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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

Original Application 348/2012

Jodhpur, this the 29th May, 2013

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)

Navin Verma S/o Shri R.K. Verma, aged about 30 years, R/o H.No.1-24A, Railway Traffic Colony, Samdari, District Barmer, (Office Address:- Working as Section Engineer at Railway Station Samdari).

.....**Applicant**

Mr. S.P.Singh, counsel for applicant.

Vs.

1. Union of India, through General Manager, North Western Railway, Jaipur.
2. Divisional Railway Manager, North Western Railway, Jodhpur.
3. The Additional Divisional Railway Manager, North Western Railway, Jodhpur.
4. Chief Electrical Engineer, North Western Railway, Jaipur.
5. Senior Divisional Electrical Engineer, North Western Railway, Jodhpur.

...**Respondents**

**Mr. Aditiya Singhi, proxy counsel for
Mr. Manoj Bhandari, counsel for respondents.**

ORDER (ORAL)

Applicant, Navin Verma, is an employee of the respondent department, and while he was posted at Samadari Railway Station as Section Engineer, a charge memo was issued for disobeying the order of rail administration, leaving the Headquarters (Samadari) without permission of the competent authority and the negative attitude towards the rail work and producing the illusive situation by presenting incorrect

facts. The applicant requested the respondent authorities to provide the documents relied upon for issuing the charge sheet such as the list of officials who could not be relieved and what disciplinary action initiated against them, any other letter/communication forwarded for the reason of arising out problem due to delay caused in reliving the staff on transfer order, letter/document in regard to the decision making process to decide man power at different stations on pin pointing, the list of supervisors who have been charged for his fault committed one year ago, and the documents indicating leaving Samdari on 09.06.2011 and the process initiated for automation prior of decreasing man power/pump driver from 8 to 4 at Samdari. The respondent department did not provide the documents and provide only 5 days' opportunity to file the reply without providing the documents demanded by the applicant, whereas generally 10 days' time provided for giving the representation. The applicant requested to provide the time but the respondent denied and passed punishment order ex parte. The respondents passed punishment order dated 18.08.2011 (Annexure-A/2) withholding increment of pay for a period of three years which will have effect his postponing future increments. The applicant filed an appeal and the same was dismissed by the order dated 16.01.2012 (Annexure-A/4). Applicant also filed a review petition and that was dismissed vide order dated 02.07.2012 (Annexure-A/1). Therefore, the applicant by way of this original application has challenged the legality of all the three orders at Annexure-A/1, A/2 and A/4, on the ground that he has not been given sufficient opportunities to file the reply in the matter and he has not been provided sufficient documents to make an effective representation

against the memo/charge sheet. The applicant in this OA has annexed the order of the review petition decided by the competent authority as Annexure-A/1, punishment order dated 18.08.2011 as Annexure-A/2, charge sheet along with articles of charge as Annexure-A/3, order of the appellate authority dated 16.01.2012 as Annexure-A/4, documents demanded by the applicant vide dated 01.07.2011 as Annexure-A/5, representation given by the applicant on 11.07.2011 as Annexure-A/6, the reply of the competent authority regarding the representation as AnnexureA/7, the reply of the competent authority regarding supply of documents as Annexure-A/8, and the letter dated 01.08.2011 by which the applicant requested the competent authority to provide him time to file reply in the matter is annexed as Annexure-A/9 of the OA. The applicant has challenged the legality of the order at Annexure-A/1, A/2 and A/4 on the ground that the major punishment was imposed upon him vide Annexure-A/2, whereas the charges relates to minor penalty, and in appeal it was converted into the minor penalty and in review petition the minor punishment was imposed upon him. The applicant has challenged the aforesaid orders mainly on the ground of non-supplying him the relevant documents and secondly for non-providing him the sufficient opportunities to submit his reply before the competent authority.

2. By way of counter, the respondent department denied the averments made in the OA, and further pleaded that there was no necessity to provide the documents for the minor enquiry and sufficient opportunities were given to the applicant. It is further submitted that the behaviour of the applicant was undisciplined as he was not obeying the

order of the superior officers and the applicant vehemently avoided to submit his reply of the chargesheet/memo and it is further submitted that the orders at Annexures-A/1, A/2 and A/4 do not suffer from any illegality or infirmity and the same has been passed as per the relevant procedure. Therefore, they prayed to dismiss the OA.

3. Heard both the parties. Counsel for the applicant contended that a charge sheet/memo was issued to the applicant vide Annexure-A/3 and the articles of the charges have been annexed with the memo dated 22.06.2011, and the applicant requested to provide the document vide dated 01.07.2011. In reply to that the competent authority vide letter dated 20.07.2011 inform the applicant that by demanding the relevant documents, he has adopted a negative practice towards the railway authorities and also narrated this fact that he has already been provided all the relevant documents earlier on dated 01.08.2011. The applicant requested the competent authority to provide him one more opportunity to prepare the reply due to his ill health and domestic circumstances. But the competent authority vide dated 18.08.2011 (Annexure-A/2) passed the impugned order of punishment of major penalty without following the due procedures prescribed under the Rules. Counsel for the applicant therefore contended that the order at Annexure-A/2 has been passed without providing the opportunity to the applicant to defend his case, and it is against the Principle of Natural Justice. Therefore, the orders at Annexures-A/1, A/2 and A/4 require to be quashed.

4. Per contra, counsel for the respondents contended that sufficient opportunities were provided to the applicant and he neglected to file the

reply and want to delay the procedure initiated against him and there was no necessity to provide any document in case of minor penalty. He further contended that the orders at Annexures-A/1, A/2 and A/4 are legal and do not suffer from any infirmity, and he vehemently contended that the applicant himself was undisciplined and was habitual of disobeying the order of the superior authority.

5. I have considered the rival contentions of both parties. It is an admitted fact that the applicant was served a charge sheet for minor penalty and was awarded major punishment because he has been punished with the withholding of increment for three years with cumulative effect and it comes within the definition of the major penalty, which was reduced to minor penalty in appeal and review petition. The order at Annexure-A/2, therefore suffers from illegality perse because when a charge sheet was issued for the minor penalty, an employee or a delinquent cannot be punished for major penalty. Only on this ground, the Annexure-A/2 cannot be sustained. Further, on dated 01.08.2011 (Annexure-A/9), the applicant moved an application to the competent authority to provide some more opportunities to file the reply but instead of providing any further opportunity, the competent authority passed the order of punishment ex parte only on the basis of charges framed against him. It is settled principle of law that no one should be punished unheard and in the present case it is clearly established that the applicant has been punished without there being any reply on record and the Appellate Authority also did not consider this fact. The Appellate Authority failed to consider this aspect also that how the competent

authority punished the applicant by major punishment in case of a charge sheet served for a minor penalty, therefore, the order at Annexures-A/1, A/2 and A/4 cannot be sustained and the same are illegal and suffers from infirmity.

6. As regarding the providing of any opportunity to the applicant to file the reply against the Memo is concerned, it is an important right of the applicant and when application dated 01.08.2011 was submitted by the applicant before the competent authority for providing some relevant documents then in my considered view without giving any opportunity to the applicant infringes one of the most important rights of the defence of the applicant.

7. In view of the discussions hereinabove made, the Annexures-A/1, A/2 and A/4 are quashed and the applicant is directed to appear before the concerned authority on 14th June, 2013 and to file the reply of the Memo/charge sheet (Annexure-A/3) as availing the last opportunity, and thereafter the concerned authority shall pass a fresh speaking and reasoned order in accordance with law. Accordingly, the OA is allowed as stated above with no order as to costs.


[Justice K.C. Joshi]
Judicial Member