

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

OA NO. 153/57

Date of Decision : 4-6-2001

Shri S.M. Joshi ... Applicants

(By Advocate : K.B. Talreja)

V E R S U S

VOI & Aml ... Respondents
(By Advocate : R.K. Shetty)

CORAM :

Hon'ble Shri S.L.Jain, Member (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?
- (3) Library

(Govindan S. Tampi)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAT RENCH

OA 193/97

MUMBAT, THIS THE 4 TH DAY OF JUNE, 2001

HON'BLE SHRI S.L.JAIN, MEMBER (J)
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Shri S.M.Joshi,
Sr. Clerk, DRM (P)/Bhusawal
Resident of : C/o Shri M.M.Joshi
M.H.No. 88, Garud Plot, Near Madhukar Dairy
Bhusawal, Distt. Jalgaon (M.S.)

...Applicant

(By Advocate Shri K.B.Talreja)

V E R S U S

The Union of India : Through
1. The General Manager,
Central Railway, Mumbai CST-Mumbai.

2. The Divisional Railway Manager,
Central Railway, Bhusawal Division
Bhusawal.

...Respondents.

(By Advocate Shri R.K.Shetty)

O R D E R

By Hon'ble Shri Govindan S. Tampi, Member (A).

Shri S.M.Joshi has, in this OA challenged the enhanced penalty imposed on him by the revisionary authority, which according to him was issued without jurisdiction and competance.

2. Heard S/Shri K.B.Talreja and R.R.Shetty, counsel for the applicant and the respondents respectively.

3. Disciplinary proceedings initiated against the applicant culminated in the imposition of the minor penalty of withholding of one increment for one year without cumulative effect vide order dated 8-5-1995 passed by the Asstt. Personnel Officer, in the office of

the Divisional Railway Manager, Bhusawal. On his filing the appeal against the same, the appellate authority i.e. Divisional Personnel Officer, DRM's office, Bhusawal by his order dated 9-6-1995 reduced the penalty to that of "Censure", as it was the first mistake committed by the applicant and to give him an opportunity to improve himself and to be careful in future. On 9-10-1995, Additional Divisional Railway Manager (ADRM) Bhusawal issued a show cause notice on 9-10-1995 proposing to review the appellate order, and after considering his representation dated 18-10-1995, directed on 8-11-1996 the imposition of penalty of "reduction of pay in same time scale for two years by two stages (N/C)". Hence this application.

4. According to the applicant the order passed by the revisionary authority was liable to be set aside on two specific grounds i.e. ADRM, Bhusawal could not in law have issued a show cause notice and passed the order in revision as the appellate order was passed by the Divisional Railway Manager (DRM). Secondly in terms of Rule 25 (4) (i) of the Railway Servants (Discipline and Appeal) Rules, 1968, no power of revision can be exercised once an appeal has been filed and the appellate order has been passed. On both these grounds Shri Talreja pleads that the order passed by the revisionary authority was improper illegal and liable to be quashed and set aside, argues Shri Talreja.

5. Rebutting the above plea Shri R.R.Shetty, learned counsel for the respondents states that perusal of Rule 25 (4) (i) of Railway Servants (Discipline & Appeal) Rules, 1968 could make it clear that what the Rule prohibits is the exercise of revisionary powers by

the appellate or the revising authority, where it has already considered the appeal and passed the orders. In other words, the prohibition is against the repeated exercise of the powers by the same authority. It is made clear by sub-Rule 4 (ii) where it is indicated that the revising authority shall be higher in rank than the appellate authority. Shri Shetty also points out that the appellate powers in this case was exercised by the Divisional Personnel Officer and not by the DRM as alleged by the applicant's counsel and, therefore, the revision order by the ADRM was legal and proper. No interference from the Tribunal was warranted in this case, according to the learned counsel.

Having given careful deliberation on the matter, we are convinced that the applicant has no case at all. Perusal of the orders and the relevant records makes it amply clear that the original order was passed by the Asstt. Personnel Officer in the Office of the Divisional Railway Manager (DRM), Bhusawal on 8-5-1995 and the appellate order was passed by the Divisional Personnel Manager also in the same office, a higher functionary. On 9-6-1995, the Show Cause notice proposing enhanced penalty was issued by Additional Divisional Railway Manager (ADRM) who was a still higher authority. The final order was passed by the Additional Divisional Railway Manager himself. The averment made by the applicant both in the pleadings and during the oral submissions that the ADRM has sought to review the order passed by the DRM is clearly mis-conceived, misleading and not at all based on facts, as the appellate order was passed by the Divisional Personnel Officer.

7. Coming to the specific legal plea raised by the applicant that Rule 25 of the Railway Servants (Discipline & Appeal) Rules 1968 does not sanction the present revisionary order is also not correct. The relevant position of the rule reads as below :-

Rule 25 (ii)

(1) Notwithstanding anything contained in these rules -

- (i) the President; or
- (ii) the Railway Board; or
- (iii) the General Manager of a Railway Administration or an authority of that status in the case of a Railway servant under his or its control ;
- (iv) the appellate authority not below the rank of a Divisional Railway Manager in cases where no appeal has been preferred;
- (v) any other authority not below the rank of a Deputy Head of a Department, in the case of a Railway servant serving under its control (may at any time, either on his or its own motion or otherwise, call for the records of any inquiry and revise any order made under these rules or, under the rules repealed by Rule 29, after consultation with the Commission where such consultation is necessary, and may)-----

(a) confirm, modify or set aside the order ; or

(b) confirm, reduce, enhance, or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

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(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the cases; or

(d) pass such other orders as it may deem fit; "

It is evident from the above that revisionary powers can be exercised, among others by any authority not below the rank of a Deputy Head of a Department. The Additional DRM is one such functionary and he has, therefore, correctly exercised the powers of revision on an order passed by Divisional Personnel Officer, a authority junior to him.

8. Sub Rule 4 of Rule 25 which the applicant relies upon also does not come to his rescue. The same states as below :-

(4) No power of revision shall be exercised under this Rule ---

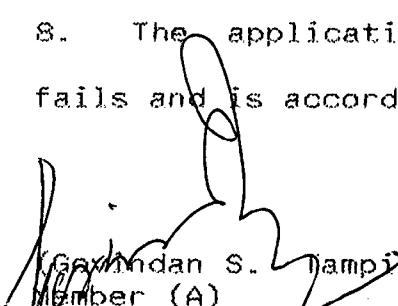
(i) by the appellate or revising authority where it has already considered the appeal on the case and passed orders thereon; and

(ii) by a revising authority unless it is higher than the appellate authority where an appeal has been preferred or where no appeal has been preferred and the time limit laid down for revision by the appellate authority, has expired.

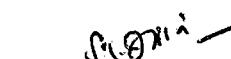
It says that the appellate or the revising authority cannot exercise the powers of revision, where it has already considered the appeal on the case and passed

order thereon, meaning thereby that once the appellate authority or revising authority had considered the issue and given its decision it cannot record a second finding on the same issue. This is also rational and logical. It is not that once an appeal has been considered and decided, the revisionary authority who is higher in rank to that of the appellate authority cannot at all call for and revise the order, if he felt it was warranted. The proposition canvassed on behalf of the applicant that once an appeal has been decided, revision thereof cannot be permitted in terms of the above sub-Rule is a wholly irrational view which cannot be accepted or even countenanced. Sub Rule 4 (ii) makes it clear by stating that the revising authority has to be someone higher than the appellate authority. The applicant has in his pleadings indicated that ADRM has sought to revise the order passed by the DRM while deciding the appeal. This is incorrect appreciation of facts as the appellate powers in this case have been correctly exercised by the Divisional Personnel Officer and not by the DRM, a fact which is clearly borne out by the perusal of the records. Evidently, therefore, the appellate and revisionary powers have been correctly exercised by persons who have competence and jurisdiction to perform the same, cannot at all be assailed in law.

8. The application, being totally devoid of any merit, fails and is accordingly dismissed. No costs.


Gopinathan S. Nampi
Member (A)

/vikas/


(S.L.Jain)
Member (J)