

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW
BENCH LUCKNOW

Original Application No.526/2009

Order Reserved on 28.4.2015

Order Pronounced 11-05-2015

HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

Tushar Kanti Pal aged about 60 years son of late Sri Panna Lal Pal,
resident of House No. 84/270, Katra Maqboolganj, Lucknow.

Applicant

By Advocate: Sri Praveen Kumar

Versus

Union of India through

1. The General Manager, Northern Railway, Baroda House, Lucknow.
2. The Financial Advisor and Chief Accounts Officer, Northern Railway, Baroda House, Lucknow.
3. The Senior Assistant Financial Advisor, Northern Railway, C&W Workshop, Alambagh, Lucknow.

Respondents

By Advocate:- Sri S.Verma

ORDER

By Hon'ble Mr.Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant
u/s 19 of the AT Act with the following reliefs:-

- i) to quash the impugned order dated 30.7.2003 and 18.8.2009 contained in Annexure No. A-1 and Annexure No. A-1A with all consequential benefits.
- ii) to direct the respondents to regularize the illegal suspension period and to make full payment of the said period.
- iii) to direct the respondents to refund the illegal deduction made due to WIT for one year.
- iv) to open the sealed cover as stated by the respondents in previous case and grant promotion to the applicant with all consequential benefits.

v) Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.

vi) cost of the present case.

2. The fact of the case are that the applicant was initially appointed in the respondents organization on the post of Clerk in the pay scale of Rs. 260-400/-. The applicant was placed under suspension in 1998 and the said suspension order was subsequently revoked. Subsequently, a charge sheet was issued to the applicant and a detailed enquiry was conducted and after conducting the enquiry, the respondents imposed two punishment upon the applicant viz. i) withholding of increment temporarily for the period of one year in time scale of Rs. 7450-11500/- ii) withholding of PTO for two years.

3. The learned counsel for applicant has indicated that the appeal so preferred by the applicant was also decided by the authorities and the same was decided after obtaining the comments of disciplinary authority as provided in the Railway Servants (Disciplinary and Appeal) Rules, 1968. The learned counsel for the applicant has also drawn the attention of the bench towards the comments so submitted by the disciplinary authority. The learned counsel for applicant has categorically indicated that two punishments cannot be awarded to the applicant for single offence, as such, the same requires interference by this Tribunal.

4. On behalf of the respondents, reply is filed and through reply, it is indicated that the punishment order dated 30.7.2003 as well as order dated 18.8.2009 is passed after holding disciplinary proceedings against the applicant by issuing the charge sheet as per Railway Servants (Disciplinary and Appeal) Rules, 1968 and the scope of judicial review as observed by the Hon'ble Apex Court is very limited and in fact the judicial review in the matter of

disciplinary proceedings is confined to decision making process as the courts and Tribunals are not the appellate forum. Learned counsel for respondents also argued and submitted that it is settled principle of law that if person failed to avail the opportunity of hearing provided as per rules, he cannot be permitted to assail the order of punishment on the ground of opportunity of hearing. Apart from this, it is also argued by the learned counsel for respondents that applicant was duly supplied with the relevant documents and after due enquiry, the punishment was awarded. Apart from this, the learned counsel for the respondents has also indicated that there is no procedural irregularities in conducting the enquiry, as such it does not require any interference by this Tribunal.

5. On behalf of the applicant, Rejoinder Reply is filed and through Rejoinder Reply, mostly the averments made in the original application are reiterated and contents of the counter reply are denied.

6. Heard the learned counsel for parties and perused the records.

7. The applicant was initially appointed in the respondents organizations and was charge sheeted vide charge sheet dated 21.9.1999. In pursuance of the charge sheet, enquiry officer was appointed and enquiry officer conducted the enquiry and statement of article of charges on the basis of which action is proposed to be taken against the applicant was mentioned along with the list of witnesses and documents. After the submission of the enquiry report, the disciplinary authority passed an order of withholding of increment temporarily for the period of one year in time scale of Rs. 7450-11500/- as well as imposed penalty of withholding of PTO for two years. The applicant preferred appeal and the appellate authority sought comments from the disciplinary authority.

Disciplinary authority while giving the comments has categorically

indicated that prayer of the appellant are worth considering and the punishment awarded need to be set aside by suitable quashing the SF-5 allowing the appellant to get all the consequential service benefits, full salary for the period from 21.11.98 to 14.12.98. The appellate authority passed the final order and has indicated that the disciplinary authority has given ex-parte decision as the appellant did not appear for the enquiry. The decision of the disciplinary authority was intimated to the appellant vide letter dated 30.7.2003 but again he refused to receipt the letter in presence of two witnesses which was later personally delivered in office on 31.7.2003. Subsequently, it is observed by the appellate authority that taking an overall view of the case and also considering the fact that the appellant did not cooperate with the enquiry proceedings, as such disciplinary authority has imposed the penalty judiciously and uphold the same.

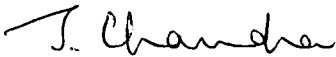
8. Appellate authority while deciding the appeal has failed to consider that two punishments were awarded by the disciplinary authority of the same charge sheet. Learned counsel for applicant has relied upon the provision of Railway Servants (Disciplinary and Appeal) Rules, 1968 through which the comments sought by the appellate authority is required to be made. Relevant provision of Railway Servants (Disciplinary and Appeal) Rules, 1968 reads as under:-


“Comments of the disciplinary authority on the appeal under Rule 21(3)- The comments of the Disciplinary Authority on the appeal only intend to clarify the position on the various points raised by the appellant with reference to the orders of the Disciplinary Authority. These comments thereby facilitate consideration of the appeal by the appellate authority without putting the appellant to any disadvantage. However, it has to be ensured that, while forwarding appeals to the Appellate Authority, the Disciplinary Authority confines its comments to the points raised in the appeal without commenting on any extraneous circumstances on which the charged official has had no opportunity to explain his position. Board desire that the above directions be brought to the notice of all the authorities

concerned on your Railway for their guidance and strict compliance.” (No. E(D&A)99/RG 6-40 dated 13.1.2001).

9. It is settled preposition that for the single charge sheet, two punishment cannot be awarded as such, considering the submissions made by the learned counsel for the parties and after perusal of records, the impugned orders dated 30.8.2003 and 18.8.2009 as contained in Annexure A-1 and A-1A are quashed. The O.A. is allowed. Liberty is granted to the disciplinary authority to pass a fresh order in accordance with law after providing an opportunity of hearing to the applicant within a period of three months from the date the certified copy of order is produced.

10. With the above observations, O.A. stands disposed of. No order as to costs.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

HLS/-