

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

(10)

OA No.58/1994

Date of order: 2-12-97

Kishan Singh at present working as ELC under Junior Electrical Forman (JEF), Gangapur City, in the office of D.R.M.Kota.

.. Applicant

Versus

1. The Union of India through the General Manager, Western Railway, Churchgate, Bombay.
2. The Divisional Railway Manager, Western Railway, Kota.
3. The A.D.R.M., Western Railway, Kota.

.. Respondents

Mr. P.V.Calla, counsel for the applicant

Mr. M.Rafiq, counsel for the respondents

CORAM:

Hon'ble Mr. O.P.Sharma, Administrative Member

Hon'ble Mr. Ratan Prakash, Judicial Member

ORDER

Per Hon'ble Mr. C.P.Sharma, Administrative Member

In this application under Section 19 of the Administrative Tribunals Act, 1985, Shri Kishan Singh has prayed that the order dated 4-3-1993 (Ann.A6) by which penalty of reduction by three stages in the present grade with future effect was imposed, for a period of 5 years as stated in the communication Ann.A7 dated 16-4-1993, may be quashed. He has further prayed that the order Ann.A1 dated 7-10-1993 by which the period of service from 21-10-1991 to 18-3-1993 has been treated as not spent on duty (dies non) may also be quashed. There is a still further prayer that the respondents may be directed to treat the aforesaid period from 21-10-91 to 18-3-1993 as spent on duty for all purposes

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and full pay and allowances may be provided for the aforesaid period as if orders Ann.A6 and Ann.A7 had never been passed.

2. The case of the applicant is that he joined in the service of the Railways as Electrical Chargeman on 12-3-1987 at Gangapur City in the Kota Division of the Western Railway, in scale Rs. 1400-2300 and earned increments in the aforesaid scale. While he was working on the said post, disciplinary proceedings were initiated against the applicant under the Railway Servants (Discipline and Appeal) Rules, 1968 on the allegation that while the applicant was on medical leave at Bharatpur, he quarreled with the Driver of 4 Up on 13.9.1990 and assaulted the Driver which caused detention of the aforesaid train. The applicant denied the charge stating that the applicant was in fact called to look into the fault in the functioning of the train. It was the Driver of the train, who started abusing and beating the applicant with the help of others. The applicant was injured and was able to escape with the help of others. The applicant, thereafter lodged an F.I.R. Simultaneously, the applicant reported the matter to the Department but no action was taken against the Driver. Subsequently, the Driver also lodged an F.I.R. With regard to the F.I.Rs. lodged by the applicant and the Driver, the matters are pending before the Trial Court at Bharatpur.

3. Further according to the applicant, in the disciplinary proceedings initiated against him, the Enquiry Officer submitted enquiry report and he apprehended that the order of removal may be passed

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against him. The applicant, therefore, submitted an OA No. 497/1991 before the Jodhpur Bench of the Tribunal. During the hearing, the applicant pleaded that the order of penalty had not been served on the applicant. The Tribunal, therefore, directed vide order Ann.A2 dated 20-11-1991 that status quo as on date should be maintained.

4. Further according to the applicant, he reported for duty on 22-11-1991 but despite the order of the Tribunal Ann.A2, the applicant was not taken on duty. The applicant submitted a representation dated 22-11-1991 (Ann.A3) seeking to be allowed to join duty. Meanwhile the respondents filed reply to the OA stating that the order of penalty had already been issued and, therefore, the OA is not maintainable, because the applicant should first file an appeal against the penalty order as per the provisions of the 1968 Rules. On 30-10-1992, the Jaipur Bench of the Tribunal disposed of the OA directing the applicant to file an appeal before the authorities and directing the respondents to dispose of the appeal on merits within a specified period.

5. The applicant's case is that the position that has emerged from the Tribunal's order dated 30-10-1992 is that a copy of the penalty order had not been served on the applicant before 20-11-1991. Further, the applicant should have been allowed to join duty but despite his repeated requests, he was not allowed to join duty. Any how, the applicant submitted an appeal on 26-11-1992. Vide an order dated 4-3-1993 (Ann.A6), the appeal was disposed of

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by which
the penalty of removal from service imposed on the applicant by the disciplinary authority was reduced to that of reduction by three stages in the present grade with future effect and by a further order dated 16-4-1993 (Ann.A7) the said penalty was stated to be effective for a period of 5 years. After receipt of the aforesaid orders, the applicant joined duty on 22-3-1993 on the post of Electrical Chargeman. The respondents were under an obligation to make payment of pay and allowances for the period from 21-10-1991 to 22-3-1993 when during this period the applicant was not allowed to join duty despite the orders of the Tribunal. The applicant submitted representations in this regard. The respondents have now communicated a decision vide order dated 7-10-1993 (Ann.A1) treating the aforesaid period as not spent on duty and have further stated that the applicant will not be entitled to any gain for this period.

6. According to the applicant, the respondents should have waited for the outcome of the criminal case pending in the Court before proceeding with the disciplinary inquiry because the facts in relation to both the matters are the same. The appellate authority also disposed of the applicant's appeal without application of mind, by passing a non-speaking order and, therefore, it is contrary to the directions issued by the Tribunal and against the principles of nature justice.

7. In fact, on 20-11-1991 the Tribunal had issued interim direction vide Ann.A2 directing the respondents to maintain status quo on that date.

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Till that date the order of removal from service had not been served on the applicant. Therefore, the applicant was entitled to continue to be on duty as a consequence of the order Ann.A2 and there was no question of the period from the date of order of removal from service to the date of change of penalty to that of reduction in scale of pay being treated as not spent on duty. Moreover once the penalty of removal from service has been taken away, and the applicant has been reinstated in service by imposing ^{another} penalty on him, which retained him even in service, the period of absence from duty cannot be treated as not having been spent on duty. The substituted penalty imposed by the appellate authority has also serious adverse consequences on the applicant. He has, therefore, prayed that the orders imposing penalty of reduction of pay by 3 stages in the present grade with future effect for a period of 5 years may be quashed and the order Ann.A1 treating the period from 20.10.1991 to 18.3.1993 as dies non may also be quashed.

8. The respondents in their reply have stated that ~~xxxxxxx~~ the order imposing penalty of removal from service was received by the applicant on 21-10-1991 as evidenced by Ann.R1. Therefore the applicant is not entitled to any benefit as a consequence of the order dated 20-11-1991 passed by the Tribunal vide Ann.A2, maintaining status quo as on that date because the order of penalty had come into effect a month before the passing of the order maintaining status quo, by the Tribunal. They have maintained that the orders passed by the disciplinary and appellate authorities are

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self explanatory and there has been no violation of principles of natural justice as alleged by the applicant. The penalty of removal imposed on the applicant has been reduced to a lower penalty by the appellate authority on humanitarian ^{grounds} and this is the only penalty which remained in force. As regards the payment for the period from 21-10-1991 to 22-3-1993, the respondents have stated that he is not entitled to any payment because the period has been treated as not spent on duty.

9. During the arguments, the learned counsel for the applicant assailed the orders of the appellate authority at Annexures A6 and A7 as wholly unjustified having regard to the circumstances of the case. He added that the appellate authority had itself in this order expressed some doubt about the correctness of the factual position stated in the ordersheet and, therefore, was not justified in coming to the conclusion that the applicant was guilty of any misconduct. He further stated that the effect of the order Ann.A1 dated 7-10-1993 by which the period from 21-10-1991 to 18-3-1993 has been treated as dies non, would be that there would be break in service of the applicant and the service prior to that period would stand forfeited. He, therefore prayed that all the orders adverse to the applicant, may be quashed. The learned counsel for the respondents maintained during his oral arguments that the orders of the appellate authority and the disciplinary authority had been passed with due application of mind and in accordance with the prescribed procedure. These, therefore, called for no interference from the Tribunal. As regards the order Ann.A1 dated 7-10-1993, he stated

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that effect of this order is only that no pay and allowances would be granted to the applicant for the period from 21-10-1991 to 18-3-1993 and this will have no other effect such as break in service.

10. We have heard the learned counsel for the parties and have perused the material on record.

11. Initially after inquiry was held into the charges framed against the applicant in the chargesheet issued to him, penalty of removal from service was imposed on him vide order dated 11-10-1991 which was served on the applicant vide Ann.R1 dated 21-10-1991. Thus w.e.f. 21-10-1991 the applicant stood removed from service. Subsequently, as per the directions of the Tribunal vide order Ann.A5 dated 30-10-1992, the applicant preferred an appeal against the order of penalty of removal from service and the appellate authority vide orders Ann.A6 and Ann.A7 dated 4-3-1993 and 16-4-1993 imposed on the applicant penalty of reduction by 3 stages in his existing grade with future effect for a period of 5 years and to be effective from 1-3-1993. As a consequence of the orders passed by the appellate authority, the applicant rejoined duty in his earlier post on 18-3-1993. Thus the period from 21-10-1991 to 18-3-1993 was considered by the competent authority as not spent on duty and was treated as dies non. We are satisfied on the basis of the material placed on record by the respondents that the order removing the applicant from service was served on him on 21-10-1991. Therefore, the applicant's plea that the order Ann.A2 dated 20-11-1991 maintaining status quo on that date should have been given effect to, is not tenable because the applicant already stood removed from

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service about a month before that date.

11. Now we have to consider whether the grounds for assailing the order of the appellate authority are maintainable. The disciplinary authority had imposed a penalty of removal from service on the applicant on the basis of the charges as had been established during the inquiry but the appellate authority considered the facts and circumstances of the case, length of service and his age, ^{and} decided to modify this penalty to a lower penalty by which the applicant was retained in service but his pay was reduced. When there is some evidence available to establish a charge, it is not within the domain of the Tribunal to determine how much evidence should be required to hold a charge as proved nor is this Tribunal competent to reappraise the evidence, as if ^{is} it an appellate authority. Suffice it to say that this does not appear to us to be a case of no evidence. Therefore we decline to interfere with the order of the appellate authority who had already displaced the order of the disciplinary authority by its own order.

12. As regards the plea of the applicant that disciplinary proceedings should not be initiated when criminal proceedings were also pending, it may be stated that it has now been held by the Hon'ble Supreme Court in the case of State of Rajasthan Vs. Shri B.K.Meena and Ors., JT 1996 (6) SC 684 that generally speaking two sets of proceedings can go on simultaneously. Therefore, this plea of the applicant is also rejected. As regards the order

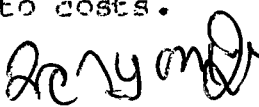
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Ann.A1 dated 7-10-1993 treating the period from 21-10-1991 to 18-3-1993 as dies non, it may be stated that the applicant did not physically perform duty during this period. The respondents had an obligation to pass an order regulating the treatment to be accorded to this period. We decline to interfere with the order of the competent authority that the aforesaid period shall be treated as not spent on duty.

13. As regards the consequences of Ann.A1 dated 7-10-1993, the learned counsel for the respondents clarified during the arguments that the only effect of this order was that the applicant would not be entitled to pay and allowances for the period from 21-10-1991 to 18-3-1993 and that it does not have any other consequence such as break in service, forfeiture of previous service etc. It also appear to us that the order as worded also does not state that there would be any break in service of the applicant or that the service prior to the period from 21-10-1991 would stand forfeited. In view of the position that has emerged during the arguments and after considering the contents of Ann.A1, we direct that the only effect of the order dated 7-10-1993 shall be that the payment of pay and allowances shall not be made to the applicant for this period and that it shall have no other adverse consequence on the service of the applicant.

14. The OA stands disposed of accordingly. No order as to costs.


(Ratan Prakash)
Judicial Member


(O.P.Sharma)
Administrative Member