

O.A. No. 214 of 2007

Order dated: 26.03.2009

CORAM:

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

Heard Dr. D.B.Mishra, Ld. Counsel appearing for the applicant and Mr. G.Singh, Ld. Counsel for the Respondents.

2. The applicant challenges Annexure-A/3, penalty order dated 17.11.2006, issued against him and also Annexure-A/5, the appellate order dated 13.02.2007.

3. A short facts leading to the case are that while the applicant was working as Technician Grade-I in Jajpur, he was served with Annexure-A/1 memorandum of allegations and imputations, to which the applicant has filed his written statement. However, dissatisfied with the written statement filed by the applicant, Disciplinary Authority, the 2<sup>nd</sup> Respondent, Assist. Divisional Electrical Engineer (TRD), Talcher, Dist. Angul passed an order on 17.11.2006 imposing a minor penalty on the applicant by ordering the stoppage of one annual increment for two years with non-cumulative effect. Aggrieved by the said order, the applicant filed a mercy appeal for review of the penalty/punishment imposed against him before the Sr. Divisional Electrical

10

Engineer (TRD), JJKR. However, on considering the review application, the Sr. Divisional Electrical Engineer (TRD), Khurda Road dismissed the review petition. Under the above circumstances, the applicant approached this Tribunal by filing present O.A.

4. The O.A. has been admitted and notice was ordered against the Respondents and in pursuance to the notice, Respondents have filed a counter reply in which it is stated that the Disciplinary Authority was not satisfied with the explanation filed by the applicant and imposed the penalty of stoppage of increment. The Appellate/Revisional Authority also considered the case and had confirmed the order passed by the Disciplinary Authority. Further, it is stated in the counter that the complete case was put up before the Additional Divisional Railway Manager, the Reviewing Authority, and the ADRM went through the appeal and the complete case and remarked that the charged official has not brought any new ground for meriting any consideration at any level. Hence, the punishment imposed by the Disciplinary Authority is justifiable and tenable in law.

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5. This Tribunal heard the Ld. Counsels for the parties and perused the records produced along with the O.A. as well as the materials placed along with the counter/reply statement.

6. Ld. Counsel appearing for the applicant contended that the applicant received a letter on 19.10.2006 from the 2<sup>nd</sup> Respondent proposing to take an action against him under Rule 11 of the Railway Servants (Discipline & Appeal) Rules 1968 together with imputation of misconduct and misbehavior whereas there is no material before the Disciplinary Authority to conclude that the applicant had committed the mistakes so alleged in the charge. He has contended that even in an inquiry, under Rule 16 of the Rules, being a summary procedure, it is only proper for the Disciplinary Authority and the Inquiry Authority to satisfy with materials to show that the applicant had committed the misconduct as alleged against him. Further, the Ld. Counsel contended that the order passed by the Disciplinary Authority by itself show that the Disciplinary Authority has not applied the mind while considering the charge against the applicant and imposing the penalty of stoppage of one annual increment for two years as there was no material to

show whether the Respondents/Disciplinary Authority has considered any material to come to such conclusion and, that apart, there is no evidence to come to a conclusion that Disciplinary Authority has considered the case of the applicant, which he has projected through his written statement dated 14.11.2006. The Ld. Counsel for the applicant further submitted that in the like manner Appellate/Revisional Authority has also not considered the case put forward by the applicant in his written statement. Ld. Counsel for the applicant contended that without giving any reason, the Disciplinary Authority has passed the penalty order in a cryptic manner and that too with one sentence.

7. However, the above contentions have been answered by the Ld. Counsel appearing for the Respondents, Mr. G.Singh. Relying on the counter/reply statement, it is stated that both the Disciplinary as well as Appellate Authorities had considered the entire materials before concluding the charge against the applicant as has been proved. The Counsel further submitted that the finding entered by the Disciplinary Authority is on his own satisfaction and some materials before the Disciplinary

Authority and hence under the provisions of Rule-3 of the Railway Service Conduct Rules 1966, the charge against the applicant has been proved. Hence, the O.A. has to be dismissed.

8. This Tribunal has considered the rival contentions of the Ld. Counsel for the parties. It is to be noted that as per the imputations and allegations leveled against him, it is stated as under:

“Sri M.R.Panda, Tech. Gr.-I is working under Se/TRD/JJKR since last one year. He is not performing duty satisfactorily and some times he is refusing to perform duty. Other misconduct and misbehavior by Sri Panda are as under:-

1. He is misguiding the Junior staff of the depot.
2. He is creating disturbance in office & field.
3. He is remaining absent unauthorisedly.
4. He has been allotted Railway accommodation and remaining out of Hd. Qrs in Rest without permission from Railway authority. Also he is found to be not available in his room during OHE breakdown/other failure.
5. On 11.10.06, the JJKR/TRD staff moved to CTC along with Sri Panda for attending mock-drilling breakdown. After completion of work, he was advised to accompany tower

wagon upto JJKR. But, he did not accompany.

Thus by the above act Sri M.R.Panda, Tech. Gr-I rendered himself liable for disciplinary action."

A reading of the above imputations and allegations would show that the applicant was misguiding the junior staffs of the Depot, creating disturbance in office and field, he was remaining absent unauthorizedly from the headquarters and Shri Panda also had disobeyed orders of the superior officers. However, it is only stated in finding entered by the Disciplinary Authority at Annexure-A/3 dated 17.11.2006 that "I have decided that you are responsible in the above case and have passed the following orders:- Stoppage of one annual Increment for two years with Non-cumulative effect". Nothing is discernible from this order that the Disciplinary Authority has considered any of the materials to prove the charges leveled against the applicant and the Respondents authority has applied his mind to have such a conclusion in the case and without giving any reason of the finding or any material there, the penalty is now imposed against the applicant.

9. It is the principle of Labour Law rather Service Law that the Disciplinary Authority should give reasons for

28

the order even ~~if it is~~ for imposing minor penalty or major penalty as contemplated under the rules. If any order is unsupported with the reasons, it is only an irregular and illegal order and it cannot stand in the eye of law. It is imperative on the part of the disciplinary Authority to give the item of materials or evidence on which the authority came to the conclusion that the employee had committed any misconduct as alleged in the charge. If a person is imposed with a penalty, it should reflect in the order on what reason or on what finding the penalty is imposed. This is the principle of natural justice and hence as per the judicial pronouncements in catena of cases by the Apex court, this Tribunal is of the view that Annexure-A/3 does not stand in the eye of law and it should be quashed by this Tribunal.

10. When this Tribunal considered the appellate order, it is found that the Appellate Authority has also not considered or given any reason for imposition of penalty as passed by the Disciplinary Authority so as to enable Appellate Authority to confirm the same. However, this Tribunal see that there are some statements contained in the counter reply to show that the Disciplinary Authority as well as Appellate Authority has "gone through the entire case"

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but the counter also is not giving any reason for passing the impugned order or the materials upon which the authorities have passed impugned order.

11. In the above circumstances and on the finding entered by this Tribunal, the O.A. is allowed by quashing Annexure-A/3, punishment order, as well as Annexure-A/5, appellate order without any order as to costs.

✓ APPAY

MEMBER (J)

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