

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

ORDER SHEET

Notes of the registry	Orders of the Tribunal
	<p>O.A. No. 290/00390/15 (Bimal Kumar Jain vs UOI & Ors) Date of Order : 01/10/2015</p> <p>Mr J.K. Mishra, Counsel for applicant.</p> <p>The OA is filed challenging order Annex. A/1 dated 23.03.2010 to the extent of remitting the case back to Disciplinary Authority and the direction thereof and order Annex. A/2 dated 29.09.2014 and further relief(s) claimed to direct the respondents to release all the withheld retiral dues alongwith interest @ 9% per annum from the due date to the date of actual payment.</p> <p>The matter has been taken up for consideration for admission today. In the disciplinary proceedings initiated against the applicant, the Disciplinary Authority imposed penalty of reduction in the same time scale of Rs 9300-34800 + GP 4200 of the pay at the stage of 9300 for a period of five months vide penalty order dated 25.05.2009 (Annex. A/4). The applicant preferred an appeal on 09.09.2015 challenging the penalty order before the 3rd respondent. The Appellate Authority vide order Annex. A/5 dated 16.10.2009 held that the applicant has misappropriated the railway revenue and tried to manipulate the entries made in stock register and charge report and being incharge, it was in the applicant's knowledge, hence deliberate intention cannot be ruled out. On the basis of said facts and finding, the Appellate Authority found the applicant responsible for the charges mentioned in the SF-5 and therefore, the applicant was removed from service with immediate effect.</p> <p>The applicant has been charge sheeted for misappropriation of government money by taking out-of series MVB's from stock without entry and unaccounting the money, received, lose of money value book and for tempering of records by applying white fluid and cutting on stock charge report. The Annex. A/5 order dated 16.10.2009 issued is a suo motu revision with enhancement of punishment issued by Senior Divisional Commercial Manager. NWR. Bikaner which was challenged by the</p>

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orders NIPs dated 25.05.2009 and 16.10.2009 before the competent authority. The Additional Divisional Railway Manager who was the Appellate Authority vide order dated 23.03.2010 (Annex. A/1) held that a proper inquiry was not conducted by the Disciplinary Authority and even by Revisional Authority while giving notice for enhancement of punishment. In the light of said finding, the Addl. Divisional Railway Manager, NWR, Bikaner remitted the case back to the Disciplinary Authority with direction to conduct proper enquiry and based on inquiry report findings he may give his recommendations for taking appropriate decision by the competent authority under RS D&AR, 1968, as per rules, because the employee has superannuated from Railway service on 31.10.2009.

The learned counsel for applicant submitted that he challenged the order Annex. A/1 dated 23.03.2010 before respondent No. 5 i.e. Chief Commercial Manager and after considering the issues involved, the respondent No. 5 vide order Annex. A/2 dated 22.09.2014 held that there is no illegality or irregularity in the order passed by the Appellate Authority and proper order has been passed by ADRM and no question of interference in the proper order of ADRM arises. In the light of the facts noticed, the 5th respondent directed the Disciplinary Authority to conduct fresh inquiry and to give reasonable opportunity to the applicant to defend the matter and further directed to complete the same within 30 days. The Annex. A/2 order was passed by the 5th respondent in his revision capacity and both orders Annex. A/1 and A/2 have been challenged in this OA.

We noticed that Annex. A/1 order was passed setting aside the order of termination passed by the Disciplinary Authority and it was passed at the instance of the applicant in his favour. The Additional Divisional Railway Manager set aside the NIP dated 25.05.2009 and 16.10.2009 and remitted the case to Disciplinary Authority with the direction to conduct proper inquiry. Really, there was no occasion for applicant to challenge

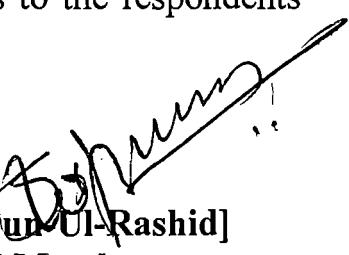
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appears that the applicant wants to delay the matter. The impugned orders are, infact, passed in favour of the applicant. The inquiry already conducted was found not to be proper, therefore, respondents No. 4 & 5 directed the Disciplinary Authority to conduct proper inquiry and pass appropriate orders. We are not inclined to interfere with orders Annex. A/1 and A/2. Therefore, we are not issuing notices to the respondents and the OA is accordingly dismissed in limine.


[Meenakshi Hooja]
Administrative Member

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[Justice Harun Ul-Rashid]
Judicial Member