

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA

O.A. No. 187 of 2006

Date of order : 22.11.05

C O R A M

Hon'ble Mrs. Justice Rekha Kumari, Member [ J ]  
Hon'ble Mr. Sudhir Kumar, Member ( A )

Raghu Nandan, S/o Late Chetaru, Ex-Mate, under S.E. [ P. Way], N.E. Railway, Gazipur, r/o village – Santha, P.O., jahwan, P.S. Garakha Hal Avatar Nagar, District – Saran.

....Applicant

By Advocate : Shri M.P. Dixit

Vs.

1. The Union of India through the General Manager, N.E. Railway, Gorakhpur.
2. The DRM, N.E. Railway, Varanasi [ U.P ].
3. The Senior Divisional Engineer II, N.E. Railway, Varanasi [ U.P ].
4. The Senior DPO, N.E. Railway, Varanasi [ U.P ].
5. The Additional DRM, N.E. Railway, Varanasi [ U.P ].
6. The Section Engineer, N.E. Railway, Gazipur City [ U.P ].

....Respondents

By Advocate : Shri S.K. Griyaghey

O R D E R

Justice Rekha Kumari, M [ J ] :- The applicant has filed the OA for quashing the order dated 25.10.04 whereunder he has been dismissed from service by the disciplinary authority in a departmental proceeding and also for quashing the order dated 06.04.05 [ Annexure A/16] of the appellate authority reducing the punishment of dismissal from service to compulsory retirement with immediate effect. There is also a prayer for reinstatement of the applicant in service with all consequential benefits.

2. The case of the applicant is that he was initially appointed as a

Gangman on 15.02.69 in the N.E. Railway. He was subsequently promoted as Senior Gangman and then as Keyman, and ultimately he was promoted as a Mate with effect from 17.02.2000. While working as a Mate , he was put under suspension on 30.01.2001 in contemplation of departmental enquiry. However, no departmental enquiry was initiated against him and he was dismissed from service by order dated 02.02.01 under Rule 14 [ 2 ] of Railway Servants [ D&A] rules, 1968. The applicant filed appeal against that order. The appeal , however, was not disposed of in spite of subsequent representation. The applicant hence filed OA 525 of 01 before this Tribunal. The OA was disposed of on 04.09.01 with a direction to the respondents to dispose of the said appeal within two months from the receipt of the order. by passing a reasoned order. In compliance of that order the appellate authority on 28.11.01 passed an order that since the situation had improved and a regular departmental enquiry was practicable, an enquiry would be held against the applicant. The applicant, however, was not reinstated in service. The applicant hence filed another OA 111 of 02 in this Tribunal stating that unless and until the applicant was reinstated and given the status of railway servant, the said enquiry was not permissible. The Tribunal by order dated 14.01.04 allowed the OA and directed the respondents to reinstate the applicant in service and further directed to complete the departmental proceedings within a reasonable period not exceeding four months from the date of receipt / production of copy of this order, and the applicant would be deemed to be under suspension with effect from the suspension order dated 30.01.01. The applicant submitted copy of the order on

28.01.04. The departmental enquiry, hence, should have been completed latest by 27.05.04. The respondents, however, took no action for three months after the receipt of the copy of the order, and only on 29.04.04 a charge sheet under rule 9 of the Railway Servant [ D&A] rules, 1968 could be issued. The applicant submitted the representation denying the charges and as per the rule, the Enquiry Officer should have been appointed within 10 days, but the same was also delayed. However, four months expired on 28.05.04, but neither the departmental enquiry was completed, nor the applicant was granted any subsistence allowance in violation of the principle of natural justice. After the expiry of the period of four months, the Enquiry officer was appointed on 28.06.04. Thereafter, the respondents filed a petition on 05.07.04 in this Tribunal vide MA No. 306 of 04 for extension of time. The Tribunal on 05.08.04 granted time to the respondents up to 30.09.04 to comply with the order with clear observation that no further extension of time would be granted to do the needful.

3. The further case of the applicant is that though the applicant co-operated, the respondents served the copy of the enquiry report asking the applicant to file a representation within 15 days on 08.10.04 i.e after the cut-off date of 30.09.04. The applicant was also not supplied with the relevant documents during the enquiry. The case of the applicant is that any order passed after the cut-off date of 30.09.04 is non-est. It is further said that in spite of the protest by the applicant, the respondents passed the impugned order dated 26.10.04 dismissing him from service. The applicant preferred an appeal on 25.11.04 against the order of dismissal. The respondent No. 5 on 06.04.05

passed the impugned order in appeal without deciding the legal points raised in appeal, modifying the punishment to compulsory retirement. The applicant submitted a representation before respondent No. 7 on 30.05.05 against the illegality of orders passed by the disciplinary authority and the appellate authority, but could get no reply.

4. The case of the applicant, hence, is that in view of the legal position, the impugned orders are unsustainable, and the applicant is entitled to get all the benefits, including the salary from the date of dismissal upto the date of normal retirement.

5. The respondents have filed a written statement contesting the case of the applicant. Their case, *inter alia*, is that the applicant was charged for misconduct and suspended on 03.01.01 in contemplation of departmental enquiry. He was punished. The applicant filed OA 525 of 01. The same was disposed of vide Annexure A/5 of the OA. The applicant filed another OA 111 of 02 which was disposed of on 14.1.04 with the direction to conclude the departmental enquiry within four months. The respondents filed MA 306 of 04 for extension of time to conclude the proceeding and the same was allowed and according to the direction of this Tribunal, the respondents were to complete the departmental proceeding by 30.09.04. The respondents concluded the departmental proceeding before the above date in spite of non-co-operation of the applicant. The applicant was found guilty for violating the Railway Service [conduct] rule 3 [ 1 [ i ], 3 [ 1 ] [ ii ] and 3 [ 1 ] [ iii ]. The competent authority passed the order of punishment on 26.11.04, dismissing the applicant from

service, and the appellate authority passed order of compulsory retirement vide order dated 17.03.05 on the appeal filed by the applicant. The applicant has not pointed out any illegality in these orders. The applicant had also been given subsistence allowance for the period of suspension. The applicant filed revision against the order of appellate authority and the revisional authority has upheld the order of appellate authority, and the Revisional Authority has sent the order to the applicant on 30.06.06. The case of the respondents, hence, is that there is no ground to assail the impugned order.

6. The learned counsel for both the sides were heard.

7. The learned counsel for the applicant submitted that the respondents were directed in OA 111 of 02 by order dated 14.1.04 to complete the departmental proceedings within a reasonable period not exceeding four months from the date of receipt of copy of this order, and the applicant had submitted the copy of order on 28.01.04, and therefore, the respondents were bound to complete the departmental proceeding by 27.05.04, but they could not complete the proceedings within that period. They, hence, filed MA for extension of time which was allowed, and the respondents were granted time upto 30.09.04 to conclude the departmental proceedings. But the departmental proceeding could not be concluded by 30.09.04, and any order passed by the respondents thereafter would be non-est. Hence, the impugned order of punishment dated 26.10.04 passed by the competent authority, which is a part of the departmental proceeding, is non-est and illegal. The learned counsel in support of his submission has relied on the decision of the Chennai Bench of

CAT in the case of K.V.Gnanasampandan vs. UOI and others, reported in 2008 [ 2 ] ATJ 64 wherein it has been held that in a departmental enquiry, when a direction has been given by the Tribunal to pass final order within a specific time. It is incumbent on the part of the official respondents to have passed a final order within the stipulated time, and any order passed thereafter would be null and void.

8. The learned counsel for the respondents, on the other hand, submitted that after the extension of time granted by the Tribunal, the respondents were to complete the departmental proceeding by 30.09.04 , and Annexure A/13 is clear that the enquiry officer had completed the enquiry on 28.03.04 and therefore, the enquiry was completed within time and hence, the impugned order of punishment cannot be said to be non-est.

9. It appears from Annexure A/7 that the Tribunal in OA 111 of 02 by order dated 14.11.04 had directed the respondents to complete the departmental proceedings within a reasonable period, not exceeding four months from the date of receipt / production of copy of the order and thereafter, by order dated 05.08.04 passed in MA 306 of 04, the respondents were directed to comply the above order by 30.09.04. Therefore, it is evident that the departmental proceeding was required to be completed by 30.09.04.

10. It is clear from Annexure A/13 that the enquiry was completed on 28.03.04 i.e., before 30.09.04. But the departmental proceedings are not concluded on the submission of the enquiry report. They come to an end only when the disciplinary authority on consideration of the enquiry report either

exonerates or imposes punishment on the delinquent. In this case, therefore, the departmental proceeding which was required to be concluded by 30.09.04 was not concluded by that date as the disciplinary authority had passed the impugned order of punishment thereafter on 25.10.04. The question, hence, is whether the order of punishment dated 26.10.04 is non-est.

11. Though according to the above decision relied on by the learned counsel for the applicant, the order of punishment would be illegal, the Full Bench Mumbai of CAT in the case of J.M. Burman vs. UOI & Others, 2004 [ 2 ] ATJ, 340 has held that unless there is inordinate delay which causes prejudice to the concerned person, the order so passed i.e., after the time prescribed by the Tribunal cannot be declared illegal or not binding. In the present case, the enquiry was already concluded on 28.09.04, and thereafter, the applicant was allowed time to file his representation and after considering his representation and the report of the Enquiry Officer, the disciplinary authority has passed the order of punishment on 26.10.04. Therefore, there was not inordinate delay in passing the order of punishment, causing prejudice to the applicant. Therefore, in view of the Full Bench Mumbai decision of the CAT, the order of punishment cannot be said to be illegal as not being passed within the time allowed by the Tribunal.

12. The learned counsel for the applicant has further submitted that as per order of the Tribunal passed in OA 111 of 02, the respondents were required to complete the departmental proceedings by 27.05.04. But they could not complete the departmental proceeding by that date and filed the MA 306 of 04

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for extension of time on 05.07.04 i.e., after the expiry of time fixed by the Tribunal, which is illegal. In support of his submission, he has relied on the decision of Jodhpur Bench of CAT in the case of U.O.I and Others vs. Suraj Bhan, reported in 2004 [ 1 ] ATJ 330 wherein it has been held that extension of time for implementation of the order of the Tribunal can be sought when the time is current and not after the expiry of the time fixed by the Tribunal for implementing the order. But from the order passed in MA 306 of 04 it appears that this submission was considered while passing the order dated 05.08.04 allowing extension of time and therefore, it cannot be agitated again at this stage.

13. The learned counsel for the applicant has, then, submitted that the applicant was not given subsistence allowance during enquiry and therefore, there has been violation of natural justice, and hence, the enquiry vitiates. It appears from the appellate order [ Annexure A/16 ] that it is an admitted position that during enquiry no subsistence allowance was given to the applicant. The provision for payment of subsistence allowance ensures that the employee is in a position to attend the enquiry and defend himself, and is, therefore, an essential element of principle of natural justice. Hence, if no subsistence allowance was paid, and the employee had no other sources of income, the employee would be justified in complaining that he was denied a reasonable opportunity of defending himself. But in this case, there is nothing to show that the applicant had no other source of income to come and defend himself in the enquiry, rather the appellate order shows that he had taken part in the enquiry

and availed of the full opportunity to defend himself. He had also taken the help of a defence helper during the enquiry. Therefore, it cannot be said that on account of non-payment of subsistence allowance, there has been a violation of natural justice in this case.

14. The learned counsel for the applicant, then, has submitted that the charge sheet at Annexure A/9 would show that it starts with the sentence that the applicant is a very indisciplined, arrogant and negligent worker. It is his habit to abuse and assault the superior, and he has connection with anti-socials. These sentences clearly indicate that the disciplinary authority had reached the conclusion that the applicant was guilty. The charge sheet, therefore, is tainted and hence should be quashed.

15. Of course, the charge sheet in this case is not happily worded, and the disciplinary authority should have avoided the above expressions, but there is nothing to show that the enquiry was not properly held, and that the Enquiry Officer was in no way influenced by the above expressions. So, only on the basis of the above expressions, the charge sheet cannot be quashed. The conclusion was also <sup>facte</sup> prima facie and not final. So, no injustice was caused to the applicant.

16. As regards the impugned order of punishment of dismissal [Annexure A/14], it appears that the disciplinary authority, after considering the report of the enquiry officer and the defence of the applicant and examining the evidence have found the applicant guilty and passed the impugned order. The appellate order [Annexure A/16] also shows that by giving the applicant full opportunity of personal hearing and discussing the points raised by him in his

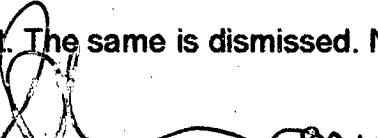
memo of appeal [ Annexure A/ 15] , the appellate authority has passed the reasoned order and considering that the applicant has to retire within one year, he reduced the punishment to compulsory retirement.

17. The impugned orders hence, cannot be assailed on any ground and are valid.

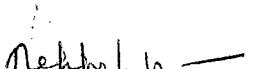
18. As regards non-supply of the documents mentioned in the OA, the memo of appeal does not show that the applicant had raised this point there. There is no other material to show that the applicant was not supplied with relevant documents. So, no reliance can be placed on the allegation that the relevant documents were not supplied to the applicant. Non-supply of documents also does not appear to have caused any prejudice to the applicant. So, the enquiry has not vitiated on this ground.

19. As regards the quantum of punishment, there is very little scope of judicial review on this point, and the Tribunal cannot interfere in the order of punishment unless it is shockingly disproportionate. In this case, considering the nature of allegation, the order of punishment passed in the appeal cannot be said to be shockingly disproportionate, justifying any interference by this Tribunal.

20. In view of the discussions made above, the OA is devoid of any merit. The same is dismissed. No order as to the costs.

  
[ Sudhir Kumar ] M [ A ]

cbs/

  
[ Rekha Kumari ] M [ J ]