

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA No. 52 of 2006

Date of order : 3rd January, 2011

C O R A M

Hon'ble Mr. Anwar Ahmad, Member [Judicial]
Hon'ble Mr. A.K.Jain, Member[Administrative]

Chandrika Ram, son of late Nand Lal, Ex-Master Craftsman of B.R.S. Jamalpur Workshop, resident of Quarter No.447/CD, Rampur Colony, P.O. - Jamalpur, District - Munger [Bihar].

Applicant.

By Advocate : Shri M.P.Dixit

Vrs.

1. Union of India through the General Manager, Eastern Railway, 12 Netaji Subhash Road, Fairlie Place, Kolkata.
2. Chief Works Manager, E.R.Jamalpur, District - Munger.
3. Dy. Chief Mechanical Engineer [Diesel], E. Railway, P.O. - Jamalpur, District- Munger.

Respondents.

By Advocate : Shri N.K.Sinha, ASC

ORDER

Justice Anwar Ahmad, Member [Judicial] : -

This OA has been filed by Chandrika Ram for the following reliefs :-

“8[A] That your lordships may graciously be pleased to quash and set aside the impugned order of removal dated 26.11.1997 contained in Annexure-A/1 and order of the appellate authority contained in Annexure-A/2 dated 30.3.2005.

8[B] An order may kindly be issued for reinstatement in service of the applicant from the date he was thrown out of the employment i.e. from 26.11.1997 and he be paid salary with arrears treating the entire period from 26.11.1997 to the date of joining as on duty without causing further delay with interest.

8[C] All payments may kindly be made with the incidental benefits/consequential and annual increments and periodical revision of scale from time to time.

8[D] The entire enquiry proceeding may kindly be declared illegal and

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void.

8[E] Any other relief or reliefs may be granted if considered fit and proper.”

2. Heard the learned counsel for the applicant and the learned counsel for the respondents.

3. The learned counsel for the applicant has assailed the impugned orders on two grounds -

Firstly, the order of removal was passed by the authority lower in rank to the authority who actually promoted the applicant as Master Craftsman under restructuring scheme. He submits that the applicant was promoted to the post of Master Craftsman under restructuring scheme by the Chief Works Manager, Jamalpur but the removal order has been passed by the Deputy Chief Mechanical Engineer [Diesel], Jamalpur who is lower in rank to the Chief Works Manager. So, he submits that the entire proceeding stands vitiated, hence the impugned orders are fit to be set aside and the relief is fit to be granted.

4. The learned counsel for the respondents on the other hand submits that the applicant was found suitable for the post of Master Craftsman in the scrutiny held in terms of directives contained in Chief Personnel Officer, Kolkata's Sl. No. 15/93. Accordingly, his promotion order was issued under the signature of Workshop Personnel Officer [Senior Scale Officer]. He submits that the Senior Scale Officer is competent to make substantive appointment up to the grade of Rs. 1400-2300 [Revised Rs.4500-7000] as per SOPEST [item 5/a] issued by GM/ER/KKK. So, the Workshop Personnel Officer is the appointing authority of the applicant for the post of Master Craftsman. He further submits that the Chief Works Manager, Jamalpur is the Chief/Head of the Jamalpur Workshop on whose behalf the office order is circulated to all concerned offices for necessary action and the same has been done in the promotion of the applicant. So, he submits that the Dy. Chief Mechanical Engineer [Diesel] who is equal to Works Personnel Officer is quite competent to act as the Disciplinary Authority and to pass the

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removal order of the applicant.

5. This matter has already been considered by this Tribunal in the order dated 16.5.2002 passed in OA 564 of 1998 [Annexure-A/10], in which it was held -

“ It may be pointed out that the disciplinary authority is fully competent to pass an order in accordance with law and by applying his wisdom in the matter which will be based on the available records including the findings of the Inquiry Officer and reply of the concerned employee whereafter he is competent to pass appropriate order. In the instant case, we find that the applicant has challenged the jurisdiction of the disciplinary authority, who initiated disciplinary proceedings against the applicant. He should have file the same at the initially stage itself, but he has not done so. Moreover, we are satisfied with the arguments advanced on behalf of the respondents with regard to competence of the disciplinary authority who has passed the order of removal against the applicant vide order dated 26.11.1997 [Annexure-A-11]. Therefore, this settles the issue relating to the competence of the disciplinary authority to pass such order as per his wisdom.

6. So, the learned counsel for the applicant is not entitled to agitate this matter again.

7. Secondly, the learned counsel for the applicant submits that the impugned order was not passed by the Appellate Authority in accordance with the directions by the Tribunal given in the order dated 16.5.2002 in OA No. 564 of 1998 [Annexure-A/10]. He submits that the Appellate Authority on the direction of the Tribunal given in the aforesaid OA passed a cryptic order dated 06.08.2000 [Annexure-A/11]. He submits that the applicant was, therefore, compelled to file another OA No. 814 of 2002, in which the Tribunal under order dated 14.12.2004 [Annexure-A/12] directed the Appellate Authority to pass order as per direction given in the earlier OA No. 564 of 1998. Thereafter, the Appellate Authority passed the impugned order dated 30.3.2005 [Annexure-A/2]. He submits that the Hon'ble Tribunal directed to impose lesser punishment but the Appellate Authority in the impugned order did not consider as per direction given by the Tribunal and rejected the appeal out-rightly. He, therefore, submits that the



impugned order are fit to be set aside and the relief be granted.

8. This Tribunal passed order dated 16.05.2002 in OA 564 of 1998 [Annexure-A/10] as under :-

“..... In our considered opinion, the appeal of the applicant has not been disposed of by the appellate authority in the manner he was required to do so, as per prescribed rule. Therefore, the order of the appellate authority dated 25.7.1998 [Annexure-III] was not a reasoned and speaking order and, as such, the same deserves to be quashed. If a charge is proved during the course of inquiry, the quantum of punishment should be determined keeping in view the gravity of the charges as well as the facts and circumstances of the case. In the instant case, we feel that a severe punishment in form of removal from service has been imposed on the applicant and the same requires reconsideration, perhaps the purpose could have been served by imposing lesser punishment on the applicant than the penalty of removal from service, in the given circumstances.

“19. In view of the facts and circumstances of the case, as stated above, the order of the appellate authority dated 25th July, 1998 [Annexure-III] is hereby quashed with the direction upon the appellate authority [respondent no.4, Chief Works Manager, Eastern Railway, Jamalpur] to consider afresh the points raised by the applicant in his appeal dated 22.12.1997 [Annexure-IX] and in the light of observations made by us hereinabove, and thereafter pass a reasoned order in accordance with law within a period of three months from the date of communication of this order. However, before passing such reasoned order, the applicant should be given an opportunity of personal hearing by the appellate authority. This OA stands disposed of accordingly. No order as to the costs.”

9. On the direction of the Tribunal, the Appellate Authority considered the appeal and passed a cryptic order. This led to filing of OA No. 814 of 2002 [Anexure – A/12] by the applicant. The Tribunal passed order dated 14.12.2004 in OA 814 of 2002 as under :-

“After careful consideration of the matter and perusal of Annexure-A/2, we are of the considered opinion that the appellate authority has not complied with the order passed by the Court in its letter and spirit as the order under challenge is found to be very cryptic and not attending to all the points raised by the applicant in his appeal which has been filed in the present



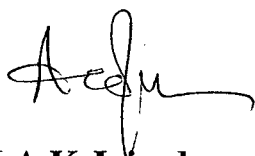
OA as Annexure-A/14 [Annexure-A/9 in the earlier OA]. Therefore, we find it appropriate to send the matter back to the appellate authority i.e., the respondent no.2 with a direction to pass appropriate order as per direction by this Bench in the aforesaid OA within a period of three months from the date of receipt/production of a copy of this order after giving an opportunity of personal hearing to the applicant. Consequently, the impugned order dated 06.08.2002 [Annexure-A/2] is hereby quashed and set-aside with the aforesaid direction.

“3. This OA stands disposed of in terms of observations and directions, as above, with no order as to costs.”

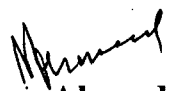
10. Thereafter, the appellate authority passed the detailed impugned order dated 30.3.2005 [Annexure-A/2]. From perusal of the order, it transpires that the Appellate Authority has touched all the points raised in the appeal but he completely left out to consider and pass order on the direction of the Tribunal in respect of imposing lesser punishment. The learned counsel for the respondents during the course of arguments, admitted that the Appellate Authority has passed no order on the direction of the Tribunal to consider for imposing lesser punishment.

11. In the result, the Appellate Authority is directed to pass further order in the light of the observations/directions of the Tribunal for re-considering the imposition of lesser punishment on the applicant in the order dated 16.5.2002 passed in OA 564 of 1998 [Annexure-A/10] within a period of three months from the date of communication of this order.

12. The OA is accordingly disposed of. No costs.



[A.K.Jain]
Member [Administrative]
mps.



[Anwar Ahmad]
Member [Judicial]