

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNAOW BENCH LUCKNOW**

Original Application No. 334 of 2011

Order Reserved on 07.02.2017

Dated: This the 10th day of February, 2017

**HON'BLE SHRI JUSTICE VISHNU CHANDRA GUPTA, M(J)
HONO'BLE MR. A. K. UPADHYAY, MEMBER (A)**

M. S. Siddiqui,
Aged about 52 years,
Son of Late Shri M. P. Siddiqui
Resident of E-4, Extension (FI Tower),
37/Cantt Raod, Lucknow.

.....**Applicant**

By Adv: Shri Praveen Kumar.

V E R S U S

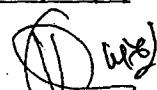
1. Union of India through
The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Chief Mechanical Engineer,
Northern Railway,
Baroda House,
New Delhi.
3. The Additional Divisional Railway Manager,
Northern Railway,
Hazratganj, Lucknow.
4. The Sr. Divisional Mechanical Engineer (C&W),
Northern Railway Hazratganj,
Lucknow.

.....**Respondents**

By Advocate : Shri B. B. Tripathi.

ORDER

HON'BLE SHRI JUSTICE VISHNU CHANDRA GUPTA, M(J)



The applicant by means of this Original Application under Section 19 of the AT Act, 1985 claimed for following relief(s):

- “1. To quash the impugned punishment order dated 28.8.2009, Appellate order 14.1.2011 and order passed by the Revisioning Authority on 16.3.2011 annexed as Annexure A-1, A-2 and A-3 to this OA with all consequential benefits.
- 2. To restore the applicant on the pay, which he was drawing at the time of imposition of penalty and pay arrears of salary on account of restoration of pay along with interest @ 12 P.A.
- 3. Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.
- 4. Cost of the present case.”

2. The brief facts of the case are that the applicant was working as Office Superintendent was served with a minor penalty charge sheet dated 11.3.2008. The charges levelled against the applicant reads as under:

श्री एम०एस०सिद्धीकी/प्रधान लिपिक/अनुभाग/लखनऊ के विरुद्ध लगाये गये दु०विहार या अवचार के अपठनीय का विवरण

श्री एम०एस०सिद्धीकी का श्रीमती रीता दास सिद्धीकी अधीक्षक टेण्डर की अनुपस्थिति में टेण्डर केस का कार्य देखते हैं। श्रीमती रीतादास, अधीक्षक टेण्डर दिनांक 16/2/08 से सिक पर चल रही है। एवं म.रे.प्र./लखनऊ के आदेशानुसार लखनऊ एवं वाराणसी के सी०टी०एस० के टी०सी का कर्य शीघ्रता शीघ्र सम्पन्न करने के लिए वरि०म०या०अभि०/के०वै लखनऊ के द्वारा दिनां 05/3/08 को श्री सिद्धीकी को दिनांक 06/3/08 को कार्यालय पहुँचने के लिए आदेशित किया गया था। लेकिन श्री एस०एस० सिद्धीकी द्वारा उक्त दिनांक को अपने कर्मव्य के प्रक्रित घोर लापरवाही वरती गयी जब कि उनके द्वारा वरिष्ठ म०या०अभि०क०वै० के आदेशों की अवहेलना की गयी और वे दिनांक 06/3/08 को टी०सी० का कार्य सम्पन्न नहीं हुआ तथा सी०टी०एस० का कर्य प्रभावित हुआ। अतएव श्री एम०एस०सिद्धीकी रेल सेवा आचरण नियम 1966 के नियम 3-(i)&(ii)में निहित कर्तव्य भावना का निष्ठापूर्वक पालन करने में असफल रहे।

वरिष्ठ मण्डल या०अभियन्ता
(कै० वै०)

3. The applicant submitted his reply against the aforesaid charge sheet Annexure 5 which reads as under:

सेवा में,

वरिमुयांअभिमानी लखनऊ
उ०र०/लखनऊ

विषय ए के रिपलाय के सम्बन्ध में

सन्दर्भ पत्र सं० पी०/जनरल/मेके/०८ दि० ११.०३.२००८

महोदय,

सविनय निवेदन है कि प्रार्थी यांत्रिक अनुभाग में प्रधान लिपिक के पद पर कार्यरत था, तत्कालीन वरिमानी लखनऊ /उ०र०/लखनऊ द्वारा साप्ताहिक अवकाश एवं अन्य अवकाश में आफिस बुलाया करते थें, प्रार्थी भी कार्य की को देखते हुये आफिस अवकाश वाले दिन भी आफिस आते रहे थे तथा अवकाश वाले दिन दि० ०६/०३/०८ को भी control message द्वारा आफिस बुलाया गया परन्तु मेरी माँ जिनकी अवस्था करीब ८४ साल की है, अचानक बीमार हो गयी थी जिस कारण मुझे अपने जनपद बाराबंकी जाना पड़ा, परन्तु द्वारा ज्ञात हुआ कि मुझे अतिशीघ्र आफिस पहुँचना है, मैं डेढ़ घंटा लेट आफिस पहुँचा देर पहुँचने के लिए Sr.DME(C&W) से खेद व्यक्त किया परन्तु ६-३० बजे मुझे सस्पेन्ड कर दिया गया तथा दुसरे दिन मुझे DSED/AMV द्रासफर के लिये आदेश पारित कर दिये गए जिसके कारण मैं मानसि रूप से बहुत पीड़ित हुआ सस्पेन्ड होने के पश्चात सक्षम अधिकारी द्वारा revocation कर दिया गया। लेकिन कार्याधीन द्वारा चार्जशीट नहीं की गयी तथा उसे pending रखा गया अब अधीन द्वारा कवरिंग लेटर के साथ हस्ताक्षरित साथ में एक वर्ष चार महीने चार्जशीट मुझे PRC द्वारा जारी किया गया जिसमें CTS का TC कार्य प्रभावित होनें का आरोप है। टी०सी०कार्य मेरे द्वारा कैसे प्रभावित हो सकता है क्योंकि टी०सी० में प्रार्थी को क्यों घसीटा जा रहा है क्योंकि मेरे द्वारा मेरा जो काम था जैसे कि

1. Tender propose करवाना
2. सक्षम अधिकारी द्वारा apprval लेकर Tende float करना।
3. तत्पश्चात Comparative Chart Finance से Vet करवाना।
4. Tender committee Nominate करवाना तथा उसके पश्चात Tender की file Convenor को दे देने की जिम्मेदारी होती है।

Case final होने पर सक्षम अधिकारी द्वारा लिपिक को work order issue करने के निर्देश दिए जाते हैं तथा agreement आदि की व्यवस्था लिपिक द्वारा सुनिश्चित की जाती है। जहाँ तक दि० ०६.०४.०८ को प्रार्थी कार्यालय में समय से उपस्थिति नहीं हुए क्योंकि मेरी dependent widow mother में बीमार थी

मेरी

जो Dr. Jaswant Singh का treatment कर रही थी मुझे डर था कि उनकी death न हो जाए उसी गम में प्रार्थी मानसिक रूप से पीड़ित था, इसलिए कार्यालय पहुँचने में विलम्ब हुआ।

श्रीमान जी भविष्य में इस प्रकार की पुनरावृति नहीं होगी। मंडल कार्यालय में रेल प्रशासन की छवि खराब करने वाले असामाजिक तत्वों के कहने पर न करने की क्षमा करें। यदि अज्ञानतावश प्रार्थी से आपके respect में भू हो गयी हो तो मुझे माफ कर दीजिए क्योंकि मेरी दो वेटियों के भविष्य का प्रश्न है।

एम०एस० सिदिकी
प्रधानल लिपिक, शाक्ति नियन्त्रक कार्यालय
मंडल कार्यालय, उ०र० लखनऊ

संलग्न— Dr. Jaswant Singh, द्वारा किए गए Treatment की फोटो कापी।

4. The Disciplinary Authority after considering the explanation passed the order of punishment dated 14.1.2011 which is annexed as Annexure-A-1 which reads as under: Page 12

उ०र० सामान्य-225
फार्म सं० 4

रेल कर्मचारी अनुशासन तथा अपीलद्व नियम, 1968 के नियम 6 के अनुसार शास्ति देने का आदेश संख्या पी/जनरल/मैकेनिकल स्थान लखनऊ
दिनांक 28/8/2009

सेवा में,

श्री एम० एस० सिद्धीकी
प्रधान लिपिक
कार्मिक अनुभाग
मार्फत

आरोप—पन्न ज्ञापन संख्या पी/जनरलपैके०/०८ दिनांक 11/3/08 के उत्तर में आपके दिनांक समसख्यक के अभ्यावेदन पर मैंने ध्यानपूर्वक विचार किया है। मुझे आपका अभ्यावेदन निम्नलिखित कारणों से संतोषजनक नहीं मालूम होता:-
कृप्या सलग्नक अ देखें

अतः मैं आपके विरुद्ध लगाये गये आरोप (पो) अर्थात् उपरोक्त मानक फार्म - ।। के लिये आपको दोषी ठहराता हूँ और वेतन वृद्धि रेक रखने की आपको शास्ति देने का मैंने निर्णय किया है अतः वेतन श्रेणी रु 9300-34800/-में आपका वेतन रु 18670/- दि० 21.07.2010 रु 19240/- बढ़ाने वाली आपकी वेतन वृद्धि जो सामान्यता को मिलती है, साल 35

महीने की अवधि के लिये रोक दी गयी हैं। जिसके कारण भविष्य में मिलने वाली वेतन वृद्धियां स्थगित की जायेगी/ नहीं होगी।

2. रेल कर्मचारी अनुशासन तथा अपील नियम 1968 के नियम 18 के अनुसार इन आदेशों के विरुद्ध अ.म.रे.प्र./उ0रे0 लखनऊ की अपील की जा सकेगी यदि—
आदेश मिलने से 45 दिन के भीतर विधिवत् अपील की जाये और
अपील की भाषा अनुचित या अभद्र न हो।
क्ष्या इस पत्र की पावती दे।

हस्ताक्षर

नाम.....पी0के0सिंह
अनुशासनीय प्राधिकारी.
का पदनाम

संलग्न "अ"

श्री एम0एस0 सिद्दकी/प्रधान लिपिक/पावर कंट्रोल के विरुद्ध जारी किया गया मानक फार्म सं0-11 सं0 पी0/जनरल/मैकेनिकल/08 दि0 – 11/3/008 के उत्तर में प्रेषित किया गया अभ्यावेदन दिनांक निल अनुशासनिक प्राधिकारी (वरि0मं0यां0अभि0/कै0वै0, उ0रे0, लखनऊ)द्वारा पारित उद्धरण दिनांक 21/8/2009:-

श्री एम0एस0 सिद्दकी का अभ्यावेदन मान्य नहीं हैं क्योंकि उनके बयानों में विरोधाभाष हैं:-

1. श्री एम0एस0 सिद्दकी अभ्यावेदन में कह रहे हैं कि मां की तबियकत 06/3/08 को अचानक खराब हो गयी जबकि जसबंत क्लीनिक जो मेडिकल लगाया है उसने डॉक्टर ने लिखा है कि Rest from 05/3/08 से 07/3/08 था तो मेडिकल फर्जी है अथवा सिद्दकी का बयान गलत है।
2. बाराबंकी जाने से पहले आउट स्टेशन परमीशन भी नहीं ली गयी थी।

अतः WIT for 35 months की जाती है। Without commulative effect

वरि0मं0यां0
अभि0/कै0वै0
उ0रे0 लखनऊ

5. The order of punishment was challenged in appeal.

The Appellate authority after considering the claim reduce the punishment from 35 to 16 months. Order of the Appellate Authority was challenged before the revisoinal authority on 16.3.2011 and no further reduction of punishment was made. Aggrieved by the aforesaid orders , this O.A. has been filed.

6. The case of the applicant is that it was holiday and he was asked to work on holiday. But, he could not attend

१५६

the call immediately of his superior officer on account of illness of his mother and he reached to attend the call with a delay of about 1 $\frac{1}{2}$ hours. In explanation, he was also submitted that the mother is solely dependent on him and therefore he went to Barabanki to look after her and after making necessary arrangements there, the applicant returned back and reached the office on 6th March, 2008. It was further contended that the applicant is not supposed to do work for which the applicant has been called to attend the office. It is not the job of the applicant to issue work order or to prepare the agreement etc. The disciplinary authority without any cogent reason and without considering the representation of the applicant passed the order mechanically. The order is not reasoned one. It is also contended that there is no charge that he left the Headquarter without taking any permission. It has been contended that the appellate authority exceeded in its jurisdiction to hold guilty the appellant for that charge which were never levelled against the applicant. So far as the finding with regard to illness of mother is concerned that reasoning given by the disciplinary authority for not believing the statement as correct was endorsed by the appellate authority without any cogent reason. The appellate authority also taken into consideration the fact that the applicant has refused to take the charge memo which is not expected from the railway employee and it

(QW6)

amounts to misconduct. However, the appellate authority finds that memo has been received but after a long lapse of time. The appellate authority ultimately, found that the applicant has not performed his duty with all sincerity and responsibility and as such, he is not to be exonerated. However, the punishment has been reduced as stated herein above.

7. Counter affidavit has been filed. It was contended that withholding of increments without cumulative effect is a minor penalty and the same has been reduced by the Appellate Authority after considering the case sympathetically. There is nothing wrong in the orders passed by the departmental authorities including the disciplinary authority. It was contended that when the order dated 6.3.2008 was not complied with, the applicant was put under suspension on 7.3.2008 with immediate effect and direct that he will not deal with any tender work. However, the suspension order was ultimately withdrawn and after completion of inquiry, the punishment has been awarded.

8. Rejoinder affidavit has also been filed.

9. Heard the learned counsel for applicant and the counsel for respondent.

10. Learned counsel for applicant contended that the disciplinary authority has not taken into consideration the

(Signature)

statement given by the applicant in the form of representation wherein the applicant has categorically stated that he reached on 6.3.2008 with a delay of about 1 $\frac{1}{2}$ hours, but it has not been said to be incorrect, nor any finding has been recorded in this regard. It was further contend that what loss has been occasioned or what work could not have been performed due to absence of the applicant has not been mentioned or discussed in the impugned order. The Appellate Authority as well as the Revisional Authority also ignored this important aspect. Therefore, charges levelled against the applicant is not substantiated. The fact that the certificate of bed rest from 5.3.2008 to 7.3.2008 of her mother does not mean that applicant's mother was not fell ill suddenly on 6.3.2008.

11. On the contrary, the counsel for the respondents would submit that detailed reasons to support the order is not required. Moreover, and this is case based on admission of the applicant and it is not denied that he was called to come in the office and he did not responded the call. He discloses his in-ability in attending the call for two reasons i.e. illness of the mother and leaving the Headquarter by the applicant without permission.

12. No certificate of illness of his mother of 6th March, 2008 has been placed on record by the applicant. Only the certificate issued for taking rest from 5th to 7th March 2008 by her mother has been filed.



13. Admittedly, the applicant left Headquarter suddenly without permission and the act of not taking the memo of charge could be considered to decide the quantum of punishment. Actually the misconduct of applicant has been established on the basis of allegations made in the memo of charge.

14. In the light of submissions of both the parties, it is not denied that the applicant was called upon to attend the office on a holiday. It is also not denied that he did not attend the call as is expected by the superior officer. Even on his own admission, the applicant reached with a delay of 1 $\frac{1}{2}$ hour, but when he was asked to come and when he reached has not been disclosed. The charge memo shows that he did not attend the office on 6th of March 2008. The explanation submitted of sudden illness of mother without illness certificate of 6th of March 2008 cannot be substantiated by certificate which has been placed on record of advising rest from 5th to 7th March, 2008.

15. It is true that no charge has been levelled against the applicant for leaving the Head Quarter without permission or of refusal of taking the memo of charge and that cannot be said to be misconduct under inquiry. So far as the question of loss to the department due to failure of attending office by applicant is concerned, neither the disciplinary authority nor the appellate authority or revisional authority gone into the question and has not recorded as to what loss

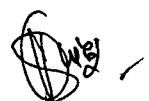
(A.M.S) /

has been occasioned to the department due to non appearance of the applicant on 6.3.2008.

16. The perusal of the memo of charge depict that the charge is twofold. Firstly it relates to non attendance on call and secondly, non performance of TC work and consequent effects thereof.

17. The applicant has violated the orders of the superiors by not attending the call as required by the superior authorities is found to be established. However, there is no finding to this effect as to how the work could not be caused out or affected and what consequences were followed due to non performance of the work due to absence of the applicant.

18. Therefore, we are of the view that charge is partially proved. In the absence of any finding with regard to loss to the department and in view of the fact that the applicant was immediately suspended on 7th March 2008. The punishment of withholding increment for 18 months in the aforesaid circumstances, appears to be excessive and not commensurate with proved misconduct and we are of the view that the matter shall be remitted back to the disciplinary authority to reconsider the case with regard to awarding punishment commensurate with proved misconduct.



19. Even though, the appellate authority in appeal has reduced the punishment from reduction of pay withholding of increment from 35 months, in our view, the punishment is still excessive commensurate to the charges alleged. Therefore, we are of the view that the impugned order to the extent of punishment of the Appellate Authority and the Revisional Authority needs to be reconsidered.

20. In view of the above, the O.A. is partly allowed. The finding with regard to proven misconduct is accepted, but the quantum of punishment requires modification. Hence the order of the Appellate Authority and Revisional Authority are set aside to that extent. The Appellate Authority is directed to reconsider the matter so far as the quantum of punishment is concerned, after given opportunity being heard to the applicant and pass fresh order awarding appropriate punishment commensurate to the proved misconduct. No order as to costs.

A. K. Upadhyay
(A. K. Upadhyay)

Member (A)

V. C. Gupta
(Justice V. C. Gupta)

Member (J)

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