

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

O.A.NO.297 OF 2004

December 15, 2004.

**CORAM : HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN &
HON'BLE MR. G.R. PATWARDHAN, MEMBER (A).**

Heera Singh S/o Shri Jagannath Singh, Age 60 years, R/o Plot No.1, Mahalaxmi Colony, Kesharganj, Satpur, District Sirohi. Retired as PWM, N.Western Railway, S.S.E., Abu Road.

..... Applicant.

By: Mr. Kuldeep Mathur, Advocate.

Versus

1. The Union of India, through the General Manager, Northwestern Railway, Jaipur.
2. Divisional Railway Manager, Northwestern, Railway, Ajmer.

By: Mr. Vinay Jain, Advocate.

...Respondents.

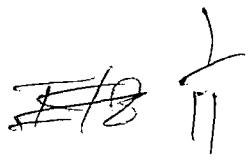
O R D E R (oral)

KULDIP SINGH, VC

The applicant has filed this O.A. seeking quashing of Memorandum (charge sheet) dated 16.4.2002 (Annexure A-1); order of punishment dated 29.5.2002 (Annexure A-3); letter dated 17.6.2003 (Annexure A-5) and letter dated 21.8.2003 (Annexure A-9).

The facts in brief are that the applicant was proceeded departmentally on the allegations that despite specific directions, the applicant had reported for duty late on 22.3.2002. The

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machine disturbed the tracks but despite being present at the work place he did not go for repair of track, which is misconduct. He submitted a reply to the charge sheet (Annexure A-2) which was rejected on 26.4.2002 and the department imposed the penalty of reduction to a lower stage in time scale of pay for a period of three years without cumulative effect whereby his basic pay was reduced from Rs.4750/- P.M. to Rs.4500/-PM (Annexure A-3), dated 29.5.2002. The applicant pleads that as per rule 6(III)(b) of Railway Servants (Discipline & Appeal) Rules, 1968 (for short "The Rules"); such type of penalty can be imposed only without effecting adversely pension of an employee. But this penalty has affected adversely his pensionary benefits, DCRG, leave encashment and commutation also. The applicant further pleads that since the penalty was imposed on 29.5.2002 and the applicant retired on 30th April, 2003, so the punishment was to have effect till 1st of January, 2006 as the penalty starts from 1.1.2003. Since this penalty has the effect of adversely effecting the pensionary benefits, therefore, the applicant submitted an application under rule 25(2)(i) of The Rules, praying for review of the order but the respondents treated it as an appeal and rejected the same holding that the appeal has been filed beyond the period of limitation and also holding that the appeal does not lie before the General Manager, therefore, the appeal may be preferred to the Divisional Railway Manager. He was so advised by the impugned order, Annexure A-5).



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Thereafter, the applicant made another application stating therein that it was an application under rule 25(2) of the Rules and not an appeal under rule 18 of the Rules and as such the same is maintainable before the General Manager. Though the application was submitted to the General Manager, but the Divisional Railway Manager disposed ^{of} ~~the same, of~~. It is further stated that the applicant further submitted an application on 12.5.2002 but the same is pending before the General Manager for compassionate consideration and decision. The applicant submitted another application vide Annexure A-7 for expeditious disposal of the same but nothing has been heard. However, it has been intimated by the DRM by letter-dated 21.8.2003 (Annexure A-9) that the appeal is barred by time. Thus, the applicant has prayed for quashing the same.

The respondents are contesting the Original Application. They plead that since the applicant has challenged the issuance of the charge sheet and the order dated 29.5.2002 by which the penalty was imposed, so the same has become time barred, as the applicant should have preferred it within one year from the date of the order. It is apparent that applicant had submitted an application under rule 25(2) of the Rules, before the General Manager, North Western Railway, Jaipur but the same is not maintainable and the applicant should have filed an appeal before the appellate authority within 45 days but instead of filing such appeal, he has moved an application under rule 25(2)(1)

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for review and since there is no provision for submitting application under rule 25(2) of the Rules, therefore, under this rule the Reviewing authority can review the order of Disciplinary Authority after expiry of limitation of appeal i.e. after 45 days from the date of penalty, therefore, this rule is not applicable on applicant rather it is a discretion of reviewing authority. Hence, it is prayed that the O.A. filed by the applicant may be dismissed.

We have heard learned counsel for the parties and have gone through the record of the case.

As regards the rule position, the learned counsel for the applicant has referred to the provision of Revision & Review as enshrined under Chapter VIII of Discipline, Appeal & Conduct Rules. Referring to rule 25(2) of The Rules, it is submitted that under its provisions no proceedings for revision shall be commenced until after expiry of the period of limitation for an appeal; or the disposal of the appeal where any such appeal has been preferred. He submits that the reading of rule 25(2) of The Rules postulates that the revision petition can be filed after the expiry of the period of limitation for appeal and if appeal had been filed, after disposal of the appeal. Thus, it postulates two eventualities that even without preferring an appeal, but after the expiry of period of limitation for an appeal, the revision petition can be filed. The counsel for the applicant then also referred to Railway Board's decision dated 2.12.1986 as

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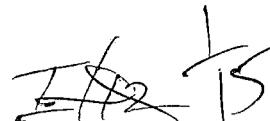
mentioned in the Digest of Discipline Appeal and Conduct Rules written by B.S.Mainee and published by Bahri Brothers, 7th edition. The same being relevant is reproduced as under:

"time Limit: - The time limit for preferring of Revision Petition under Rule 25 by the railway servant is the same as laid down for preferring appeals under Rule 20 i.e. 45 days from the date of the delivery of the order sought to be revised in cases, where no appeal was preferred against the order of the disciplinary authority this time limit of 45 days shall be reckoned from the date of expiry of the period of limitation for submission of appeal. The Revisionary authority may entertain the Revision petition after the expiry of the aforesaid limitation period if it is satisfied that the petitioner had sufficient cause for not preferring the petition in time. (emphasis supplied)

(R.B's.No.E(D&A) 84/RG 6-44 dated 2-12-86 (N.R.,S.N.,8128)."

By relying upon this Railway Board's letter dated 2.12.1986, learned counsel for the applicant submitted that this permits the railway servants to file a revision petition even in those cases where no appeal was preferred in time and the Revisional Authority is empowered to entertain the revision petition by condoning the delay if it is satisfied that the delay was on account of sufficient cause. But in this case though the applicant made a revision petition to the competent authority i.e. General Manager of the North-Western Railway, Jaipur but it appears that the same has not been placed before the General Manager and the DRM has passed order dated 21.8.2003 indicating that the appeal filed by the applicant is barred by the limitation and the same is not maintainable and stands rejected on this ground. A conjoint reading of the Rule 25(2) of the rules and the Railway Board letter dated 2.12.1986 goes to show that even if there is no appeal preferred by the railway servant, even then revision

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petition can be entertained and it is for this reason that the revisional authority can entertain the revision petition even after the expiry of the aforesaid limitation if the revisional authority is satisfied that the petitioner has sufficient cause for not preferring the petition within the period of limitation. The applicant in his revision petition is stated to have disclosed the reasons as to why he could not file an appeal / revision petition in time and therefore, it is for the revisional authority itself to decide and not for the DRM who has passed the impugned order. Thus, we find that the impugned orders, Annexures A-5 and A-9 as passed by the DRM, Ajmer, are without jurisdiction as the DRM, Ajmer has no jurisdiction to deal with the revision petition filed under rule 25 (2) of the rules. The above orders, Annexures A-5 & A-9 having been passed without jurisdiction, are liable to be quashed. Accordingly, the same are quashed and set aside with the directions that the revision petition filed by the applicant be placed before the General Manager, who shall decide the same within a period of 3 months from the date of receipt of copy of this order, in accordance with the rules and instructions on the subject.


(G.R. PATWARDHAN)
MEMBER (A)


(KULDIP SINGH)
VICE CHAIRMAN

December 15, 2004.

HC*

~~Hotel 186
Part II & III
by P.M.G.~~

~~Part II & III
not now required
not required
not required
J.D.~~

Part II and III destroyed
in my presence on 31/10/13
under the supervision of
section officer (J) as per
order dated 18/10/2013

D.R. Srinivas 31.10.2013
Section officer (Record)