Central Administrative Tribunal
Calcutta Bench

OA 368/96 26-9-2002

Present : Hon'ble Mr.S.Biswas, Member(A)
Hon'ble Mr.S. Raju, Member(J)

K.K. Jha

-Vs-

CLW

For the applicant : Mr.B.Chatterjee, Counsel
For the respondent : Mr.M.K. Bondyopadhyay, Counsel with Sh. R N DAS

ORDER

Mr.S.Raju, Member(J) :

The applicant impugned respondents order dated 6-2-96 enhancing the punishment order withholding of next annual increment for one year with cumulative effect to reduction from the post of Electrical Fitter Gr.II to Elec. Fitter Gr.III borne in the cadre as on 14-4-89. The applicant sought quashing of the order with all consequential benefit.

2. The applicant was proceeded against for a major penalty and by an order dated 14-4-89 was reduced from the post of Electrical Fitter Gr.II to Elec. Fitter Gr.III on pay Rs1300/- p.m. from pay Rs1380/- in the scale of Rs950-1500/- reckoning the seniority at the top of all the existing Elec. Fitter Gr.III.

3. The applicant preferred an appeal to the appellate authority. On which the punishment was modified to withholding of one increment for a period of one year with cumulative effect vide order dated 7-7-89.

4. The respondents by an order dated 21-6-94 issued by General Manager/CLW as a revising authority issued a show cause notice proposing to enhance the penalty by reducing from the post of Electrical Fitter Gr.II to Elec. Fitter Gr.III on pay Rs1300/- p.m. from pay Rs1380/- in scale Rs950-1500/- reckoning the seniority at

the top of all the existing Electrical Fitter Gr.III borne in the cadre as on 14-4-89. Thus the applicant has filed the present OA.

5. The learned counsel for the applicant vehemently stated that as per the maximum time limit to review the penalty or the order of the appellate authority is 6 months from the date of passing the order and as the order reviewed is dated 7-7-89 and show cause notice was issued on 21-6-94 and revised order was passed on 6-2-96. Thus the order dated 6-2-96 is not tenable. He also states that revising authority while issuing show cause notice should have considered all facts and could minimise his hardship, which is not done in the present case. Lastly, the counsel for the applicant stated that as per provision under RS (D&A) Rules, 1968 permanent reduction without specifying the period is illegal, arbitrary and in utter violation of rules.

6. On the other hand, respondents denied the contention of the of the learned counsel relying upon Rule 25(5) contended that the General Manager as the Revisioning Authority can call for any DA case and revise the penalty either enhancing or reducing the penalty without any time limit. It is contended that the appellate authority i.e. Dy.CEE & Appellate Authority is lower than the GM. As such the proposal to enhance the penalty has been rightly mooted.

7. We have carefully considered the rival contentions of the parties and perused the documents on record.

8. In so far as plea of time limit of enhancement of penalty in revision is concerned, the same would not be attracted in view of Rule 25(5) of RS (D&A) Rules, 1968, which stipulates that if the GM undertakes the revision of an order passed by a lower authority in appeal. Admittedly, GM is higher than the Dy.CEE and on this count the alleged punishment cannot be challenged. However, another aspect of

the case which has been overlooked by the Divisional Authority their own letter issued by the Railway Board reiterated lastly on 12-12-72, wherein it has been laid down that where an employee has already undergone the original penalty in whole or in part, this fact would be taken into account by the reviewing/appellate authority when deciding upon the higher penalty, so that unintended hardship is not caused to the employee and alternatively, the feasibility of cancelling the original penalty while imposing the higher penalty may be considered.

9. Moreover, as per the Railway Board's Circular dated 30-7-64 and 26-5-70 states that in the event of reduction to lower grade the order of penalty under Rule 6 of the RS(D&A)Rules, 1968, it is incumbent upon the authority to be very specific while revising the order. In the revised order dated 6-2-96, we do not find any such findings recorded by him on this count, thus the penalty is vitiated.

10. By an order passed by this Tribunal, the operation of the impugned order has been stayed. As such the applicant has not been reduced.

11. In view of above, we find that the order is not legally sustainable and we quash and set aside the impugned order. However, the respondents are not precluded to issue fresh order, keeping in view their own circulars within a period of 3 months from the date of receipt of the order. No costs.

S.Raju
(S.Raju)
Member(J)

S. Biswas
(S.Biswas)
Member(A)