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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, Jodhpur**

Original Application No. 258/2005

Date of decision: 12.12.2008

Hon'ble Mr. N.D. Raghavan, Vice Chairman

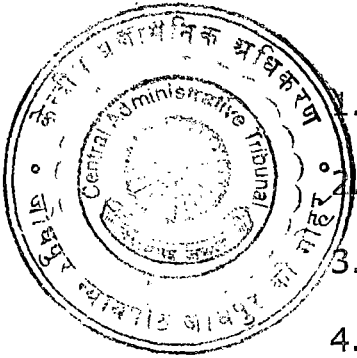
Hon'ble Mr. Tarsem Lal, Administrative Member.

Bhanwar Lal Chouhan, S/o Shri Gishu Lal ji aged about 51 years, r/o House No. 564, Inside Nagouri Gate, Main Fort Road, Jodhpur, Distt. Jodhpur (Rajasthan) Ex. HTTE in the office of DCTI, North Western Railway, Railway Station, Jodhpur, Distt. Jodhpur. (Rajasthan).

: applicant.

Rep. By Mr. S.K. Malik : Counsel for the applicant.

VERSUS



1. Union of India, through the General Manager, North Western Railway, Jaipur, (Rajasthan)
2. Additional Divisional Railway Manager, North Western Railway, Jodhpur Division, Jodhpur (Rajasthan)
3. Divisional Commercial Manager, North western Railway, Jodhpur Division, Jodhpur (Rajasthan)
4. Chief Commercial Manager, North Western Railway Headquarters Office, Jaipur.

: Respondents.

Rep. By Mr. Manoj Bhandari ; Counsel for the respondents.

ORDER

Per Mr. Tarsem Lal, Administrative Member.

The applicant has filed this O.A and prayed for the following reliefs:

" 8.(a) By an appropriate order, writ or directions, respondents may be directed to produce the complete records of Disciplinary Enquiry proceedings against the applicant before this Hon'ble Tribunal for its perusal.

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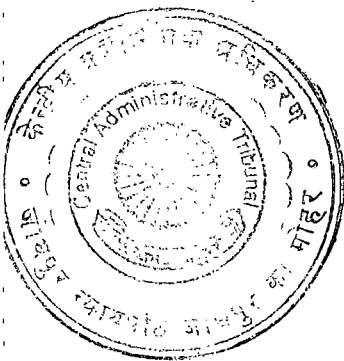
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(b) By an appropriate writ, order or direction, impugned orders Nos. CG 506-T/Loose/ Misc./98 dated 19th March 2004 (Annex. A/1) passed by respondent No 3 impugned order no. CG 506-T/Loose/Misc./98/X dated 19th June 2004 (Annex. A/2) passed by Respondent No. 2 and impugned charge sheet dated 28-30 Aug. 1999 (Annex. A/3) by which applicant have been awarded penalty of dismissal from service be declared illegal and be quashed and set aside by this Hon'ble Tribunal.

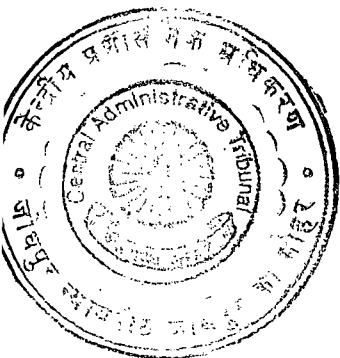
(c) By an appropriate writ, order or direction, if during pendency of this Original Application, any order is passed on the Appeal under Rule 24 of RSDA Rules, 1968, of the applicant the same may be declared illegal and be quashed and set aside by this Hon'ble Tribunal.

C (a) by an order or direction the impugned order dated 07.08.2006 Annex. R/11 be declared illegal and be quashed and set aside."

2. The facts as relevant to the case are that the applicant was appointed as Signaller on 17.12.1975, in the pay scale of Rs. 260-430. Subsequently, he was promoted as HTTE in the pay scale of Rs. 1400-2300 with effect from 01.08.1995. While he was working as HTTE, the applicant was issued a charge sheet with S.F.5, for Major penalty by respondent No. 3 vide his letter dated 30.08.1999 (Annex. A/3). The allegations contained in the charge sheet were (a) despite transfer order of the employee from Jodhpur to Samdari on administrative grounds made on 07.08.1998, he did not join duty their till 27.08.1999; (b) that from the date of issuance of charge sheet on 07.08.1999, employee unauthorisedly remained absent upto 27.08.99; (c) employee had not deposited MRs of Rs. 153/- and EFT returns upto June 1998 till issuance of Charge sheet; (d) employee after relieving from Samdari on 07.08.98 has not deposited Local EFT Book No. 325701 to 325750 till issuance of charge sheet by which some EFT's might have been misused by him.



3. The applicant fell sick and he was under treatment of Railway Doctors upto 27.08.99. He has submitted RMCs and PMCs for the period from 07.08.98 to 27.08.99. The applicant had also deposited EFT returns for the month of June 1998 and MRs amounting to Rs. 153 for May 1998 vide MR No. 672377, timely in the Office of DCTI which is evident from their letter dated 30.08.1999.(A/5) . As the applicant did not get any relief from the Railway doctors, he was referred to MG Hospital Jodhpur by the Railway doctors. The applicant submitted an application dated 04.03.2000 to Respondent No. 3 stating that that till date his father is sick (A/6).



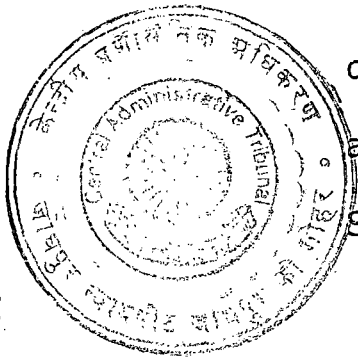
4. In the meanwhile, one Mr. Yogendra singh CMI was appointed as Inquiry Officer to inquire into the charges framed against the applicant. The applicant was sick at that time and he was admitted in the Central Hospital Northern Railway, New Delhi on 15.12.2000 and from there he was referred to AIIMS New Delhi on 26.12.2000. Thereafter, on 08.02.2001, the applicant was informed that a charge sheet was issued through registered post but the same was received back and it was pasted on his quarter by two employees as he was absent from working place since long. The respondent No. 3 asked the applicant to submit his reply to the charge sheet within 15 days failing which ex parte- decision will be taken in the matter.

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5. Lastly the respondents ordered for a medical board vide their letter dated 21.05.2001 and on the same date he was given 'Fit' certificate and he was shown under treatment from 18.02.2000 to 21.05.2001. The applicant vide his application dated 28.05.2001, submitted his medical certificates of his sickness w.e.f. 28.01.2000 to 01.03.2001. The respondent no.3 vide his letter dated 29.05.2001 instructed the applicant to report to the Station Superintendent, Samdari and he was issued with a special duty pass from CTI Jodhpur vide letter dated 29.05.2001.

6. The applicant claims that he deposited the money value book for the month of August 1998 along with EFT returns as per the details mentioned in his letter dated 30.05.2001 (A/15). The applicant resumed duty on 30.05.2001 in the office of Station Superintendent, Railway Station Samdari.



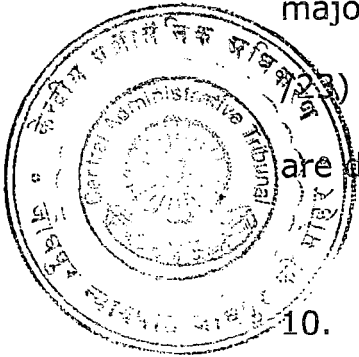
7. The applicant was served with a charge sheet dated 20.07.98/29.05.2001 for minor penalty containing the charges for submitting monthly EFTs return late and not submitting MRs for the month of May 1998 pertaining to Rs. 153/- despite the fact that the applicant had already submitted the same in the office of R.3 on 30.08.99(A/5).

8. The applicant submitted an interim reply to the charge sheet vide his reply dated 08.06.2001(A/21) Thereafter the inquiry officer vide his letter dated 24.02.2002 informed the Station

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superintendent Railway Station Samdari to direct the applicant to attend the inquiry on the date mentioned therein. He further stated that he was informed by COM/CNL and CTI Jodhpur, that the employee is under RMC but on 07.01.2002 he was absent and one more chance will be given to plead his case on the above mentioned date and if he failed to attend ex parte decision will be taken.

9. However, the respondents vide his letter dated 10.04.2003, (A/22) dropped the charges leveled in the charge sheet for minor penalty with the reasons that the same are repeated in SF 5 for major penalty. The applicant vide his letter dated 25.04.2003 (A/23) submitted that since the charges leveled against him in SF 11 are dropped he was exonerated of the same.



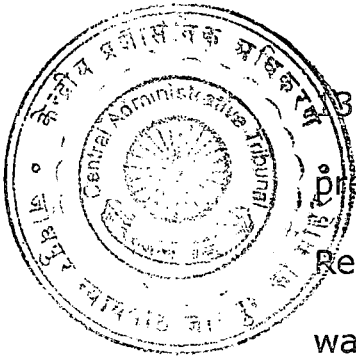
10. He further submitted that despite submitting RMCs and PMCs and dropping of charges mentioned in SF 11, the Inquiry Officer proceeded against the applicant vide his letter dated 11.10.2003, (A/24) when he joined duty as per the orders of the competent authority. The applicant submitted an application of bias against the inquiry officer to the Divisional Railway Manager vide his letter dated 22.10.2003 (A/26). Thereafter the inquiry officer informed the applicant vide his letter dated 13.01.2004 (A/27) that he should attend the inquiry on 28.01.2004 with all the documents.



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11. The inquiry officer proceeded against the applicant and without supplying the copy of inquiry report, respondent No. 3 imposed the penalty of dismissal from service vide his order dated 19.03.2004 (A/1).

12. Aggrieved by the above impugned order dated 19.03.2004 (A/1), the applicant had submitted a detailed appeal on 03.05.2004 along with the annexures mentioned therein. However, respondent No.2 without considering the legal position and the points raised by the applicant in his appeal dismissed the appeal vide his order dated 09.06.2004 (A/2).



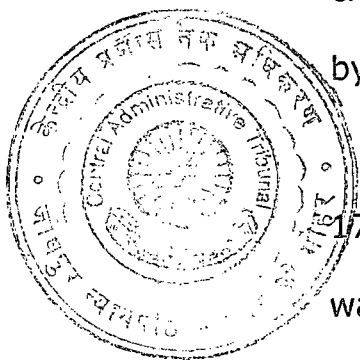
13. Aggrieved by the impugned order dated 09.06.2004, he preferred a detailed appeal along with important annexures to Respondent no. 1 under Rule 24 of R.S (D & A) Rules, 1968 which was received by the respondent No.1, on 23.07.2004 (A/32).

14. After filing, the present O.A, the respondent no. 4 vide impugned order dated 07.08.2006(A/4) rejected the appeal/revision of the applicant contrary to rules and without any authority of law. However, the same was not communicated to him but was annexed with reply to the instant O.A. Aggrieved by the above, the applicant has filed this O.A and prayed for the reliefs mentioned in para (1) above.



15. The respondents have contested this O.A. inter alia pleading that the charge sheet was issued to the applicant on 28.08.99 and the same was sent through registered post on the address of the railway quarters allotted to him. But the same was returned by the postal authorities with the remarks that the addressee is not available in spite of repeated visits of the postman on 17.09.99 and 23.09.99 at about 15.30 hrs. Thereafter the charge sheet was pasted at this quarter in the presence of two witnesses as required under RS (D & A) Rules.1968.

16. In the mean while the applicant filed O.A. No. 212/98, challenging his transfer to Samdari. The said O.A was dismissed by this Tribunal vide order dated 10.02.2000 (R/2).



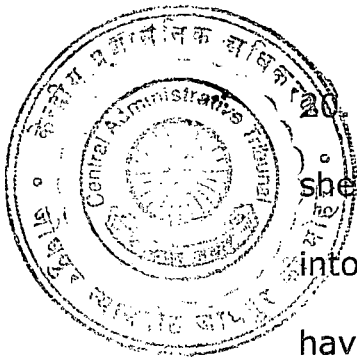
17. There was serious complaint against the applicant while he was working as conductor in train No. 4809 Jaisalmer- Jodhpur, a foreign tourist made a complaint against sexual abusement involving moral turpitude and with an intention to outrage the modesty of lady passenger and this was not the first time that a complaint was lodged against the applicant and in the past also two cases were registered in the court of Railway Magistrate Jodhpur vide case No. 540/90 Sec. 190 of Indian Railway Act, 1890 and case No. 541/90 Sec. 354 IPC.

18. It is wrong to contend that the applicant submitted PMC for the period beginning from 7th Aug. 1988 to 27th Aug. 1999. As per

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record of the respondents no PMC had been submitted by the applicant and he did not even mention about the same before the Inquiry Officer. In such circumstances, the contention raised by the applicant is absolutely baseless.

19. The applicant was spared on 07.08.98 after his removal order but he did not deposit the EFT till 08.08.98, whereas he should have deposited the same on the same date. It was reported by the CTI Jodhpur that the applicant was in the habit of submitting EFTs after the scheduled time and had also not submitted MR of May 1998 till 15th July 1998.



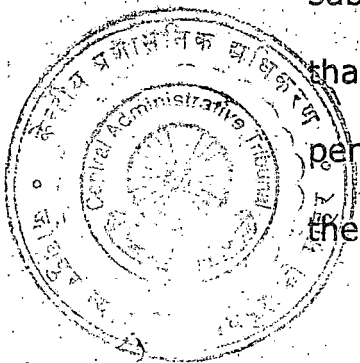
20. As no reply was received by the respondents to the charge sheet, the decision was taken to appoint inquiry officer to inquire into the allegation leveled against the applicant. The respondents have issued many reminders to applicant in order to comply with the provisions of principles of natural justice and no ex parte decision was taken as the applicant was requested again and again to submit his defence till February 2001.

21. The respondents further stated that the applicant had acknowledged the standard form containing the charge sheet without any murmur which shows that the applicant did not have any complaint with regard to the issuance of charge sheet. He did not raise any grievance during the inquiry proceedings and therefore the contention raised by the applicant in this regard

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cannot be sustained in the eye of law. The respondents further state that the applicant had submitted the EFT book and returns on 03.08.1999 after a lapse of one year and therefore, the charge sheet was rightly issued to the applicant. The applicant was informed vide communication dated 10.04.2003 (R/7) that since some of the charges in the SF 11 issued vide No. CG506-T/ Misc/ Loose/2 dated 20.07.98 are repeated in SF 5 issued vide CG 506/T Misc.-Loose/21 dated 27/30.08.99, the proceedings of SF 11 dated 20.07.98 were dropped by the competent authority without prejudice to any further action which may be considered in the circumstances of the case. It is absolutely wrong to contend that the charges were dropped and the applicant was exonerated. It is submitted that the charge sheet was withdrawn in view of the fact that similar charges were to be inquired in pursuance of the major penalty charge sheet and therefore, the question of exoneration of the applicant does not arise.



22. The inquiry officer tried his level best to see that the applicant appears in the inquiry proceedings and issued notice to the applicant for attending the inquiry but the applicant did not appear which is clear from the letter of the applicant himself. The applicant did not cooperate with the inquiry officer and a perusal of the inquiry report reveals that how many times the inquiry was fixed and postponed on account of non-availability of the applicant.

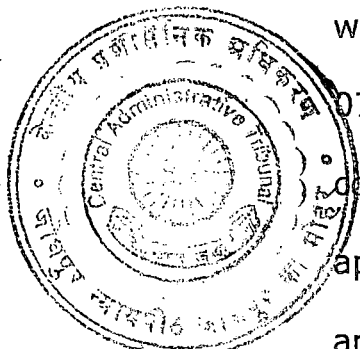
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23. A copy of the inquiry report was sent to the applicant on 11.03.2004 at his quarter where the applicant was not found and hence the copy was sent with railway staff and witnesses who reported that the applicant refused to accept the same. The disciplinary authority after considering all the facts available on record issued an order dated 19.03.2004 (A/1) dismissing the applicant from service.

24. The applicant preferred an appeal to the appellate authority who considered the entire appeal and rejected the same by issuing a speaking order on 09.06.2004 (R/10), in accordance with law. Thereafter the applicant preferred a Revision Petition and the same was decided by the competent authority vide order dated 07.08.2006 (R/11), rejecting his revision petition. Therefore the contention of the applicant that no reply has been received by the applicant on appeal-cum-revision petition submitted by the applicant is having no force. In view of the above the respondents have prayed that the O.A be dismissed with exemplary costs.

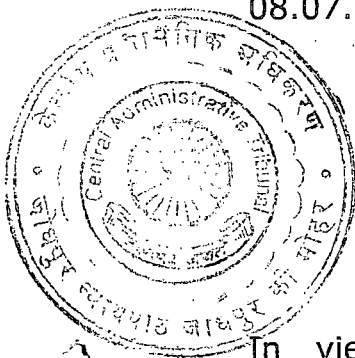
25. Learned counsel for the parties have been heard. They generally reiterated their arguments already given in their respective pleadings. Mr. S.K. Malik, learned counsel for the applicant particularly laid emphasis that the orders communicated by the Revisional Authority vide his order dated 07.08.2006 (R-11) have not been passed by the competent authority. Though he submitted his revision petition to the General Manager, North West



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Railway, the same has been considered and rejected by the Chief Commercial Manager, North West Railway, Jaipur. In this regard he relied on Rule 24 of the Railway Servants (Discipline & Appeal) Rules, 1968 and a note given at the bottom of communication dated 09.06.2004 (A/2) under which the appeal of the applicant was rejected.

26. Mr. Manoj Bhandari, learned counsel for the respondents emphatically pleaded that though the revision petition was made to the General Manager, North West Railway, Jaipur, the same could be decided by any other officer on his behalf. In this regard he relied on the Railway Board's letter No. E (D&A) 80 RG 6-21 dated 08.07.1982. Para 2.(i) of the same reads as under:



"2.(i) Appeals against penalties imposed by the Divisional Railway Managers (erstwhile DSs) will lie to the Head of Deptt. Concerned in as much as the departmental heads carry the additional weight of General Management Authority as a part of General Manager's Organisation in the headquarters. Where more than one departmental head functioning in a department, the appeal/reviews will be dealt with by the Principal Head of Department."

In view of this, the learned counsel for the respondents emphatically pleaded that his revision petition has been correctly decided by the CCM vide his order dated 07.08.2006. In support of his contention, the learned counsel for the respondents relied on a judgement of the Apex Court in the case of **Inspector General of Police and Another vs. Thavasiappan** [(1996) 2 SCC 145].

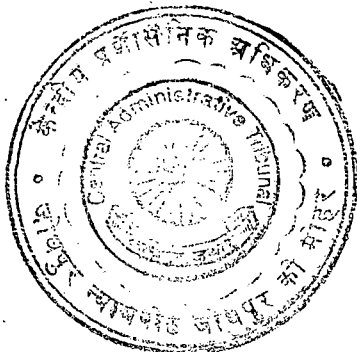
27. We have considered the rival contentions and perused carefully the documents placed on record. It is seen from letter



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No. CG506 T/Loose/Misc. 98/X dated 09.06.2004 (A/2) which was issued by the ADRM under which the appeal of the applicant was rejected which states that if any employee of 'A' category or Skilled Artizan who has been removed or dismissed from service, after rejection of his appeal by the concerned authority, within one month, he could file Revision Petition to the General Manager and the official could also request the General Manager that before passing any order, the matter may be referred to the Railway Rates Tribunal for advice.

28. It has also been seen that Rule 24 (2) of the RS(D&A) Rules 1968, which stipulates as under:



A Group 'C' Railway servant who has been dismissed, removed or compulsorily retired from service may, after his appeal to the appropriate appellate authority has been disposed of, and within 45 days thereafter, apply to the General Manager for a revision of the penalty imposed on him. In this application, he may, if he so chooses, request the General Manager to refer the case to the Railway Rates Tribunal for advice before he disposes of the revision petition. On receipt of such a request the General Manager shall refer the case to the Chairman, Railway Rates Tribunal for advice sending him all the relevant papers.

On receipt of the revision application by the General Manager, or on receipt of advice from the Railway Rates Tribunal, as the case may be, the General Manager shall dispose of the application in accordance with the procedure laid down in Rule 25 and pass such orders as he may think fit:

Provided that the procedure mentioned in this sub rule will not apply in cases where the General Manager or the Railway Board are the Appellate Authority:

Provided further that where a revision application has been disposed of by the General Manager under this sub-rule, no further revision shall lie under rule 25.

29. It is clear from the communication dated 09.06.2004 (A/2) and Rule 24 (2) of the RS (D&A) Rules 1968, that the Revision Petition of the applicant should have been considered by the



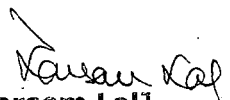
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General Manager himself, whereas the same has been considered and orders were passed by the Chief Commercial Manager. Therefore, in our considered view the order of the Chief Commercial Manager, dated 07.08.2006 (R/11) is not sustainable in the eye of law. The judgement relied on by the learned counsel for the respondents is distinguishable on facts of this case.

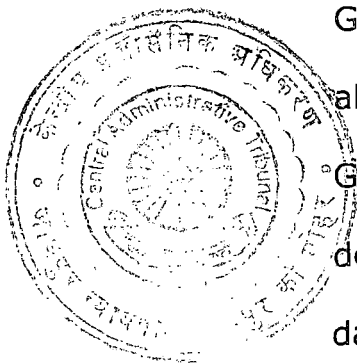
30. In view of the above discussion, the letter dated 07.08.2006 (R/11) is hereby quashed and set aside. The Revision Petition dated 'Nil' preferred by the applicant vide Annex. A/32, which was received by the respondents on 23.07.2004, is remitted back to the General Manager, North West Railway, Jaipur for consideration of all the grounds taken by the applicant in his revision petition. The General Manager, North West Railway, is directed to pass a detailed and speaking order within a period of two months from the date of receipt of a copy of this order. O.A is partly allowed to the extent indicated above.

31. There shall be no order as to costs.


[Tarsem Lal]
Administrative Member.


[N D RAGHAVAN]
Vice Chairman.

Jsv.



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