

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 186/2005

This the ²⁰ day of January, 2009

**Hon'ble Mr. M. Kanthaiah, Member (J)
Hon'ble Dr. A. K. Mishra, Member (A)**

Magan Behari Singh aged about 60 years son of Sri Lal Bahadur Singh resident of Mahipat Singh Purwa Post Office, Chandawatpur, District- Gonda.

Applicant

By Advocate: Sri M.Singh

Versus

1. Union of India through the Secretary to the Ministry of Railways, Govt. of India, New Delhi.
2. Divisional Railway Manager, North Eastern Railway, Lucknow.
3. Chief Mechanical Engineer, North Eastern Railway, Gorakhpur.
4. Senior Divisional Mechanical Engineer (Diesel), North Eastern Railway, Gonda.
5. Divisional Mechanical Engineer (Diesel), North Eastern Railway, Gonda.
6. Assistant Mechanical Engineer (Diesel), North Eastern Railway, Gonda.

Respondents

By Advocate: Sri N.K.Agrawal

ORDER

HON'BLE SHRI M. KANTHAIAH, MEMBER (J)

The applicant has filed the O.A. with a prayer to quash the punishment orders dated 11.10.2002 (Ann.A-1) date 16.2.2002 (Ann. A-2) dated 25.1.2003 (Ann. A-3) and 10.12.2003 (Ann. A-4) passed by respondents No. 6,5,4 and 3 respectively and also for a direction to refix the pension and other pensionary benefits of the applicant on the pay of Rs. 5200/- along with recovery of arrears and also for refund

of amount of Rs. 4000/- deducted from his bonus and Rs. 2200/- deducted from his retiral benefits on the ground that the punishment of stoppage of increment cannot be given without holding an enquiry under Rule 11(2) of Railway Servants (Disciplinary and Appeal) Rules, 1968 since he was going to retire shortly.

2. The respondents have filed counter reply denying the claim of the applicant stating that the orders of penalty imposed by the respective authorities are in accordance with rules and thus there are no justifiable ground for interference by this Tribunal.

3. The applicant filed rejoinder denying the stand taken by the respondents and reiterating the pleas taken in the O.A.

4. Heard both sides.

5. The point for consideration is whether the applicant is entitled for the relief as prayed for.

6. The admitted facts of the case are that the applicant while working as Diesel Shunter in the Diesel Shed, Gonda, was transferred from Diesel Lobby ,Gonda to Diesel Shed, Gonda and on the next date of his joining, i.e. on 8.9.2002, he was directed to shunt the Loco Engine No. 16154 without any learning / training so as to acquaint himself at the Railway track. When he attended the said job , two wheels of loco engine were derailed from the train, upon which on 9.9.2002, a charge sheet was served on the applicant alleging that he was responsible for the derailment of the engine. The applicant has submitted his reply stating that he was not aware of the railway track as he was not given any learning/ training and as such he was not responsible for the above incident. Ann. 5 is the copy of charge sheet and Ann. 6 is the copy of reply. Respondent no. 6, who considered the reply of the applicant was not satisfied with his explanation and imposed penalty vide order dated 11.10.2002 (Ann. A-1) imposing penalty of stoppage of one set of railway pass. Aggrieved with the said order, the applicant made appeal before the

respondent No.5 who enhanced the earlier punishment and stoppage of two increments temporarily was imposed vide his order dated 16.12.2002 (Ann.A-2) without providing any opportunity of hearing. Thereafter, the applicant preferred appeal before the respondent No. 4 on 13.12.2002, who confirmed the penalty imposed by the respondent No. 5 and Ann. A-3 dated 25.1.2003 is the said order. Thereafter, the applicant also preferred revision before the respondent No.3 who rejected the same vide order dated 10.12.2003 (Ann.A-4) stating that the revision is not maintainable after preferring the second appeal. Now, by way of this O.A., the applicant has challenged the punishment imposed by the respondents more particularly the punishment of appellate authority i.e. respondent N. 5 vide his order dated 16.12.2002 under which penalty of stoppage of two increments of the applicant temporarily was imposed and subsequently, the same was confirmed by the revisional authority/ second appellate authority. It is also undisputed fact that the applicant retired on 31.7.2002 which is within one year of the punishment imposed by respondent No. 5 dated 16.12.2002 (Ann.A-2) which was confirmed by the second appellate authority / revisional authority on 25.1.2003 (Ann.A-3). The applicant was drawing salary with the basic pay of Rs. 5200/- at the time of retirement. But because of this penalty ,his basic pay was reduced from Rs. 5200/- to Rs. 5000/- reducing two increments and pension and all other retiral benefits have been fixed on reduced basic pay of Rs. 5000/-

7. It is the main case of the applicant that the penalty of stoppage of two increments temporarily though by way of minor punishment but because of his retirement within one year , such punishment will cause reduction in pension and pensionary benefits and further while imposing such minor penalty, it requires detailed enquiry and the same has not been conducted and thus the said penalty is

against the Rule 11 (2) of the Railway Servants (Disciplinary and Appeal) Rules, 1968. Rule 11 (2) is extracted below:-

11. Procedure for imposing minor penalties:

(1) Subject to the provisions of sub-clause (iv) of Clause (a) of sub-rule (9) of Rule 9 and sub-rule (4) of Rule 10, no order imposing on a Railway Servant any of the penalties specified in Clauses (i) to (iv) of Rule 6 shall be made except after-

(a) ...

(b) ...

(c) ...

(d) ...

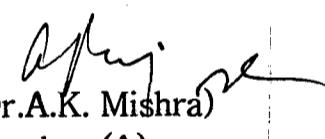
(e) ..

(2) Notwithstanding anything contained in Clause (b) or sub-rule (1), if in a case, it is proposed, after considering the representation, if any, made by the Railway servant under Clause (a) of that sub- rule to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension * (or special contribution to Provident Fund) payable to the Railway servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (6) to (25) of Rule 9, before making any order imposing on the Railway servant any such penalty."

8. From the said provision, it is clear that because of stoppage of two increments of the applicant one year before his retirement, naturally, affected the amount of pension and other pensionary benefits and further this rule also clearly says, in such circumstances, an inquiry shall be held in the manner laid down in sub-rules (6) to (25) of Rule 9 i.e. procedure as laid down for major penalty. But the respondent No. 5 did not take note of the said

provisions and simply imposed penalty vide his order dated 16.12.2002 for stoppage of two increments of the applicant temporarily and subsequently, the second appellant authority/revisional authority i.e. respondent No. 4 also did not consider the said provision and simply confirmed the orders of the appellate authority. As such the penalty imposed by the respondent No. 5 which was confirmed by the respondent No. 4 is not at all sustainable without conducting proper inquiry as provided under sub- Rule 6 to 25 of Rule 9 of Railway Servants (Disciplinary and Appeal) Rules, 1965 and as such the applicant is justified in questioning the orders issued by the authorities.

9. In the result, the impugned penalty order dated 16.12.2002 (Ann. A-2) and order dated 25.1.2003 (Ann. A-3) and order dated 10.12.2003 (Ann. 4) issued by the respondent No. 5, 4 and 3 respectively are set aside and the applicant is also entitled for all consequential benefits and thus O.A. is allowed accordingly. No costs.


(Dr. A.K. Mishra)
Member (A)

HLS/-


(M. Kanthaiah)
Member (J)

20.01.2009