

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH**

Original Application No.479/2007
This the 16th day of September 2008

HON'BLE MR. M. KANTHAIAH, MEMBER JUDICIAL.
HON'BLE DR. A.K. MISHRA, MEMBER ADMINISTRATIVE.

T.N. Misra, adult, son of Sri H.C. Misra, resident of Neelmatha Bazar, Lucknow.

...Applicant.

By Advocate: Shri Ravi Nath.

Versus.

1. Union of India, through the Secretary, Ministry of Railways, New Delhi.
2. Divisional Rail Manager, Northern Railway, Lucknow.
3. Senior Mechanical Engineer, (Carriage and Wagon), Northern Railway, Lucknow.

...Respondents.

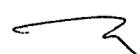
By Advocate: Shri C.B. Verma.

ORDER

BY MR. M. KANTHAIAH, MEMBER JUDICIAL.

The applicant has filed this OA with a prayer to set aside the order Dt. 09.08.2008 (Annexure-A-1) and order Dt. 13/22.02.2007 (Annexure-A-2) passed by Respondents No.2 and 3 respectively with holding the increment for one year in the pay scale of the applicant and then modifying it to Withholding Increment temporarily (W.I.T) for 35 months by dismissing the appeal and with consequential relief thereon.

2. The respondents have filed Counter Affidavit, supporting the orders passed by respondents and opposed the claim of the applicant for interference of this Tribunal.



3. The applicant has filed Rejoinder Affidavit, denying the stand taken by the respondents and also stating that the punishment imposed in the appeal is excessive and found fault with it stating that the same has been issued by the disciplinary authority.
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 J.E.I., at railway station, Lucknow, during October, 2006, had been assigned duty on special Train No. 0514 on 02.10.2006 and in respect of latches in duty, Respondent No.3 issued a Memorandum Dt. 01.11.2006 (Ann.-3) alleging that, he had not signed the break certificate and thus he was guilty of misconduct under Rule-11 of Railway Service (Discipline & Appeal) Rules, 1968 for which, the applicant submitted his reply Dt. 20.12.2006 (Ann.4). The Respondent No.3, who was not satisfied with the reply of the applicant, imposed the penalty of withholding of one increment for one year temporarily vide order Dt. 13/22.02.2007 (Annexure-A-2). Aggrieved by the said punishment, when the applicant filed an appeal (Ann.5) before the Respondent No.2 the same was rejected by its order Dt. 09.08.2007 (Annexure-A-1) and the penalty was enhanced from one year to 35 months without providing any opportunity to the applicant.
7. It is the case of the applicant that the Appellate authority (R-2) did not pass orders in his appeal and the same has been passed by the disciplinary authority (Respondent No.3) only and further, imposed

higher penalty in a mechanical manner which is illegal and against the principle of natural justice and thus questioned the validity of order Dt. 09.08.2007 (Ann-1).

8. A perusal of Ann.-1 Dt. 09.08.2007 shows that it is only the communication of the order of the Respondent No.2 by Respondent No.3 and thus there is no merit in the argument of the applicant that his appeal has been disposed of by the Respondent No.3, but not by appellate authority (Respondent No.2).

9. The penalty of withholding of next increment from one year temporarily was awarded by Respondent No.3 in its order Dt. 13/22.12.2007 (Annexure-A-2). But in the appeal the Respondent No.2 appellate authority enhanced the same from one year to 35 months in its order Dt. 09.08.2007 (Ann.-1)

10. Admittedly, the disciplinary authority (Respondent No.3) imposed minor penalty under Ann-2, of withholding of next increment for one year temporarily after giving opportunity and inviting representation from the applicant, which falls under Rule 16 IV of the Railway servants (Discipline & Appeals) Rules, 1968. Aggrieved with such penalty, when the applicant preferred an appeal, the appellate authority passed orders (Ann-1), under Rule-22 (2) of the Railway Servants (Discipline & Appeal) Rules, 1968 and under which he enhanced the penalty of WIT from one year to 35 months.

11. A reasonable opportunity has to be given to the appellant before imposing an enhanced penalty under Rule 22 (2) (V), but the enhanced penalty, imposed by the appellate authority, does not fall under the said rule and as such the same is not applicable to the case

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of applicant, and thus non providing any opportunity to the applicant by the appellate authority before enhancing penalty as imposed by him is not at all fatal and no violation of principles of Natural Justice is involved.

12. Thus, there are no merits in the claim of the applicant, in quashing the validity of orders passed by Respondent No.2 Dt. 09.08.2008 (Ann.-A-1) and as such the OA has no merits.

In the result, OA is dismissed. No costs.


(DR. A.K. MISHRA)
MEMBER (A)


(M. KANTHAIYAH)
MEMBER (J)
16-09-08

/amit/