

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.

O.A. No. 481 of 2005

Date of order : 22.12.09

C O R A M

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

Shri Ranjit Kumar, S/o Shri Mundrika Das Dhusia, r/o village Choti Keshopur, P.O. & P.S. Jamalpur, working as Diesel Assistant Driver under Sectional Engineer [Loco] Eastern Railway, Jamalpur.

.... Applicant

By Advocate : Shri A.N. Jha

Vs.

1. The Union of India, through the General Manager, Eastern Railway, Fairlie Place, 17, Netaji Subhash Road, Kolkata.
2. The General Manager [Personnel] Eastern Railway, Fairlie Place, 17, Netaji Subhash Road, Kolkata.
3. The Divisional Railway Manager, Eastern Railway, Malda Division, Malda.
4. The Sr. Divisional Personnel Officer, Eastern Railway, Maida Division, Maida.
5. The Sr. Divisional Mechanical Engineer, Eastern Railway, Malda Division, Malda.
6. The Assistant Mechanical Engineer, Eastern Railway, Maida Division, Maida.

.... Respondents.

By Advocate : Shri Mukund Jee.

O R D E R

Justice Rekha Kumari, M [J]:- The applicant has filed this OA for quashing the order dated 19.08.04 passed by respondent No. 3, Divisional Railway Manager, Eastern Railway, Malda as Reviewing Authority reducing the punishment of the applicant of Ten years WIT 3 years [NC] [Annexure A/16]. Besides this, the applicant has also sought for the following reliefs in the OA:-

"[a] the respondents may be directed to restore the pay along with increments on and from 04.02.04 with interest thereon.

[b] the respondents may be further directed to give promotion at par with his juniors under restructuring as well as selected.

[c] any other orders/directions that may be considered fit and proper be passed/issued.

[d] cost incidental to the proceeding be awarded.

2. The case of the applicant is that he was initially appointed as engine cleaner on 28.10.1980. Ultimately in the year 1997 he was promoted as Diesel Assistant Driver [DAD] and was posted in the Malda Division with Headquarters at Jamalpur. On 07.09.02, he was put under suspension which was revoked on 04.10.02. However, after a fact finding enquiry, a charge memo for major penalty was issued against him with the statement of imputation of misconduct / misbehaviour and violating G.R 2.8 of Service Conduct Rules. He submitted representation denying the charge levelled against him and requesting to supply the copies of documents as mentioned in his application. On his request, a defence helper was appointed. Out of six named witnesses, only two witnesses , namely, R.L. Mandal and D. Oraon appeared. The Enquiry Officer, Shri Samar Kumar Das, Loco Inspector , Jamalpur found him guilty for violating G.R 2.8 [Annexure A/8]. A copy of the enquiry report was given to him. He filed representation before the Disciplinary Authority pointing out the irregularities and illegalities. The Disciplinary Authority passed the order of punishment of stoppage of increment for next 10 years with non-cumulative effect with further punishment that he would not be considered for promotion for next 10 years. The applicant preferred appeal against the above order of punishment. The appellate authority by order dated 13.4.04 [Annexure A/13]

rejected the appeal. The applicant being aggrieved filed a review petition before the ADRM, Malda, but the same was returned with the direction that the reviewing authority was DRM, Malda. He preferred review petition [Annexure A/14] before the reviewing authority. The DRM by the impugned order held that he was not directly responsible for accident and was only responsible for absconding from duty for a short period. He, hence, reduced the punishment to WIT 03 years [NC] [Annexure A/16]. The further case of the applicant is that on 11.6.04, respondent No. 4 issued office order promoting 91 Diesel Assistant Driver on having been found suitable for the post of Senior Diesel Assistant Driver with effect from 1.11.03 on account of restructuring, but the applicant was singled out, though the punishment started from 04.02.04. It is also stated that the respondent No. 4 had formed a panel on 03.01.03 for the post of Goods Driver with the list of eligible employees, and he [the applicant] was one of them. He appeared in the viva voce test and was declared successful vide letter dated 27.3.03, but he was left out from posting in the posting order dated 08.11.04. He made representation for inclusion of his name for promotion to the post of Goods Driver, but the representation was not replied to. The respondents issued letter dated 13.4.05 for suitability test for the post of Shunter and juniors to the applicant were called for the said test, but the applicant was not called. The applicant filed a representation to consider his case. The case of the applicant is that so many juniors have been promoted superceding him because of the involvement in DAR case regarding an accident in which he has actually no hand.

3. The further case of the applicant is that he was not supplied with documents demanded by him and as such, there was no proper enquiry. The enquiry was also not held in a fair manner. The appellate authority without giving him personal hearing, passed a cryptic order against the settled laws. The DRM had imposed the penalty for absence from duty for a while, but respondent No. 6 [Disciplinary Authority] had not imposed any penalty for the same, and hence, the review order is bad in law on this score also.

4. The respondents have filed a written statement and have contested the claim of the applicant. Their case is that the applicant was charge sheeted for absconding from duty after putting his signature in token of his arrival on 07.09.02, and this amounts to violation of 2.8 of General Rules, and Railway Service [Conduct] rules 3-1 [ii] and [iii]. The Enquiry Officer conducted the enquiry properly and submitted his report to the competent authority who passed the order of punishment after considering the representation of the applicant. The applicant filed an appeal. The appellate authority after going through the entire case confirmed the order of punishment. The reviewing authority in review reduced the punishment by the order impugned.

5. Their further case is that the suitability test was conducted to fill up vacancies arising out of restructuring, but the applicant was not found suitable and so he could not be considered for the post. He was also not found suitable in the suitability test for the post of Shunter. As regards the panel for the post of Goods Driver, the applicant only qualified in the written test but in the further process of selection test, he could not secure qualifying marks to be included in

the provisional panel. The contention of the respondents, hence, is that there is no merit in the OA.

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

7. The charge framed against the applicant was that on 07.09.02 at Jamalpur siding, the RA - 9 was kept in Loco ^{long} ~~being~~ siding in dead end buffer and another Saloon No. 1058 was kept on the same line at Kalka end. As per programme, both the saloons were to be drawn from Loco siding and to be kept in OC/west/JMP, and since the applicant was on duty on 07.09.02 but absconded in the morning at the time of incident [about 9.10 hours], the shunter shunted the saloons. Due to lack of DSL. Asstt. the shunter Shri R.L. Mandal could not control the shunting and derailed RA-9 saloon and damaged the buffers. The charge further shows that since being a railway servant, the applicant furnished false information and absconded from duty on that date after signing 'ON', he had violated GR 2.8 and Railway Service [conduct] Rules 3.1 [ii] and [iii] of 1966.

8. The defence of the applicant, during the enquiry, was that after signing 'ON' his duty at 8.30 hours, he was going to Loco No. 16542 as asked by on duty ALP and B/C. As he was suffering from dysentery he tried to convey his message by hand indication and also shouting loudly to the shunter and shunting staff that he would soon be reaching there for duty after attending to nature's call and after attending call, he reached the place just after the above incident.

9. The enquiry report shows that the Enquiry Officer, after going

through the statements, documents cross -examination, defence note submitted by the defence helper of the applicant, came to the conclusion, *inter alia*, that his [applicant's] presence could have saved the disaster and his plea to nature's call is not believable and due to his absconcence, the accident took place. He was, thus, responsible for violating G.R 2.8.

10. The contention of the learned counsel for the applicant is that the applicant was not supplied with documents and the statement of the witnesses made during the preliminary enquiry and so the enquiry is vitiated, and that the applicant was not given personal hearing at the time of appeal. His contention also is that the reviewing authority has imposed the penalty for absence from duty, for which there is no charge. His submission also is that the punishment is harsh and disproportionate.

11. The applicant in this case has challenged only the order passed by the DRM, Malda in review. This order shows that the reviewing authority had considered all the documents, as also the facts of the case and the defence of the applicant and had held that the applicant was not available on duty, and his claim that he tried to pass on message through hand signal is totally baseless as the shunter has categorically said that he had not seen applicant till after the accident, and as a matter of fact, Mr. Mandal, the shunter did not even know who the DAD to be booked with him, since at the time of signing 'ON', no DAD had been identified. The impugned order further shows that as the applicant was not directly held responsible for the accident, he has been held responsible only for absconding from duty for a short period. The reviewing authority reduced the

punishment.

12. Thus, there appears no infirmity in the impugned order. The reviewing authority after fully applying his mind has passed the impugned order. The charge also shows that the applicant was also charged for absconding from duty. The punishment order [Annexure A/11] also shows that the disciplinary authority after going through the enquiry report and the explanation of the applicant had found the applicant guilty of absconding from duty and consequent derailment caused during his absence, and had passed the punishment order. Therefore, the submission of the learned counsel that the reviewing authority inflicted the penalty against the applicant for which no charge was framed, is not tenable. The punishment orders by the disciplinary authority also appears to be valid.

13. As regards the contention of the learned counsel that at the time of appeal the appellate authority did not give him opportunity of personal hearing, though there is a special provision for non-gazetted staff to give him a personal hearing before disposing of the appeal, but this provision is discretionary, and such a staff is given personal hearing when the appellate authority considers it necessary. Therefore, even if the appellate authority did not give the applicant an opportunity of personal hearing, it did not vitiate the appellate order. Besides this, the applicant in his review petition [Annexure A/15] has not complained that he was not given any opportunity of personal hearing by the appellate authority and for that he was prejudiced. Therefore, on this ground also, neither the appellate order nor the enquiry proceeding at any stage can be treated as

illegal. Moreover, those orders also are not impugned.

14. Then, so far non-supply of documents, representation dated 27.2.03 [Annexure A/5] of the applicant shows that he had demanded [i] statement of shunter [ii] statement of shunting staff, if any, [iii] copy of duty booking. There is no assertion in the written reply of the respondents that the above documents were supplied. But non-supply of documents vitiates the enquiry only if they are used against the delinquent and prejudice is caused.

15. In this case, the above documents were not used against the applicant. The representation of the applicant before the disciplinary authority [Annexure A/10], Memo of appeal before the appellate authority [Annexure A/12] and the review petition [Annexure A/15] also show that nowhere he stated that the above documents were not supplied to him, and he had been prejudiced for non-supply of the documents.

16. Then, so far copy of the duty booking, it is admitted that he was absent from duty at the place where he was booked for doing duty. Therefore, non-supply of this document is not material.

17. As regards the previous statements of the shunter, Shri R.L. Mandal and Shri D. Oraon who were examined during the fact finding enquiry [Annexure A/2] shows that the applicant had attended that enquiry But he has not specified whether the witnesses deviated from their previous statements. Then, though the applicant has filed copy of his statement during the fact finding enquiry, he has not filed statement of other witnesses to show any contradiction.

Then, though the case of the applicant is that he had given indication to the

shunter, it appears from the statement of the applicant before the Enquiry Officer that he was not definite whether the shunter accepted his indication. During enquiry the shunter has stated that he had seen DAD only after the accident. So, when the applicant himself was not sure as to whether the shunter saw him, there was no scope of deviation in the statement of the shunter from his previous statement in this regard.

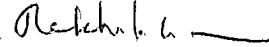
18. Therefore, there is nothing to show that any prejudice was caused to the applicant for non-supply of the documents.

19. As regards the quantum of punishment, the Tribunal can interfere when the punishment is shockingly disproportionate. But in this case, the punishment is not disproportionate. So, the Tribunal cannot interfere.

20. Thus, there appears no reasonable ground to set aside the impugned order. The other reliefs being consequential upon the impugned order cannot also be allowed. In the result, this OA is dismissed. No order as to the costs.



[Sudhir Kumar] M [A]



[Rekha Kumari] M [J]

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