The punishment order was duly implemented.

12

On 21.12.2000, the suspension order was revoked by the competent authority. The Applicant preferred an appeal on 02.01.2001 against major penalty before Sr. Divisional Traffic Manager but the same was withdrawn since DRM took cognizance to modify the order of reversion to removal from service. On 11.06.2002, the DRM, S. E. Rlys., Sambalpur sent a notice under Rule 25 of D & A Rules, 1968 to the Applicant asking to show cause as to why he should not be removed from service. On receipt of show cause explanation, the DRM, on 03.06.2003 dropped the proposed enhancement of the major penalty stating that it was time barred. On 24.07.2003, the General Manager (Respondent No.1) issued a notice to the Applicant to show cause against enhancement of penalty from reversion to removal from service, which was duly replied.

The contention of the Applicant before the General Manager was that once the DRM has issued show cause under Rule 25 of the D & A Rules, 1968 to review/revise the punishment and has passed appropriate orders after due consideration, no second show cause action lies as far as the Department is concerned. The General Manager had no

right to issue 2nd show cause under Rule 25. With the above contention the Applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking following remedy:

- "1) To quash the Annexure No.7,8 and 13 to the Original Application.
- 2) To direct the Respondent No.2 to dispose of the Appeal.
- 3) To pass an appropriate relief(s)/order(s) as think deem fit and proper in favour of the Applicant."

In their Counter, the Respondents have maintained that the Applicant misappropriated Rs. 1,20,000/- and tampered the office record on 01.10.1999, 2.10.1999, 7.10.1999 and on 24.12.1999, which prompted the disciplinary authority to place him under suspension with effect from 12.07.2000 and major penalty proceeding was initiated on 11.09.2000 under Rule 9 of D & A Rules 1968. Before the departmental proceeding would begin the Applicant had deposited mis-appropriated amount in the month of August, 2000. However, the department went ahead with the proceeding and the charge of mis-appropriation and tampering of record being proved the DRM (Commercial) after going through the enquiry report

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168
- 4 -
and considering the representation and the reply of the Applicant passed a speaking order on 20.12.2000 imposing punishment of reversion to the next lower grade with minimum of pay scale for a period of 5 years with cumulative effect and non utilization of him in cash handling duties. The punishment order was implemented from 21.12.2000 and Applicant preferred an appeal but the same was withdrawn as the DRM took cognizance to modify the order from reversion to removal from service.

After that was communicated to Chief Vigilance Officer of the Department, the case file was put up to DRM on 07.06.2001 and he proposed to review the punishment order on 27.05.2002. After the file was scrutinized on various levels, they decided that the DRM is the competent authority to review the case and accordingly DRM issued the notice to the Applicant on 11.06.2002 to show cause as to why the proposed punishment of removal should not be imposed. Since the concerned DRM could not pass any order before 20.06.2001 his successor passed an order on 09.12.2002 to make a reference to vigilance officer since the period of 6 months had already expired.

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He also communicated his order to the Applicant saying that final punishment could not be issued as the case became time barred and he (DRM) is not empowered to enhance the penalty. Thereafter, the General Manager who received a reference from the office of DRM issued notice against proposed action of enhancement of punishment to that of removal.

Heard Mr. U.B.Mohapatra, Ld. Counsel for the Applicant and Mr. C.R.Mishra, Ld. Additional Standing Counsel for the Railways and perused the materials placed on record.

The main point of this case is whether 2nd notice can be issued under Section 25 of D & A Rules 1968. It is the strong contention of the Applicant that once revision has been made there is no scope for 2nd revision. In this case the Applicant had preferred an appeal but subsequently withdrew. The disciplinary authority initiated action suomoto and dropped it being time barred. Records show that the delay rendering the case time barred was on account of want of action by one DRM. By the time his

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- 6 -

successor tried to apply his mind it had become time barred. The General Manager who was apprised of the situation did try to amend the mistake by his subordinate, which the Applicant maintains is not sustainable under Rule. Whereas, Ld. Additional Standing Counsel for the Railways says that General Manager has the authority to extend the time limit in all respects. Rule 25 of the Railway Servants (D & A) Rules, 1968 reads as under:

" 25. Revision

(1) Notwithstanding anything contained in these rules-

- (i) the President; or
- (ii) the Railway board; or
- (iii) the General Manager of a Railway Administration or an authority of that status in the case of a Railway servant under his or its control; or
- (iv) the appellate authority not below the rank of a Divisional Railway Manager in cases where no appeal has been preferred;
- (v) any other authority not below the rank of a deputy Head of a Department, in the case of a Railway servant serving under its control (may at any time, either on his or its own motion or otherwise, call for the records of any inquiry and revise any order made under these rules or, under the rules repealed by Rule 29, after consultation with the Commission where such consultation is necessary, and may)-
 - (a) confirm, modify or set aside the order or
 - (b) confirm, reduce, enhance, or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

- © remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the cases; or
- (d) pass such other orders as it may deem fit;

Provided that-

(a) no order imposing or enhancing any penalty shall be made by any revising authority unless the railway servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed;

(b) subject to the provisions of Rule 14, where it is proposed to impose any of the penalties specified in Clauses (v) to (ix) of Rule 6 or the penalty specified in Clause (iv) of rule 6 which falls within the scope of the provisions contained in sub-rule (2) of Rule 11 or to the penalties specified in this sub-clause, no such penalty shall be imposed except after following the procedure for inquiry in the manner laid down in Rule 9, unless such inquiry has already been held, and also except after consultation with the Commission, where such consultation is necessary.

(2) No proceeding for revision shall be commenced until after-

(i) the expiry of the period of limitation for an appeal; or

(ii) the disposal of the appeal where any such appeal has been preferred:

Provided that the provisions of this sub-rule shall not apply to the revision of punishment in case of railway accidents.

(3) An application for revision shall be dealt within the same manner as if it were an appeal under these rules.

(4) No power of revision shall be exercised under this Rule-

(i) by the appellate or revising authority where it has already considered the appeal on the case and passed orders thereon; and

(ii) by a revising authority unless it is higher than the appellate authority where an appeal has been preferred or where no appeal has been preferred and the time limit laid down for revision by the appellate authority, had expired.

Provided that nothing contained in Clauses (i) and (ii) above, shall apply to revision by the President.

(5) No action under this rule shall be initiated by-

(a) an appellate authority other than the President; or

(b) the revising authorities mentioned in item (v) or sub-rule (1)- after more than six months from the date of the order to be revised in cases where it is proposed to impose or enhance a penalty or modify the order to the detriment of the Railway servant; or more than one year after the date of order to be revised in cases where it is proposed to reduce or cancel the penalty imposed or modify the order in favour of the Railway servant.

Provided that when revision is undertaken by the Railway Board or the General Manager of a Zonal Railway or an authority of the status of a General manager in any other Railway Unit or Administration when they are higher than the appellate authority, and by the President even when he is the appellate authority, this can be done without restriction of any time limit.

Explanation- For the purposes of this sub-rule the time limits for revision of cases shall be reckoned from the date of issue of the orders proposed to be revised. In cases where original order has been upheld by the

appellate authority, the time limit shall be reckoned from the date of issue of the appellate orders."

***25-A. Review**

The President may at any time either on his own motion or otherwise review any order passed under these rules when any new material on evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case has come or has been brought to his notice.

Provided that no order imposing any penalty shall be made by the President unless the Railway servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed or where it is proposed to impose any of the major penalties specified in Rule 6 or to enhance the minor penalty imposed by the order sought to be reviewed to any of the major penalties and if an inquiry under Rule 9 has not already been held in the case, no such penalty shall be imposed except after inquiring in the manner laid down in Rule 9, subject to the provisions of Rule 14 and except after consultation with the commission where such consultation is necessary."

Ld. Standing Counsel for the Railways drew our attention to Rule 25 (5) where there is a proviso withdrawing the restriction on General Manager in respect of time limit. Whereas, the ld. Counsel for the Applicant drew our attention to Railway Boards Circulars No. E

(D&A) 79 RG 6-40, dated 18.08.1981 which reads as follows:

“ Once a revision has been done by any of the authorities under Rule 25 no further revision lies to any of the authorities. However, the aggrieved employee has right under Rule 31 to submit a petition to the President of India, which will be dealt with as per Appendix 10 of RII in consultation with UPSC.”

The validity and genuineness of the circular was not disputed by Ld. Standing Counsel for the Railways. The aforesaid circular is further reinforced by Railways under Railway Board Circulars No. E (D&A) 79 RG 6-40, dated 24.11.1982 as under:

“ The above order merely clarifies that once a revision has been done by any of the authorities given in Rule 25, no further revision lies to any of the authorities. Thus despite Rule 25(1) empowering the General Manager and above to revise without time-limit, but even this will not held where the revision has already been conducted by any of the authorities.”

Thus the General Manager by issuance of 2nd show cause notice to the Applicant by way of initiating the 2nd action for revision has not conformed to the Railway Board Circular Nos. E (D&A) 79 RG 6-40, dated 18.08.1981 and E (D&A) 79 RG 6-40 dated 24.11.1982,

which renders his action unsustainable. Hence, 2nd show cause explanation to the Applicant is hereby quashed.

The Applicant had also prayed to direct the Respondent No.2 to dispose of the appeal filed before Respondent No.2. But, since ^{this prayer} ~~the appeal~~ has already been withdrawn, no direction is required to be issued in this regard.

With the above observation and direction, this Original Application is disposed of. No costs.


MEMBER (ADMN.)


CHAIRMAN