

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Application No. 161/2003
Date of Decision : this is the 15th day of July, 2004

Hon'ble Mr. M.L.Chauhan, Judicial Member

Hon'ble Mr. M.K. Misra, Administrative Member

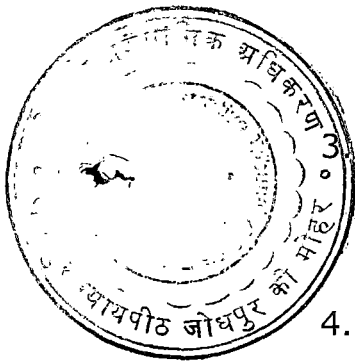
Ashok Sharma aged about 37 years
S/o Shri Meetha Lal Sharma, by caste Brahmin,
Resident of C-45, Rajiv Nagar, Jodhpur,
Presently working as Clerk, Engineering Branch,
DRM Office, North Western Railway, Jodhpur.

.....Applicant.

(By Mr.N.R.Choudhary, Advocate for the applicant)

Versus

1. The union of India through the General Manager
North Western Railway, Jaipur.
2. The Divisional Railway Manager, North Western
Railway, Jodhpur Division, Jodhpur.



Divisional Personnel Officer, North Western
Railway, Jodhpur Division, Jodhpur.

4. Assistant Personnel Officer, North Western Railway
Jodhpur Division, Jodhpur.

.....Respondents.

(By Mr. Manoj Bhandari, Advocate, for respondents)

Order
(By M.L.Chauhan)

The applicant has filed this O.A. thereby praying that the
impugned order dated 2.1.2003 (Annex.A/1) passed by the

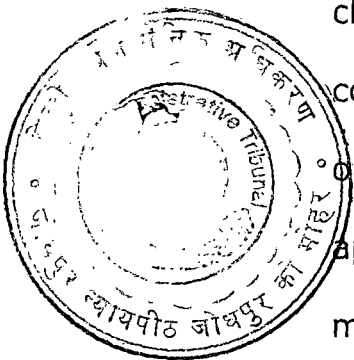
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appellate authority be quashed and set aside and in the alternative, the order dated 26.8.1998 issued by the respondent No. 4, the order dated 19.5.1999 issued by the respondent No. 3 and the order dated 19.5.1999 (Annex.A/10) which merged in the order dated 21.9.1999 and got quashed and set aside by the order dated 24.5.2002 by this Tribunal, be treated as if they were never passed. The applicant be reinstated on the post of Senior Clerk in the same pay scale and in the same cadre from which he was reverted.

2. The facts of the case are that applicant while working as Senior Clerk was issued a Memorandum dated 8.5.1998 (Annex.A/3) for major penalty under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 (for short 'the rules'), for the alleged violation of Rule 3 (1) (i) (ii) (iii) of Railway Servants (Conduct) Rules 1966 (for short the 'Conduct Rules'). The charge against the applicant was that he misbehaved using abusive and objectionable language when he was called upon by the Assistant Personnel Officer to explain his conduct on 28.4.1998. He is also alleged to have conducted himself in an objectionable manner when memo was served on him on 28.4.1998 by one Shri Ghanshyam Sharma, Confidential Assistant. Ultimately, the chargesheet held to be proved by the inquiry officer after holding an oral inquiry. The disciplinary authority vide order dated 19.5.1999 (Annex.A/2) imposed upon the applicant, a penalty of removal from service. In appeal, the appellate authority i.e. the Divisional Railway Manager modified

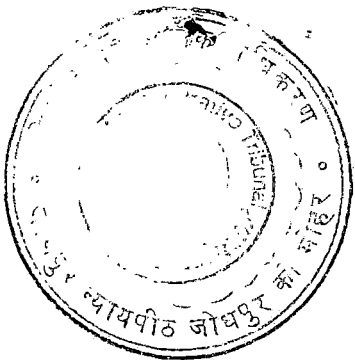


the penalty by reducing the same from removal from service to that of reduction in lower grade from Rs 4500-7000 to the grade of Rs. 3050-4590 permanently with pay at Rs. 3350/- per month. It was further mentioned that applicant shall be posted out of his cadre and for this promotion to the post of Senior Clerk he will have to qualify in the suitability test. As a result of this order the applicant was posted to work under the Senior Section Engineer, Samdari, i.e. he was shifted from the cadre of Personnel Branch to the Engineering Branch. The said order was challenged by the applicant by filing O.A. No. 251/2000 before this Tribunal. After noticing the contentions raised by the applicant that the chargesheet was void ab initio mainly for two reasons i.e. while cancelling the earlier chargesheet, no reasons have been disclosed. As such, the chargesheet is illegal and two chargesheets cannot be issued on the same charge and secondly, the chargesheet has been issued by the Assistant Personnel Officer, who is not competent to issue major penalty chargesheet to the applicant. This Tribunal while dealing with the contentions raised on behalf of the applicant passed a reasoned order and did not agree with the contentions raised by the applicant and held that the plea raised by the applicant has no merit and the case cited by the learned counsel for the applicant is of no help to him. Also that the Assistant Personnel Officer who is a Group 'B' Officer can under the rules initiate the disciplinary proceedings even relating to major penalties. This part of the finding finds mentioned at paras 9 and 10 of the judgement which has been annexed with the reply as Annex.R/2.



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The Tribunal in earlier O.A. has also noticed the contention of the applicant that the order of the penalty passed by the appellate authority is defective. The contention of the applicant that he did not get adequate opportunity during the inquiry, it was categorically held by this Tribunal in para 11 that there is no evidence on record to prove that aspect of the case. Even this point was not pressed by the learned counsel for the applicant during the arguments. The Tribunal after noticing that the appellate authority has passed the order after giving an opportunity of personal hearing to the applicant reproduced the operative part of appellate order in para 11 of the judgement and after examining the same as well as the next paragraph which mentions that 'it has been decided to post the applicant out of personnel branch' held that next paragraph cannot be read as part of the order of penalty as such, this portion is required to be omitted from the penalty. It was further observed that the appellate authority has imposed the penalty which is not covered under rule 6 (vi) of the Rules of 1968. There is no provision under this rule that authority imposing penalty while ordering reduction to a lower time scale of pay, grade, post or service can also direct that as to at what stage the pay of the charged official in the lower grade shall be fixed or the orders states that applicant's pay is reduced to lower grade permanently. Thereafter, this Tribunal held that there is a contradiction in terms of the penalty imposed by the appellate authority and as stipulated in rule 6 (vi) of the Rules and concluded that order is defective in parts while it is in order in



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other aspect. Another infirmity found by this Tribunal in the earlier O.A. was that the intervening period from 29.4.1998 to 2.6.1998 during which period, the applicant was under suspension, cannot be treated as dies non. Thus from the discussions made in the judgement in last portion of para 12, the Tribunal had held as under :-

"12..... . From the discussion aforesaid, we find that order of the appellate authority suffers from various infirmities, while imposition of a penalty is warranted in this case, but the order of the appellate authority is not sustainable." (Emphasis supplied to the underline).

Then, in the last para, the Tribunal passed the following order :-

"13. We, therefore, allow this O.A. partly. We quash and set aside the order of the appellate authority dated 21.9.99 (Ann.A/3). However, the appellate authority is free to pass a fresh order under the rules and as per law. The same shall be done within a period of one month from the date of receipt of a certified copy of this order. No order as to costs."

3. Thereafter, the appellate authority has passed a fresh order dated 2.1.2003 (Annex.A/1) which is under challenge in this O.A. thereby imposing the penalty as mentioned in Annex. A/1. The respondents have filed a detailed reply. It has been stated that the Tribunal has opined that the order of the appellate authority was not proper and the same was quashed. It was directed by the Tribunal that appellate authority is free to pass a fresh order under the rule as per law, therefore, the appellate authority considered the entire aspect of the matter and has passed a fresh order which is in accordance with rule.

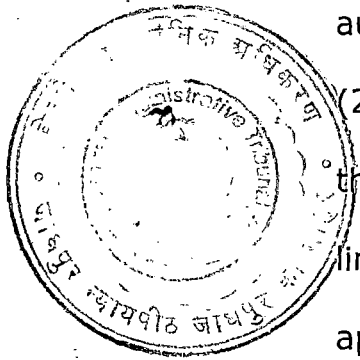


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4. We have heard the learned counsel for the parties and perused the material placed on record.

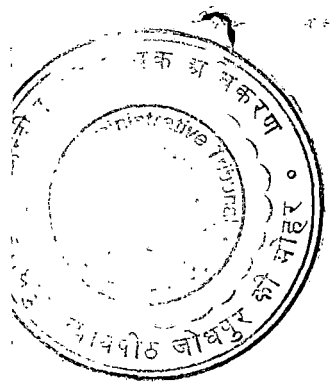
5. Though, the applicant has raised all available contentions including the contention which was raised by him in earlier O.A. and on merit also but in view of the judgement given by this Tribunal in O.A. No. 251 of 2000 decided on 24.5.2002 it is not permissible for the applicant to raise such contentions on merit as well as the order has not been passed by the appellate authority in conformity with rule 22 (2) of the rules. As already stated above, the case of the applicant was rejected on merit and the case was remitted to the appellate authority as according to this Tribunal, the order of the appellate authority suffers from various infirmities while imposing penalty and as such the order of the appellate authority is not sustainable. Thus the order of the appellate authority was not quashed and set aside on merit and also on the point that the appellate authority has not passed the order in conformity with the rule 22 (2) of the rules. This Tribunal in earlier judgement, after finding the applicant guilty of the charge, has remitted the case only on limited ground that the penalty has not been imposed by the appellate authority in conformity with the provisions of rule 6 (vi) and also that the period of suspension w.e.f. 29.4.1998 could not have been treated as 'dies non' and liberty was given to the appellate authority to pass a fresh order under rule and as per law. Accordingly, the appellate authority has passed a fresh order which according to us meets the requirement of rule 6 (vi)



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of the rules and also that the period of suspension which was earlier treated as 'dies non' was regularised and it was further observed that the said period shall be counted for the purpose of pensionary benefits. The learned counsel for the applicant could not satisfy us as to how the fresh order passed by the appellate ^{authority} ~~order~~ pursuant to the earlier judgement does not meet the requirement of provision of rule 6 (vi) of the rules except only to the limited extent that vide Annex. A/1 under last part of para 1, it has been mentioned that the order of penalty thereby reducing the applicant's pay to the lower time scale of pay shall be operated from retrospective date i.e. from the date of removal from service. According to us, there is substance in the submission made by the learned counsel for applicant that such order should not have been given retrospective effect especially when the order of the appellate authority was quashed by this Tribunal and he was not incurring any infirmity till fresh impugned order Annexure A/1 was passed. On that account, the entire order cannot be set aside. It has been held by the Apex Court that where the order is severable and effect can be given to such order, the entire order need not to be set aside. In the instant case, the impugned order Annex. A/1 was issued on 2.1.2003 as such, the order of penalty can be given effect to prospectively from the date of issue instead of the date of imposition of penalty of removal from service by the disciplinary authority. Accordingly, the respondents are directed to give effect to the penalty as mentioned in para 1 from the date of issue of the order w.e.f. the date 2.1.2003 instead from the date



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of passing of the order of removal. To that extent the O.A. shall stand allowed.

6. The matter is also no longer res integra on this point. The Apex Court in the case of R. Jeevaratnam Vs. State of Madras reported in AIR 1966 SC 951 has held that where the order is severable, the Court has power to give effect to the valid order. In that case, the order of dismissal was passed with retrospective effect. The Apex Court held that the order of dismissal with retrospective effect is in substance an the order of dismissal as from the date of the order with the superadded direction that the order should operate retrospectively as from an anterior date. The two parts of the order are clearly severable. Assuming the second part of the order mentioning that dismissal would operate retrospectively is invalid, there is no reason why the first part of the order starting that the appellant is dismissed, should not be given the fullest effect. Thus the ratio as laid down by the Apex Court in R. Jeevaratnam's case is squarely applicable in the instant case also.



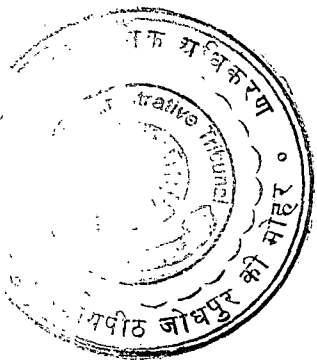
7. The learned counsel for the applicant has also argued that the order of reduction in lower scale and fixation of the pay at maximum in the lower scale of Rs. 3050-4590 amounts to double punishment as such, the order cannot be sustained. The contention raised by the learned counsel for the applicant deserves outright rejection in view of the law laid down by the

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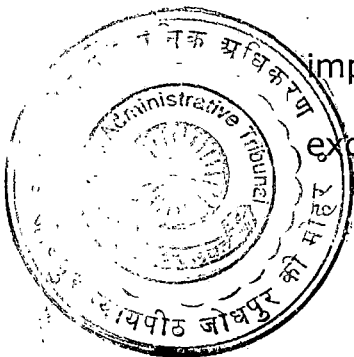
Apex Court in the case of Union of India and Anr. Vs. V. G. Veerasamy, where the applicability of the Rule 6 of the Railway Rules, 1968 was challenged under which rule, the punishment has been imposed on the applicant. In that case the disciplinary authority imposed a penalty of compulsory retirement. However, the appellate authority modified the punishment as one of reduction to a next lower scale viz. Rs. 1200-2040 for a period of eighteen months and the pay of the employee was fixed at Rs. 1500/- in the scale of Rs. 1200-2040. On appeal, Tribunal while upholding the reduction in rank strike down the order fixing the pay at Rs. 1500/- on the ground that it resulted in double punishment. The matter was carried to the Apex Court. The Apex Court held that in terms of rule 6 of Railway Rules, the disciplinary authority has to fix the pay in accordance with rule 1322 of the Establishment Code. Therefore, the Tribunal erred in holding it to be a case of double punishment. Thus, the contention raised by the learned counsel for the applicant is squarely covered by the decision of the Apex Court in the case of Union of India and Anr. Vs. V. G. Veerasamy. Reported in JT 2002 (6) SC 85. Rather the instant case is on better footing. In the case before Apex Court the pay of the Railway servant was fixed on the lower post at Rs. 1500/- in the scale of Rs. 1200-2040 whereas, in the instant case pay of the applicant in the lower post in the scale of Rs. 3050-4590 was fixed at the maximum of that scale viz. Rs. 4590/-.

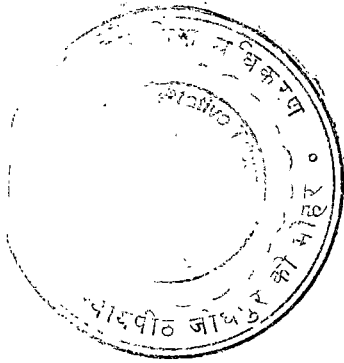
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8. Further, the learned counsel for the applicant while drawing our attention to para 5 of the impugned order dated 2.1.2003 (Annex. A/1), submitted that the seniority of the applicant in the cadre of Clerk has been forfeited by the department. We have perused para 5 of the impugned order. Nothing has been mentioned that in the cadre of Clerk seniority of applicant will be forfeited. However, as per para 2 of the impugned order, it has been mentioned that reduction to lower time scale will have effect of seniority and pay which necessarily means that on repromotion the applicant will not regain his past seniority and pay in higher post prior to his reduction. This is in conformity with rule 6 (vi) of the Rules. It cannot be construed that on account of para 2 the seniority of the applicant in the lower post i.e. Clerk will be forfeited. The apprehension of the applicants seems to be misconceived.

9. No other contention has been raised on behalf of the applicant regarding infirmity in the impugned order Annex.A/1. At this stage, it may also be relevant to mention that once the Tribunal in the earlier judgement in para 12, relevant part of which has been reproduced in earlier part of this judgement, has held that 'imposition of penalty is warranted' and this judgement was attained finality, it is not permissible for us to interfere regarding quantum of penalty. In any case penalty imposed by the appellate authority cannot be said to be highly excessive and disproportionate to the gravity of charge so as to




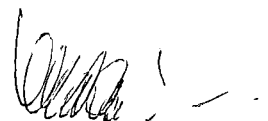


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warrant our interference. Accordingly, the O.A. is disposed of in the aforesaid terms with no order as to costs.


[M.K. Misra]
Adm. Member


[M.L. Chauhan]
Judl. Member

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21/07/04

Received
copy 22/11/04
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Part II and III destroyed
in my presence on 25/10/13
under the supervision of
section officer () as per
order dated 18/10/13

D.R. Sharma
Section officer (Record) 25.10.2013