

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH  
CALCUTTA

No.O.A.1327/1997

Date of order : 26/7/06

Present : Hon'ble Mr. B.V. Rao, Judicial Member  
Hon'ble Dr. A. R. Basu, Administrative Member

AMIT KUMAR ROY  
VS.  
UNION OF INDIA & ORS.

For the applicant : Mr. P.C. Das, counsel  
For the respondents : None

ORDER

Per Dr. A.R. Basu, A.M.

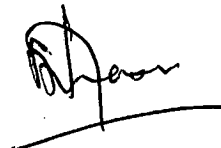
The applicant in the present O.A. has sought for the following reliefs:-

- (a) Direct upon the Respondents to quash and set aside the punishment Notice No.GI85/CBC/AKR/PKSN/25/96 dt. 28.2.97 and letter No.GI85/CBC/AKR/RKSN/26/97 dt.20.3.97 being Annexure-C & C1 respectively and to release all sets of passes and PTOs from the beginning of 1997 and withdraw the order of stop of increment for the next three years;
- (b) Direct upon the Respondents to quash and set aside the Memorandum of charges bearing No.GI85/CBC/AKR/RKSN/25/96 dt. 2.1.97 and letter no.GI85/CBC/AKR/RKSN/26/96 dt.2.1.97 being Annexure-A&A1 respectively;
- (c) Direct upon the Respondents to quash and set aside the letter dt.1.7.97 & 4.7.97 issued by the Divisional Commercial Manager, South Eastern Railway, Chakradharpur being Annexure-E & E1 respectively;
- (d) Direct upon the Respondents to declare the entire DA proceedings as void and ultravires and not in accordance with law;
- (e) Direct upon the respondents to pay heavy cost of this application;



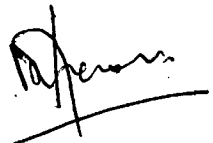
- (f) Direct upon the Respondents to pay all arrear dues with interest to which your applicant is entitled;
- (g) Any other appropriate relief or reliefs as your Lordships may deem fit and proper.

2. Facts of the case in brief are that the applicant was initially appointed as Group 'D' staff in the South Eastern Railway on 22.6.64. He was working as Head Booking Clerk at Sealdah Division, Eastern Railway. He was posted as CPC in the South Eastern Railway CBSA station. On 2.1.1997 the Divisional Commercial Manager, South Eastern Railway CKP issued Memorandum of Charge bearing No. GI85/CBC/AKR/RKSN/25/96 dated 2.1.1997 against the applicant and framed a charge for carelessness and negligence towards duty.(Annexure 'A'). Another charge sheet was issued to the applicant by the Divisional Commercial Manager, Chakradharpur in the same date i.e. 2.1.1997 bearing No.GI85/CBC/AKR/RKSN/26/96 regarding the charge framed for misbehaviour and negligence of duty(Annexure 'A1'). The applicant alleges that without any enquiry the above two chargesheets have been issued by the concerned respondents on the same date which is totally against the railway rules. The applicant thereafter made representations before the concerned authorities through proper channel and requested them to exonerate him from the charges levelled against him(copy of the representations are annexed as Annexure B& B1 respectively to the O.A.). The applicant further alleges that the Divisional Commercial Manager, South Eastern Railway, Chakradharpur to whom his representations were forwarded did not consider the representations and passed first punishment notice bearing




No.GI85/CBC/AKR/RKSN/25/96 dt.28.2.1997 to the effect that two sets of passes and PTOs for 1997 were stopped. On 20.3.1997 the Divisional Commercial Manager, Chakradharpur, South Eastern Railway passed the second punishment order bearing No.GI85/CBC/AKR/RKSN/26/97 and passed an order to the effect that the applicant's next increment raising his pay from 1720/- to 1760/- in scale of Rs.1400-2300/- is withheld for 3 years without cumulative effect. The applicant states that against the said two punishment orders issued by the Divisional Commercial Manager, South Eastern Railway, Chakradharpur the applicant made appeal before the Sr. Divisional Commercial Manager, Chakradharpur through proper channel. However, the Appellate Authority without considering the applicant's appeal have rejected the same on 1.7.1997 and on 4.7.1997 respectively(Annexure E and E1). The applicant states that the two charges levelled against him are false and punishment have been inflicted on him in an arbitrary manner and without holding an enquiry which is against the Railway Servants(Discipline & Appeal) Rules,1968. The applicant has, therefore, filed this O.A. for quashing the impugned orders passed by the respondents.

3. Ld. Counsel for the respondents have filed written reply on behalf of the respondents . The respondents have disputed the claim of the applicant. In Para 8 of the reply they have stated that the applicant joined in Rajkharswan Station on 3.8.1996 as a Head Booking Clerk and continued with learning duty till 16.8.1996 which is a clear proof of avoiding the administrative responsibility attached to his post. Moreover, being a Head Booking Clerk who had gained much experience in the similar work in



different stations could not be expected to go on with the learning duty for such a long duration. They have therefore stated that the applicant had the ill motive to escape from administrative assignment and thus committed serious lapse or misconduct in discharging duty for which he was paid and minor penalty charge sheet was served on him. After hearing the applicant penalty was imposed on him. Similarly on 8.10.1995 the respondent No.5 i.e. the Assistant Commercial Manager, South Eastern Railway, Chakradharpur Division was on official tour to Rajkharswan station while he was inspecting the Booking Office, he found the applicant entering the Booking Office at 9.35 hours and reporting for duty though he was expected to report for duty at 8 A.M. As he was late by one and half hours it amounted to serious negligence of duty on the part of the applicant. The respondent No.5 asked the applicant to put the exact time of reporting for duty on the Master Roll, but the applicant instead of doing so, became furious and uttered derogatory language to the respondent No.5 in presence of other officers. The respondent No.5 reported the matter to the Sr. Divisional Commercial Manager, Chakradharpur. After getting the report, the Sr. Divisional Commercial Manager enquired into the matter and after perusing the Master Roll and assessing other evidences pertaining to the matter submitted its report to the Respondent No.3 and finally disciplinary action was initiated against the applicant for his willful and deliberate violation of Service Conduct Rule. After hearing the applicant, minor penalty charge of withholding his increment for 3 years(N.C.) was imposed on him. The respondents have stated that proper procedure had been

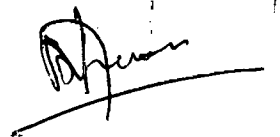


followed and punishment order has been passed by the Disciplinary Authority properly and they did not violate the provisions of the rules as provided under the D&A Rule, 1968. Moreover, they have refuted the allegations of biasness and arbitrariness as due opportunity had been given to the applicant before imposing penalty on him. They have also stated that they are fully prepared to provide documentary and other evidences, if so required, at the time of hearing to justify the act of the Disciplinary Authority in this regard. The respondents in their written reply have submitted that there is not a single ground or averment according to law on the basis of which the O.A. could be entertained and as such the same should be dismissed.

4. Ld. Counsel for the applicant Mr. P.C. Das has argued that the respondents have not followed the proper procedure before imposing the penalty. The Disciplinary Authority has not given any reason before imposing the penalty. The Appellate Authority also did not follow the procedure as provided under Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968. He has argued about the provisions of Rule 22 which are to be taken into account while considering the appeal.

5. Ld. Counsel for the respondents was not present at the time of hearing and as such the replies filed by the respondents were relied upon.

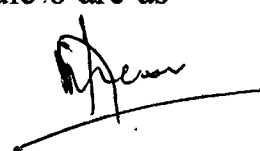
6. We have gone through the record of the case and the reply filed by the respondents. The main dispute involved in this O.A. is whether proper procedure had been followed or not. From the perusal of the record it appears that two charge sheets had been issued to the applicant. The first



charge is regarding carelessness and negligence of duty. In the first charge sheet bearing No.GI85/CBC/AKR/RKSN/25/96 dated 2.1.1997(Annexure 'A') it has been stated as under :-

“ During the course of Ticket Checking by ACM(TC) on 16/8/96,it was noticed that the said Sri A.K. Ray, CBC/RKSN who joined at RKSN station on 03/8/96 was undergoing learning duty as per the Muster Roll till 16/8/96 which is highly irregular and against the extant procedure and rules. Because taking so many days of learning duty is nowhere admissible in common working. Since Sri Ray has already worked as CBC at GP independently, the question of learning duty at RKSN in his existing capacity for the same job does not arise at all.”

The second charge is regarding misbehaviour and negligence of duty as instead of obeying the officials the applicant misbehaved and threatened them with dire consequences. The act of the applicant was, therefore, proves his insubordination, indifferent attitude, gross carelessness as a senior and front line commercial staff and unbecoming of a Railway servant. The applicant has mentioned in his representations(Annexure 'B' and 'B1') that he never underwent learning duty at RKSN and instead prepared all the pending returns and submitted them during the above period which may be verified from the Station records. Regarding the second charge he has replied that he being a patient of Heart, Diabetes and high blood pressure etc. was having a really tough time and if for his argument the officer concerned felt that he disobeyed his order, he may be excused for the same. After considering the representations penalty was imposed by the Railway authorities. Rule 6 of Railway Servants (Discipline & Appeal) Rules, 1968 deals with various penalties. Minor penalties as mentioned in Rule 6 are as follows:-



“(i) Censure:

- (ii) Withholding of his promotion for a specified period;
- (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders;
- (iii)(a) Withholding of the privilege Passes of Privilege Ticket orders or both
- (iii)(b) Reduction to a lower stage in the time scale of pay for a period not exceeding three years, without cumulative effect and not adversely affecting his pension;
- (iv) Withholding of increments of pay for a specified period with further directions as to whether on the expiry of such period this will or will not have the effect of postponing the future increments of his pay.


Rule 11 of the Railway Servants(Discipline and Appeal) Rules,1968 provides for procedure for imposing minor penalties.

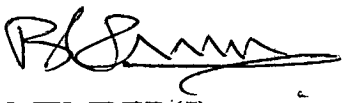
7. In the instant case it appears that the memorandum had been issued to the applicant as representations had been obtained and penalty had been imposed on the applicant after considering the same. From the order it also appears that the applicant was also intimated that in case he had to say anything in the matter of punishment, he might do so in writing to his immediate superior i.e. the Sr. DCM. Chakradharpur. The applicant had submitted appeals to the Sr. DCM, Chakradharpur(Annexure ‘D’ and ‘D1’). The appeals were considered and rejected vide orders dated 1.7.1997 and 4.7.1997 Annexure ‘E’ and ‘E1’. We do not find anything wrong in the enquiry proceeding nor in the appeal. In case of *National Fertilisers Limited Vs. P.K. Khanna*, 2005 SCC(L&S) the Apex Court has held that the disciplinary authority is required to give reasons only when it disagrees with



the findings of the enquiry officer and not when it concurs with the findings. In the instant case, though the applicant has contended that the disciplinary authority has not correctly appreciated the objections taken by the applicant to the enquiry officers' report, no specific issue has been brought to our notice and as such the said plea could not be a ground for judicial review as the applicant could have raised all such grounds before the Appellate Authority which he has not done.

7. In view of the above facts we do not find any force in the O.A. and as such the same is rejected. No order as to cost.

  
MEMBER(A)

  
MEMBER(J)