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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No.237/2008

Jodhpur, this the 15th day of October, 2013

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)
HON'BLE MS. MEENAKSHI HOOJA, MEMBER (A)

Surendra Malviya s/o Late Shri Gourishankar Malviya, aged about 54 years r/o Railway Bungalow No. L-1, Rly Colony, Churu, at present employed on the post of Junior Engineer-I (Loco), Churu under Sr. DME Bikaner, N/W Railway.

.....Applicant

Mr. J.K.Mishra, counsel for applicant

Vs.

1. Union of India through General Manager, North Western Railway, Jaipur
2. Additional Divisional Railway Manager, North Western Railway, Bikaner.
3. Sr. Divisional Mechanical Engineer, North Western Railway, Bikaner.
4. Divisional Mechanical Engineer, North Western Railway, Bikaner.

...Respondents

Mr. Manoj Bhandari, counsel for respondents

ORDER (ORAL)

Per Justice K.C.Joshi, Member (J)

The present application has been filed by the applicant against the action of the respondents whereby he has been reduced from the post of Section Engineer scale Rs. 6500-10500 to the post of Junior

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the reason that the DME (P), Bikaner had no jurisdiction and vide Memo dated 5.12.2005 he was issued a fresh chargesheet. The applicant denied the charges leveled against him. Enquiry Officer and Presenting Officer were appointed. It is stated by the applicant that on the request regarding list of witnesses, the author of report dated 25.8.2005 was summoned by the Enquiry Officer, but the ADME (P) did not present himself and the report of inspection dated 25.8.2005 was not proved, but the same has been admitted and relied upon as an evidence in support of the charge. Further, a copy of the enquiry report was supplied to the applicant in which charge against the applicant has been held to be proved against which the applicant filed a detailed representation. Thereafter vide order dated 2.11.2006 a penalty of reduction in stages from Rs. 9500/- to Rs. 9100/- for 3 years with cumulative effect has been imposed upon the applicant and vide letter dated 8.11.2006 a recovery of Rs. 69786/- i.e. the accessed value of 2838 litre HSD Oil was ordered in installments of Rs. 3000/- per month. The applicant also filed an appeal dated 22.12.2006 against the punishment order. Subsequently, a show cause notice dated 11.5.2007 was issued as to why the penalty should not be enhanced. The applicant submitted reply to show-cause notice and vide letter dated 25.10.2007 the penalty has been enhanced in the following terms:-

"Shri Surender Malviya, SE/SDLP is reduced from the post of Section Engineer scale Rs. 6500-10500 to the post of Junior Engineer-I in the scale of pay Rs. 5500-9000 at bottom of the scale i.e. at pay of Rs. 5500/- i.e. reduction in lower time scale of pay for a period of 05 years with cumulative effect."

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In support of his averments, the applicant has stated that he has not committed any misconduct and there was no admissible evidence against him in support of the charges. The documents relied upon in the enquiry were not got proved by their author and the charges have been held as proved on the basis of surmises and conjecture. Therefore, the impugned orders cannot be sustained in the eyes of law being violative of Article 14, 16, 21 and 311 of the Constitution of India in addition to Rule 9 of the Rules.

3. The respondents by way of filing reply have taken preliminary objections. It is submitting that where penalty imposed by the disciplinary authority is enhanced by the Appellate Authority or Reviewing Authority, the authority who enhanced the penalty becomes Disciplinary Authority and second appeal shall lie against the enhanced penalty. The applicant had not filed any appeal against the enhanced penalty and approached the Tribunal without exhausting the remedy.

The respondents have denied the averment of the applicant that the procedure as envisaged under Rule 9 of the Railway Servants (Disciplinary and Appeal) Rules, 1968 has not been followed. It is stated that the demand of the applicant to supply additional documents was acceded to and the same were provided to him. The shortage of HSD Oil has been established on the basis of documentary evidences verified by the applicant. It is further stated that apart from the documents supplied to the applicant prior to enquiry, the applicant had neither prayed for other documents/record

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prior to enquiry nor demanded any record from the Presenting Officer at the time of the enquiry. It is denied that no opportunity was granted to the applicant for approving his case. The applicant was given opportunity to defend his case during the enquiry proceedings by the Disciplinary Authority in accordance with law. It is further submitted that since the Railway has suffered a loss due to negligence and unwarranted attitude of the applicant, hence, the order to recover the amount of losses was passed after establishing the allegations. Further, the enquiry has been conducted in accordance with law and the Disciplinary Authority has passed the order which has been affirmed by the Appellate Authority enhancing the penalty after giving show-cause notice to the applicant, hence the OA is liable to be dismissed.

4. Heard both the parties. Counsel for the applicant vehemently contended that the due process, prescribed under the law, has not been complied with by the respondent department and the respondent department without adducing any evidence and on the basis of cross examination of the applicant has passed the impugned order. The show cause notice served to the applicant was served on different charges and the Appellate Authority passed the order in appeal on different charges. Therefore, the orders passed by the Disciplinary Authority as well as by the Appellate Authority are in violation of the procedural rules and the same may be set aside.

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5. Per contra, counsel for the respondents contended that where the Appellate Authority issues a notice for enhancement of punishment and after hearing the applicant passes the order of enhancement of penalty, the order of appeal shall be deemed to have been passed by the Disciplinary Authority and a second appeal lies against that order, but the applicant without availing the opportunity of appeal against the order at Annexure-A/4 directly approached this Tribunal. Therefore, this application is liable to be dismissed.

6. Considered the arguments of both the parties. Counsel for the applicant vehemently contended that under Section 20 of the Administrative Tribunals Act, where a final order has been passed by the Government or other authorities rejecting any appeal or representation, then such person can approach this Tribunal, and in this particular case, the punishment order was passed in the year 2006 and after a lapse of 8 years it will be injustice to direct the applicant to file an appeal before the competent authority. He further contended that entire procedure has been completed in violation of procedural rules. Counsel for the applicant further contended that the Annexure-A/4 order is void order because it has been passed by an authority having no jurisdiction to pass any such order and further two major penalties have been awarded vide Annexure-A/4, which cannot be passed by the Appellate Authority.

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7. We have pondered over the arguments and also perused the Section 20 of the Central Administrative Tribunals Act. In our considered view, the applicant can approach this Tribunal after exhausting all the available remedies under the relevant service rules so as to redress his grievances, but in this particular case, when the Appellate Authority enhanced the punishment after issuing a show cause notice, the applicant ought to have filed appeal, but without filing the second appeal, he has approached this Tribunal. Therefore, it cannot be said that the applicant has availed all opportunities available under the relevant rules. In these circumstances, we are proposing to dispose of this application with certain directions.

8. Accordingly the OA is disposed with a direction to the applicant to file an appeal against the order at Annexure-A/4 within a month from the date of receipt of a copy of this order to the competent authority and the competent authority is also directed to decide the same within two months from the date of receipt of such appeal. If any grievance remains after the decision of the appeal, the applicant may file a fresh application. It is made clear that the appeal filed by the applicant shall be considered within the time limit. Further, the applicant is also directed to file a representation regarding the recovery of the amount ordered vide Annexure-A/3 to the competent authority within a month and the competent authority shall decide the same within two months from the date of receipt of such representation, and if any grievance after the decision of

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