केन्द्रीय प्रशासनिक अधिकरण (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत निःशुल्क प्रति

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Application No.207/2010
&
Original Application No.208/2010

Date of decision: 05.11.2012

Orders reserved on 08.08.2012

CORAM:

HON'BLE Mr. G. SHANTHAPPA, JUDICIAL MEMBER,
HON'BLE Mr. B.K.SINHA, ADMINISTRATIVE MEMBER.

Akhtar Ali S/o Shri Amir Ali, aged about 49 years, R/o Qtr. No.143 B, Near New Railway Workshop Colony, NWR, Lalgarh, Bikaner, Rajasthan, present working on the post of O.S.-I, in the office of Senior Material Manager, NWR, Lalgarh, Bikaner (Raj.).

: Applicant

Mr. S.K.Malik, counsel for applicant.

Versus

1. The Union of India through the General Manager, North Western Railway, Jaipur.
2. The Dy. Chief Material Manager, NWR, Jodhpur.
3. The Senior Material Manager, NWR, Bikaner.

.....Respondents

Mr. Salil Trivei, counsel for respondents.

ORDER
Per G. Shanthappa, Judicial Member

Since the above two OAs (OA No.207/2010 & 208/2010) are similar in nature, as requested by the counsel for the applicant a common order has been passed.

OA No.207/2010

2. This OA No.207/2010 has been filed by the applicant under Section 19 of Administrative Tribunals Act, 1985 challenging the legality and propriety of the charge memo dated 18.02.2008 (Annexure-A/1), the order passed by the Disciplinary Authority dated 18.06.2008 (Annexure-A/2), and the order of the Appellate Authority dated 30.11.2009 (Annexure-A/3), and further relief of direction to the respondents to allow the increment to the applicant w.e.f. the date from which it has been withheld with consequential benefits and arrears with the interest at the rate of 18% per annum.

OA No.208/2010

3. This OA No.208/2010 has been filed by the applicant under Section 19 of Administrative Tribunals Act, 1985 challenging the legality and propriety of the charge memo dated 27.05.2008 (Annexure-A/1), the order passed by the Disciplinary Authority dated 25.06.2008 (Annexure-A/2), and the order of the Appellate Authority dated 30.11.2009 (Annexure-A/3).

4. The admitted facts from either side in OA No.207/2010 are the applicant was served with a memorandum of charges dated 18.02.2008 (Annexure-A/1), but the applicant did not submit his representation to the charge memo. He had submitted his representation dated 01.03.2008 (Annexure-A/4) for supply of 7 documents. To the said representation, the respondents issued

an order dated 21.04.2008 (Annexure-A/5) informing the applicant ***"(i) copy of the SOP is enclosed; (ii) the required document is not related with the Charges, so not necessary to provide; (iii) copy of vigilance report is already been given as Annexure-1 with the charge sheet, order copy is not related with the charge sheet so not necessary to provide; (iv) the records are available with O.S. Estt. may be inspected in any working day between 10.00 hrs to 16.00 hrs as under intimation to the undersigned and; (v) copy of the instruction is enclosed. So as instructions laid down in SF-11 you are instructed to submit your representation within 10 days from the date of receipt of these documents, otherwise exparte decision may be taken against you."*** Even after the said communication, the applicant has not submitted his representation to the charge memo. Subsequently, the applicant submitted a representation dated 28.05.2008 (Annexure-A/8) to the Senior Materials Manager, N.W. Railway, Bikaner to supply the documents. Since the applicant did not submit his representation to the charge memo, the Disciplinary Authority proceeded to pass order vide Annexure-A/2 dated 18.06.2008 and imposed the penalty. Being aggrieved by the order, the applicant filed an appeal dated 28.07.2008. The said appeal was dismissed by upholding the punishment awarded by the Disciplinary Authority, vide order dated 30.11.2009 (Annexure-A/3). The said orders are impugned in the OA.

5. It is the grievance of the applicant that the impugned order of the Disciplinary Authority is a stencilled one and is not sustainable in the eyes of law, no reasons are assigned, and that the Disciplinary Authority has not exercised the powers vested under Railway Servants (Disciplinary & Appeal) Rules, 1968 [R.S (D&A) Rules 1968 for short]. The Appellate Authority has not considered the grounds of appeal, and that the Appellate Authority has not passed a reasoned order as he has not exercised the powers under Rule 22 (2) (a) of RS (D&A) Rules, 1968. The grievance of the applicant is that the memorandum of charges have been issued by the Senior Materials Manager, who is not competent to issue the charge memo, since he is not the Disciplinary Authority as per Schedule –II under R.S. (D&A) Rules, and that the Deputy Chief Materials Manager is only the competent authority. Hence, the memorandum charges are illegal and the same are liable to be quashed. Consequently orders of the Disciplinary Authority and the Appellate Authority should be quashed.

6. The respondents vehemently opposed the OA, refuting the averments made in the OA. They have supported the impugned orders. Since the applicant did not submit his defence to the charge memo, the decision taken by the Disciplinary Authority is in order, all the reasons assigned are cogent, and they may not be interfered by this Tribunal. The Appellate Authority has considered the appeal and after going through all the relevant records of the Disciplinary Enquiry and orders of Disciplinary

Authority he has come to the conclusion that the charge against the applicant are proved, and the said order was passed only after perusal of the record. When the applicant has not submitted his defence to the charge memo, at this stage, he cannot urge that the Appellate Authority's order is illegal. To support the stand of the respondents in respect of charge memo, SOP is more clear, that JA Grade/Sr. Scale Officers in-charge of department in a division are competent to impose penalty in respect of Group 'C' and Group 'D' employees. Admittedly, the Senior Materials Manager, Bikaner is the authority independent in-charge of Lalgarh Depot in Bikaner and thus is competent authority to issue charge sheet as well as punishment against the applicant, and the ground alleged by the applicant that he is not competent is ill-founded and deserves to be rejected. The charge sheet has been issued in respect of minor penalty. Therefore, the Senior Materials Manager, is the competent Disciplinary Authority has issued the impugned orders i.e. charge memo and penalty advise. The respondents have produced Schedule-II (Rule 4 and Sub-rule (2) of Rule 7 of RS (D&A) Rules, 1968.

7. The applicant has filed rejoinder to the reply statement. Nothing is clarified except producing the abstract of Depot and introduction of Store Depot Book.

8. We have carefully considered the submissions from either side and perused the impugned orders of the Disciplinary Authority and Appellate Authority. Admittedly the order of the

Disciplinary Authority dated 18.06.2008 is stencilled and filled in the form of "filled in the blank", we are of the view that such kind of order is not sustainable in the eye of law. So, we are inclined to quash the same.

9. We have carefully examined the orders of the Appellate Authority. The Appellate Authority's order dated 30.11.2009 is not a reasoned and considered order. It is relevant to extract the reasons given:

> ***" I have carefully considered the appeal dated 28.07.2008 preferred by against the penalty of "withholding of WIT for three years without future effect" imposed on you by SMM/BKN vide his order No.728E/Vig/AA/SMM/BKN/08 dated 18.06.2008.***
>
> ***After considering the aforesaid appeal and going through all relevant records/aspects of the disciplinary case, I come to the conclusion that charge levelled against you is proved.***
>
> ***In view of above, I reject your Appeal dated 28.07.2008 and uphold the punishment awarded by the D.A."***

10. We have carefully gone through the powers vested on the Appellate Authority and Rule 22 (2) (a) of RS (D&A) Rules. After going through the orders of the Appellate Authority, we are of the view that the order of the Appellate Authority is not a reasoned and considered order and powers vested on the Appellate Authority has not been exercised. Hence we are of the view that the said order is not sustainable in the eyes of law. Accordingly, we quash and set aside the order of the Disciplinary Authority and Appellate Authority.

11. The learned counsel for the applicant contended that the charge memo dated 18.02.2008 has been issued by the

incompetent authority i.e. Senior Materials Manager. We have gone through Schedule to the RS (D & A) Rules. Schedule II relates to the powers vested to the authorities as Disciplinary Authority, Appellate Authority and Revisional Authority. Admittedly the Senior Materials Manager, who has issued the charge memo and the impugned order of penalty, is in JA grade and Sr. Scale Officers in independent charge, has the powers to issue the charge memo and also the penalty to his sub-ordinates. JA grade/Sr. Scale Officers in charge of Department in a division, ADRMs in relation to departments attached to them, DRMs in relation to other departments, HODs level-I, Functional HODs AGMs for notified departments, GM/CAO for other departments can issue an order of suspension, censure, stoppage of increments, withholding of promotions, recovery of loss, reduction in scale, stage or post on all Group 'C' & 'D' servants. In the present case, Senior Materials Manager who is in JA grade issued the memo of charges for minor penalty as per Schedule –II of RS (D&A) Rules. The Sr. Scale Officer who is holding the independent charge has powers to issue minor penalty.

12. The objection of the applicant that Senior Materials Manager has no authority to issue charge memo is rejected. When the applicant has not raised legal grounds in his representation to the charge memo, he cannot raise these grounds in the present OA without urging the legal grounds in his representation. Hence, the stand taken by the applicant is not supported by any rules. The respondents have contended that Disciplinary Authority is in JA

grade/Senior Scale Officers in charge of Department in a division, who is the competent authority to impose minor penalty in respect of Group 'C' & 'D' employees. Applicant is a Group 'C' employee. The Senior Materials Manager, Bikaner is the authority independent incharge of Lalgarh Depot in Bikaner, who is the competent authority. Considering the facts and circumstances of this case, since the applicant has not submitted his representation to the charge memo, now he is at liberty to submit his representation.

13. Accordingly, the impugned orders of the Disciplinary Authority dated 18.06.2008 (Annexure-A/2) and the order of the Appellate Authority dated 30.11.2009 (Annexure-A/3) are quashed and set aside. We are not inclined to quash the charge memo as contended by the applicant. The respondents have justified in supporting the Disciplinary Authority and the Appellate Authority in accordance with the Rules.

14. For the foregoing reasons, the Disciplinary Authority is directed to decide the charge memo in accordance with the Rules after giving an opportunity to the applicant to submit his representation to the charge memo.

OA No.208/2010

15. In this OA, the applicant is challenging the charge memo dated 27.05.2008 (Annexure-A/1), order of the Disciplinary

Authority dated 25.06.2008 (Annexure-A/2) which is in the form of stencilled one and fill in the blanks, and the order of the Appellate Authority dated 30.11.2009 (Annexure-A/3), which is similar as the order passed in OA No.207/2010. All the grounds/reasons mentioned in the OA No.207/2010 are applicable to this case also. Accordingly, order of Disciplinary Authority dated 25.06.2008 (Annexure-A/2) and order dated 30.11.2009 (Annexure-A/3) passed by the Appellate Authority are quashed and set aside. We are not inclined to quash the charge memo as contended by the applicant. The Disciplinary Authority is directed to decide the charge memo in accordance with the Rules after giving an opportunity to the applicant to submit his representation to the charge memo.

16. With the above observations, the OAs are allowed in part. No order as to costs.

—Sd—

[B.K.Sinha]
Administrative Member

— Sd —

[G. Shanthappa]
Judicial Member

CERTIFIED TRUE COPY
Dated 9.11.2012...

Section Officer (Judl.)
Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय, जोधपुर
Jodhpur Bench, Jodhpur.