

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.208/2011

Jodhpur this the 20th day of November, 2014

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (Judicial)
Hon'ble Ms. Meenakshi Hooja, Member (Administrative)**

Jas Pal Singh S/o Shri Juglal, aged about 54 years, R/o C/o Shri Hari Shankar Tyagi ASM, Block No.8-B, TPT Railway Colony, Suratgarh, District Sriganganagar, at present employed on the post of Assistant Station Master, at Suratgarh Railway Station NWR, District Sriganganagar.

.....Applicant
By Advocate: Mr. J.K. Mishra.

Versus

1. The Union of India through the General Manager, HQ Office, North-Western Railway, Malviya Nagar, Near Jawhar Circle, Jaipur-17.
2. Additional Divisional Railway Manager, NWR, Bikaner Division, Bikaner.
3. Senior Divisional Operating Superintendent, NWR, Bikaner Division, Bikaner.

.....Respondents

By Advocate : Mr. Girish Sankhala.

ORDER (Oral)

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

The present application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for seeking following reliefs:-

"(i) That impugned Charge Sheet dated 19.05.2006 (Annexure-A/1), penalty order dated 03.09.2009 Annexure-A/2) and appellate order dated 29.09.2010 (Annexure-A/3) may be declared illegal, without jurisdiction and the same may



be quashed. The respondents may be directed to allow all consequential benefits to the applicant as if none of the impugned orders were in existence.

- (ii) That the respondents may be directed to produce the relevant records/ case file of disciplinary proceedings at the time of hearing of this case, for perusal by this Hon'ble Tribunal. Otherwise also they are required to keep the Disciplinary Case file of the concerned individual ready for perusal as per the instructions issued by the Railway Board.
- (iii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iv) That the costs of this application may be awarded."

2. The brief facts, as stated by the applicant, are that the applicant was initially appointed to the post of Pointsman on dated 23.10.1978 and he passed selection for promotion to the post of ASM in the year 1998 and was promoted accordingly. He was further promoted to the next grade of ASM scale of Rs.5000-8000 in the year 2000 and he has been subsequently reverted to the lower post of ASM. It has been averred that the applicant while posted Bawanikheda Railway Station, was suffering from stomach pain and loose motion. He was under treatment with local Doctor, who advised him to take three days' bed rest to get admitted in hospital keeping in view his deteriorated physical condition. He requested for grant of leave to the respondent authorities but they did not agree for the same. It has been further averred that on 13.05.2006 while the applicant was taking rest in his quarter Shri Vinod Kumar Safaiwala asked him to attend duties but he expressed his inability for the same. Thereafter, the Station Superintendent came and told that he has filled the charge on his name. After about 01:00 hrs during night, his pain got increased and he came out of ASM office and laid down on a Bench adjacent to the ASM office. He arranged for arrival of coming up trains and he felt bit sleepy. Thereafter

the TI took over the charge and the departure of the train was done by him and the delay in departure is not attributable to him. In the morning, DMO visually examined him and prepared a report and the applicant was placed under suspension vide dated 14.05.2006. The applicant was issued a charge sheet SF-5 under RS (D&A) Rules, 1968 vide memo dated 19.05.2006 alleging violation of G&FR read with SR 2.09 and para 3 (i), (ii) and (iii) of Railway Service (Conduct) Rules, 1966, amongst other charge as mentioned at Annexure-A/1. Applicant submitted his defence stated vide letter dated 05.06.2006 and denied the allegation. The Disciplinary Authority appointed one Shri A.K. Mudgal as Inquiry Office in the matter vide order dated 21.06.2006. The Inquiry Officer conducted the detailed and confronted inquiry and the applicant was also examined by the IO on 09.07.2008. The applicant submitted the medical certificate issued by Doctor whereby he was advised three days' bed rest but the DMO has not examined the medical report given by the applicant. The applicant furnished the copy of inquiry report in which all the charges alleged against him have been held as proved by the IO. It has been further averred that the IO has relied upon the DMO report, which was not a proved document and it was inadmissible evidence. The applicant submitted a detailed and exhaustive representation against the finding of IO. The applicant was imposed multiple penalties of rejection from Grade Rs.5000-8000 (pay Rs.6200/- pm) to lower grade Rs.4500-7000 and fixed at Rs.4500/- PM (i.e. at lowest stage) in lower grade of Rs.4500-7000 for a period of five years with postponing future increments and loss of seniority. The applicant

further averred that the Disciplinary Authority has passed the penalty order in a mechanical way without objectively considering the pleas of the applicant and none of the points mentioned in his representation has been dealt with. It has been further averred that the applicant could not file his appeal in time because he could not get required documents and it was only on 02.09.2010 the applicant could prefer an appeal and he gave reasons for delay in submission of the appeal and requested for condonation of delay. But his appeal has been turned down on the ground of delay itself vide communication dated 29.09.2010 and the reasons for seeking condonation of delay have not been considered satisfactory. Therefore, by way of this application, the applicant has sought the aforesaid reliefs.

3. By way of reply, the respondent department averred that the appeal provided under the rules was not submitted within prescribed periods i.e. 45 days from the date of punishment order, therefore he has remained defaulter himself for not filing the statutory appeal within the prescribed period and the appeal was rejected on the ground of limitation. It has been further averred that the applicant failed to perform his duty in proper manner because he was sleeping after taking liquor on duty and detained to train No.977/Exp./1RB passed trains in block section of 19 minutes and 17 minutes respectively. It has been further averred that the Inquiry Officer after considering the actual circumstantial evidence and the inquiry report prepared after examination of all the witness found that all the charges leveled against the applicant have been proved. Therefore the applicant has

been found guilty and punished for the penalties as provided under the Railways Servants (Discipline & Appeal) Rules, 1968. Therefore, they prayed to dismiss the OA.

4. In rejoinder, the applicant has reiterated the same facts as averred in the OA.

5. Heard both the parties. Counsel for the applicant contended that an appeal has been filed by the applicant on 02.09.2010 (Annexure-A/13) against the order of penalty dated 03.09.2008 (Annexure-A/2) and the learned Appellate Authority vide order dated 29.09.2010 (Annexure-A/3) dismissed the appeal merely on the ground of limitation by saying that appeal was not filed within a prescribed time and the delay has not been well explained by the applicant in filing of the appeal. Counsel for the applicant further contended that the applicant has been punished with a major penalty and the Appellate Authority failed to observe even a single word on merits and the substantial rights of the applicant ought to have been decided on merits also, and merely on the technicalities deciding such serious appeals cannot be said to be legal one and it cannot be sustained in the eyes of law.

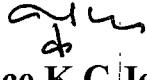
6. Per contra, counsel for the respondents vehemently contended that the appeal has been filed at a very belated stage i.e. even after the completion of about 2 years and when there is a statutory period prescribed in filing such appeals, belated appeal cannot be accepted by the Appellate

Authority and therefore the order at Annexure-A/3 does not suffer from any illegality and is a legal order.

7. Considered the rival contentions of both the parties and without touching the merits of the case and the inquiry and the order of the disciplinary authority, we are setting aside the order of Appellate Authority dated 29.09.2010 at Annexure-A/3 with a direction to reconsider and decide the appeal dated 02.09.2010 as at Annexure-A/13, afresh on merits within three months from the date of receipt of copy of this order. If any grievance remains after the decision of the Appellate Authority, the applicant can approach to the appropriate forum.

8. Accordingly, the OA is disposed of with no order as to costs.


[Meenakshi Hooja]
Administrative Member


[Justice K.C.Joshi]
Judicial Member

rss

~~Copy R
from - British Sandhills
Nichols & Moore~~

R/C

Jan 2/12/14