

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA

O.A. No. 817 of 05

Date of order : 28.7.10

C O R A M

Hon'ble Mrs. Justice Rekha Kumari , Member [ J ]

Hon'ble Mr. A.K.Jain, Member [ A ]

Binod Bihari Sharan, S/o Late Shyam Bihari Sharan, r/o village Thawe, P.S. Thawe, District – Gopalganj, Bihar.

....Applicant

By Advocate : Shri Law Kush Kumar

Vs.

1. The Union of India through General Manager, North Eastern Railway, Varanasi.
2. The General Manager, North Eastern Railway, Gorakhpur [ U.P.]
3. The Divisional Railway Manager, North Eastern Railway, Varanasi.
4. The Additional Divisional Railway Manager, North Eastern Railway, Varanasi.

....Respondents

By Advocate : Shri Mukund Jee

O R D E R

Justice Rekha Kumari, M [ J ]:- The applicant in this OA has prayed for quashing the appellate order dated 14.9.2004 [ Annexure A/3] of respondent No. 3 confirming the order of Disciplinary Authority, whereby he has reduced his [ applicant's] salary from Rs. 8100/- to 6500/-. There is also a prayer for giving direction to the respondents to refund the amount deducted from the salary for the month of February, March and April at the rate of Rs. 1600/- per month, with interest.

2. It appears that during the year 2001-02, the applicant was posted at Chapra Junction as Section Engineer. He retired from service in that capacity on 30.06.2004.

3. On 08.05.2002, there was a vigilance <sup>enquiry</sup> investigation, and in that vigilance <sup>enquiry</sup> investigation, it was detected that the applicant had kept in his store 98 Nos. of 2 Bolts Acid acid Battery of 210 A.H and other materials worth Rs. 517892/-, without making any entry in the ledger.

4. The applicant was, thus, proceeded against departmentally for keeping those materials intentionally without making any entry in ledger. The inquiry officer found the allegation partially correct. He filed his report accordingly. The Disciplinary Authority, however, disagreed with him and found the allegation against the applicant fully proved and passed the above order of punishment. The applicant filed an appeal against the order of the Disciplinary Authority to the appellate authority who dismissed the appeal, upholding the order of Disciplinary Authority.

5. The case of the applicant is that the impugned order is illegal.

6. The respondents have filed written statement opposing the prayers made in the OA.

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

8. At the out-set, it may be stated that the impugned order is dated 14.9.2004 whereas the OA was filed on 26.12.2005 i.e after more than one year.

So, the applicant had filed MA 638 of 05 for condonation of delay. On the

grounds mentioned in the MA, the delay is condoned.

9. The main contention of the learned counsel for the applicant on merit of the case is that there was no loss to the railway on the alleged misconduct. Therefore, the punishment awarded is illegal.

10. The learned counsel for the respondents supported the appellate order.

11. The penalty in this case was awarded under the provisions of rule 6 [ iii ] of the Railway Servant [ D&A ] rules, 1968. Rule 6<sup>which</sup> [ iii ] is one of the minor penalties that can be imposed on the railway servant. The penalty under this rule reads thus:-

*" Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders."*


12. Therefore, for imposition of this penalty, there must be a finding that on account of misconduct of the railway servant, there has been pecuniary loss to the Government or the Railway.

13. But from the impugned order or the order passed by the Disciplinary Authority [ Annexure A/2] or the inquiry report [ Annexure A/1], it does not appear that any pecuniary loss was caused to the Government or the Railway, even if the charge is taken to have been proved.

14. So, the Disciplinary Authority could not resort to Rule 6 [ iii ] in imposing the penalty on the applicant, and the appellate authority has committed wrong in confirming the penalty.

15. It may be mentioned here that in such a case, in an ordinary course, we would have directed the concerned authority to pass a fresh order imposing a different penalty, but as the applicant has already retired, it would not be appropriate to give such direction.

16. Accordingly, the OA is allowed. The penalty is set aside. The respondents are directed to refund the total amount deducted from the applicant within a period of two months from the date of receipt / production of copy of this order. In the facts and circumstances of the case, the refund would be made without any interest. No order as to costs.

  
[ A.K. Jain ] M [ A ]

  
[ Rekha Kumari ] M [ J ]

/cbs/