

**Central Administrative Tribunal, Lucknow Bench, Lucknow.**

**Original Application No. 4/2011**

**Reserved on 7.7.2014**

**Judgment pronounced on 04/08/2014**

**Hon'ble Sri Navneet Kumar, Member (J)**

**Hon'ble Ms. Jayati Chandra, Member (A)**

Subash Chandra Vishwakarma aged about 50 years son of late Sri C.L. Vishwakarma resident of 70 B, Kailashpuri, Alambagh, Lucknow, presently working as Senior Section Engineer, Drawing (Estimate) under Divisional Railway Manager, North Eastern Railway, Lucknow.

Applicant

By Advocate: Shri Siya Ram

Versus

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. The Additional Divisional Railway Manager, North Eastern Railway, Lucknow.
3. The Senior Divisional Engineer (Co-ordination), North Eastern Railway, Lucknow.
4. The Divisional Engineer (General) North Eastern Railway, Lucknow.

Respondents

By Advocate: Sri Rajendra Singh

**ORDER**

**By Hon'ble Sri Navneet Kumar, Member (J)**

The Original application is preferred by the applicant under section 19 of the AT Act with the following prayer;

8.1) In the interest of justice, the Hon'ble Tribunal be pleased to set aside the memorandum of charge sheet dated 31.8.2009 annexure No. A-7 annexed with the O.A. issued by the O.P. No. 4 together with punishment order dated 6/7-10-2009, contained in Annexure No. A-1 annexed with the O.A. being illegal and not empowered as per schedule of power, circulated by the Railway Board vide order dated 10.3.2003 contained in Annexure No. A-5 annexed with the O.A.

8.2) That the appellate order dated 8/11-10-2010 passed by the Senior Divisional Engineer (Co-ordination) O.P. No. 3 contained in Annexure No. A-2 with the O.A. along with Revisional order dated 28.10.2010 contained in Annexure No. A-3 with the O.A. passed by the Additional Divisional

Railway Manager, N.E. Railway, LJN, O.P. No. 2 be set aside being illegal void and not sustainable in the eye of law.

8.3) Any other order/relief which the Hon'ble Tribunal deem fit and appropriate in the interest of justice be awarded to the applicant.

8.4) Cost of suit/application be awarded in the interest of justice.

2. The brief facts of the case are that the applicant was appointed as Draughtsman in the pay scale of Rs. 330-560/- and was subsequently promoted in 1991 and thereafter in 1994. Not only this, the applicant was also subsequently promoted in 2005 on the post of Senior Section Engineer. In 2009, he was served with the minor penalty charge sheet and in 2009 itself, he was imposed punishment of withholding of increment, temporarily without postponing future increment for a period of 35 months. The applicant submitted an appeal and the appellate authority rejected the appeal of the applicant in 2010. The applicant thereafter, submitted a revision and the said revision was also rejected by the revisional authority vide order dated 28.10.2010. As such, the applicant preferred the present O.A. challenging the charge memo dated 31.8.2009 together with punishment order dated 6/7-10-2009. Not only this, the applicant has also challenged the appellate order dated 8/11-10-2010 and the revisional order dated 28.10.2010. The learned counsel for applicant has submitted that the work of applicant has been through out very satisfactory and there was no complaint against his work. The applicant has taken a plea that since he was under treatment of serious illness, as such the omission was occurred and not only this, the applicant has also taken a ground that the Divisional Engineer (G) is not empowered to issue minor penalty charge sheet to the applicant who is working as Senior Section Engineer Drawing (Estimate). Therefore, entire action initiated by the Disciplinary authority is bad in the eyes of law and is liable to be quashed.

Not only this, the learned counsel for applicant has also pointed out that the disciplinary authority did not discharge the quasi judicial function with open mind while issuing minor penalty charge sheet to the applicant,

knowing to the fact that the applicant had remained under treatment under SGPGI, Lucknow with serious illness. The learned counsel for the applicant has also pointed out that the disciplinary authority who has issued the minor penalty charge sheet against the applicant was not empowered to issue such minor penalty charge sheet in respect of the staff working in the grade of Rs.7450-11,500/- . The same ground is taken by the applicant in respect of orders passed by the appellate authority . The learned counsel for applicant has also relied upon one decision of the Hon'ble Apex Court in the case of **Bongaigaon Refinery and P.C. Limited and others Vs. Girish Chandra Sarmah reported in 2007 (115) FLR 4** as well as two decisions of Hon'ble High Court in the case of **Union of India and others Vs. Gaya Prasad and another reported in (2011) 2 UPLBEC 1383** and in the case of **Dr. Satya Pandey Vs. Director of Education (Higher) U.P. Allahabad and others reported in (2011) 2 UPLBEC 1416** and has pointed out that an illegal order passed by disciplinary authority does not assume the character of legality only because it has been affirmed in appeal or revision. Not only this, it is also categorically pointed out by the learned counsel for applicant that it is a settled proposition that if an order is bad in its inception, it does not get sanctified at a later stage. Subsequent action / development cannot validate an action which was not lawful as its inception, for the reason that the illegality strikes at the root of the order.

2. Learned counsel appearing on behalf of the respondents have filed their counter reply and through counter reply, it is categorically pointed out by the respondents that it is wrong to say that Divisional Engineer who has passed the order is not competent to pass the order. It is mentioned by the respondents that Divisional Engineer/ General, North Eastern Railway has been authorized by the Senior Divisional Engineer/ General, North Eastern Railway, as such the punishment order which has been passed was duly approved by the competent authority who is JA grade officer . The appeal submitted by the applicant against the punishment order dated 6.10.2009

was also considered by the competent authority and while deciding the appeal, it is indicated by the appellate authority that the applicant failed to submit any reply to the charge sheet and has also not submitted any defence statement. Not only this, it is also indicated in the appellate order that in the appeal, the applicant has not taken any concrete evidence as such the appeal was rejected. The revision petition filed by the applicant was also rejected by the competent authority and confirmed the punishment awarded to the applicant. Not only this, on behalf of the respondents, it is also argued that the applicant received the minor penalty charge sheet on 31.8.2009 and applicant was required to submit the explanation within 10 days which was not submitted by the applicant within time, as such the punishment was awarded to the applicant. The respondents have also submitted that case of the applicant is entirely different with the case of other employees namely Dharam Pal Arora and the applicant was granted full opportunity to put his defence but he failed to bring any new fact in his appeal and has also not filed any reply to the charge sheet, as such there is no illegality in passing the impugned order. Not only this, the respondents have also pointed out the contents of appeal and has also indicated that through his appeal dated 28.10.2009, the applicant has admitted his fault and has requested to condone the same. Learned counsel for respondents has also relied upon decision of Hon'ble Apex Court in the case of **State of U.P. and others Vs. J.P. Saraswat reported in (2011) 4 SCC 545** in which it has been observed that "Judicial review is permissible in very rare cases where punishment is so disproportionate to the established charges that it would appear unconscionable and actuated by malice." Not only this, the learned counsel for respondents have also relied upon on another decision in the case of **Coal India Limited Vs. Ananta Saha reported in (2011) 5 SCC 142** and has been pleased to observe that ***"if delinquent does not participate and cooperate with the enquiry, ex-parte enquiry is valid."*** Not only this, the learned counsel for respondents has also relied upon on another decision of the Hon'ble Apex Court in the case

of **State Bank of India Vs. Samrendra Kishore Endow and another** reported in 1994 SCC (L&S) 687 and has pointed out that ***“imposition of appropriate punishment is within the discretion of the disciplinary authority “.***

3. On behalf of the respondents it is also argued that since the case of the applicant was duly considered by the competent authority and only thereafter the order was passed, as such no illegality has been committed. Therefore, the present O.A. is liable to be dismissed.

4. The learned counsel appearing on behalf of the applicant has filed Rejoinder reply and through rejoinder reply mostly the averments made in the O.A. are reiterated and denied the contents made in the counter reply.

5. Heard the learned counsel for parties and perused the record.

6. The applicant who was working in the respondents organization was served with SF-11 which is a minor penalty charge sheet by the Divisional Engineer vide charge sheet dated 31.8.2009 which provides that applicant has failed to calculate certain estimate. Accordingly the warning was issued to him. The applicant was asked to submit the written statement/ reply to the same within a period of 10 days. The applicant has not submitted any reply. Accordingly, the disciplinary authority has indicated in the order dated 6.10.2009 that since the applicant was given time to submit the representation in his defence but since he has not submitted any such representation, as such an ex-parte decision is taken and the applicant was punished for his negligence and punishment of withholding of increment, temporarily without postponing future increment for a period of 35 months was imposed. The applicant submitted appeal on 28.10.2009 and pointed out that the applicant be exonerated so that he can work with healthy mind in future. The appellate authority rejected the appeal of the applicant by saying that he has not given any evidence in support of his appeal and has also not taken the charge sheet seriously. Not only this, the applicant has annexed certain documents. The applicant has also submitted the revision against the appellate order on 19.10.2010 and once again he has prayed for

exonerating him from the charges so that he can work with his full devotion towards his duties. The revision petition of the applicant was also considered by the revisionary authority i.e. Additional Divisional Railway Manager and also rejected the said revision of the applicant. The learned counsel for the applicant has vehemently argued this fact that the charge sheet which was issued to him was issued by the Divisional Engineer who is not competent to issue the said charge sheet and in support of his arguments has also relied upon a decision of the Hon'ble High Court which provides that if an order is bad in its inception, it does not get sanctified at a later stage. In reply to the said arguments advanced by the learned counsel for the applicant, the respondents have clearly submitted that the charge sheet given to the applicant was given by the competent authority since the same has been issued by the Divisional Engineer who is senior to the applicant. As such There is no illegality in issuing the charge sheet. Apart from this, learned counsel for the applicant has relied upon Rule 2(1)(c)(i) of Railway Servants (Disciplinary and Appeal) Rules, 1968 and submitted that the definition of Disciplinary authority has been given. For ready reference, Rule 2(1)(c)(i) reads as under:-

“2. Definitions:

(1).....

(a).....

(b).....

(c) “Disciplinary Authority’ means

(i) In relation to the imposition of a penalty on a Railway servant the authority competent, under these rules, to impose on him that penalty;”

7. The bare perusal of the charge sheet clearly shows that the same was issued by the Divisional Engineer after the same was approved by the competent authority and the applicant being working as Senior Section Engineer in the respondents organisation. The learned counsel for applicant has also taken a ground that the appellate order passed the appellate authority i.e. Senior Divisional Engineer is a non-speaking order and also not in terms of Rule 22 (2) of Railway Servants (D&A) Rules, 1968. Rule 22 of the aforesaid rule provides for consideration of appeal.

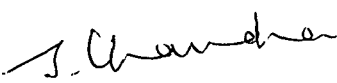
Though, the applicant has preferred the revision and the revision petition is

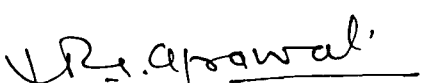
also rejected by the revisional authority. As observed by the Hon'ble Apex Court in the case of **Union of India Vs. Prakash Kumar Tandon** reported in 2009 (1) SCC (L&S) 394 that ***"if disciplinary proceedings has not been conducted fairly, presumption can be drawn that this caused prejudice to the charged employee."*** In the case of **Kuldeep Singh Vs. Commissioner of Police** reported in 1999 (2) SCC 10, the Hon'ble Apex Court has observed that ***"Judicial review is not totally barred."***

8. The bare perusal of the appellate order and appeal submitted by the applicant clearly shows that the appellate authority has not applied his mind, as such the same requires interference. The Hon'ble Apex Court in the case of **Ram Chandra Vs. Union of India** reported in (1986) 2 SLR 608, has observed that the ***"Appellate authority is under obligation to record reasons to its decision."*** The provision of Rule 22 (2) of Railway Servants (D&A) Rules, 1968 also requires that appellate authority is required to record his reason in detail while deciding the appeal of the delinquent employee. Since the same is lacking in the instant case, as such it requires interference by this Tribunal.

9. Accordingly, impugned order dated 8/11-10-2010 and revisional order dated 28.10.2010 as contained at Annexure No.A-2 and A-3 to the O.A. are quashed. The matter is remanded back at the stage of appellate authority to decide the appeal of the applicant by passing a reasoned and speaking order afresh within a period of 3 months from the date, the certified copy of this order is produced before him.

10. With the above observations, O.A. is partly allowed. No order as to costs.

  
(Jayati Chandra)  
Member (A)

  
(Navneet Kumar)  
Member (J)

HLS/-