

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 23rd day of July, 2010

ORIGINAL APPLICATION No.3/2006

CORAM :

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.K.S.SUGATHAN, ADMINISITRATIVE MEMBER

Hari Prakash H,
Mason (MCF) under
Senior section Engineer (Works),
West Central Railway,
Kota Division,
Kota.

... Applicant

(By Advocate : Shri C.B.Sharma)

Versus

1. Union of India through
General Manager,
West Central Zone,
West Central Railway,
Jabalpur.
2. Chief Engineer (Bridge),
West Central Zone,
West Central Railway,
Jabalpur.
3. Divisional Railway Manager,
West Central Railway,
Kota Division,
Kota.
4. Addl.Divisional Railway Manager,
West Central Railway,
Kota Division,
Kota.
5. Sr.Divisional Electrical Engineer (TRO),
West Central Railway,
Kota Division,
Kota.


... Respondents

(By Advocate : Shri Anupam Agarwal)

ORDER

PER HON'BLE MR.K.S.SUGATHAN

The applicant has challenged the imposition of the major penalty of reduction of his pay to a lower stage with cumulative effect alongwith loss of seniority. The applicant was issued a charge-sheet on 10.5.2000 (Ann.A/4). There were three articles of charges against the applicant. The first article relates to the allegation of making a false and baseless complaint against the Assistant Personnel Officer. The second article of charge is that the applicant got signatures of 21 co-employees disclosing the contents of the complaint, and the third article of charge is that the applicant forged the signatures of 15 co-employees in the said complaint. The applicant denied the charges. An inquiry officer was appointed to conduct an oral inquiry. The inquiry officer submitted his report on 14.3.2002 holding that all the charges against the applicant are proved. Copy of the inquiry report is at Ann.A/12. Copy of the said report was also made available to the applicant, who represented against the same. After considering the representation of the applicant, the disciplinary authority imposed the punishment of compulsory retirement vide its order dated 13.6.2002 (Ann.A/3). The applicant preferred an appeal against the punishment. The appellate authority converted the penalty into reduction to the lower stage of Rs.4000/- in the pay scale of Rs.4000-6000 with cumulative effect for three years alongwith loss of seniority, vide order dated 26.9.2002 (Ann.A/2). The applicant was also medically de-categorized from the post of Senior Assistant



Driver and posted as Mason in the pay scale of Rs.5000-8000 and, therefore, his pay was kept at the minimum of the scale at Rs.5000/- for a period of three years with cumulative effect and loss of seniority. The applicant submitted revision application, which was rejected by the Chief Engineer vide order dated 16.5.2005 (Ann.A/1).

2. It is contended by the applicant that he has more than 29 years of service and there has been no complaint about his work. He appeared in the selection for the post of Assistant Driver in the year 1996 but he was not selected but many employees having no knowledge and not qualified were selected. The applicant alongwith his co-workers made a complaint against mal-practice in the selection to the Railway Minister. The service Union had also represented about the mal-practice in the selection process. The applicant with his co-workers had represented to the Railway Minister after approaching the Divisional Manager. The proceedings conducted against the applicant are illegal because the listed documents were not testified by those who signed the documents. Only two witnesses have been cited in the charge-sheet and they both belong to the Vigilance Department who conducted the inquiry into the complaint made by the applicant. The statements made by the employees who signed the original complaint have been accepted as proof on the basis of deposition made by the vigilance officials. The concerned employees should have been cited as witnesses to prove the documents. The punishment of reduction to the

lower stage alongwith loss of seniority is not one of the punishments envisaged under the Railway Servants (Discipline and Appeal) Rules.

3. The respondents have contested the OA and have filed their reply. In the reply it is contended that a responsible railway employee should not have made false complaint against his superior. There was no malpractice in the selection. The applicant has participated in the inquiry. After participating in the inquiry he cannot raise issue such as non-citation of the employees as witnesses who signed the statements before the vigilance officials. Making a false and baseless complaint amounts to misconduct. 14 employees have disowned that they had signed the complaint. Therefore, the applicant had forged the signatures of those employees. The documents are not specifically denied by the applicant. The appellate authority has considered the appeal and has taken a lenient view and converted the penalty of compulsory retirement. Non-citation of the concerned employees as witnesses has not caused any prejudice to the applicant.

4. We have heard learned counsel for the applicant Shri C.B.Sharma and learned counsel for the respondents Shri Anupam Agarwal. We have also perused the record carefully.

5. Following the judgement of the Hon'ble Supreme Court in **B.C.Chaturvedi v. Union of India** [1995 (6) SCC 749], and **Hon'ble High Court of Judicature at Bombay v.**

Shashikant Patil [2000 SCC (L&S) 144], the scope of judicial review in departmental proceedings is limited to the examination whether there has been any violation of rules or procedures, whether there is any violation of the principles of natural justice or whether there have been extraneous considerations which vitiated the proceedings. We have examined the pleadings of this case by keeping in mind the aforesaid scope of judicial review. It is not disputed that the applicant made a complaint to higher authorities alleging mal-practice in the selection process. Subsequently, the complaint was inquired into by the vigilance department and some of the employees who signed the complaint disowned their signatures while some other employees stated before the vigilance officials that they signed the complaint without knowing the contents thereof.

6. On the basis of vigilance inquiry into the complaint, the respondents initiated disciplinary action against the applicant for making false and baseless complaint against a superior officer. The main contention of the applicant's counsel is that the statements given by the employees before the vigilance officials have been accepted as proof without being testified by those employees themselves. Those employees should have been cited as witnesses. It is also contended by him that the conclusion about forgery cannot be held as proved since opinion of handwriting expert was not taken about the correctness of the signatures of the employees who subsequently disowned the same. We are unable to agree with

the contention of the learned counsel for the applicant because the applicant should have raised these issues either before the disciplinary authority in response to the charge-sheet or during the proceedings before the inquiry officer. There is nothing on record to indicate that the applicant has specifically demanded that the employees who gave statements before the vigilance officials should be listed as witnesses. The applicant also had an opportunity to cite those employees who disowned their signatures as defence witnesses. But that opportunity was not availed by the applicant. It is not open to the applicant to raise these issues at this stage. After carefully going through the pleadings, we are of the considered opinion that there is no violation of the principles of natural justice. It is seen from the record that the applicant has been given sufficient opportunity to defend his case. We also do not see any violation of any rule or procedure.

7. It has been contended by the applicant that penalty of reduction of pay to a lower stage alongwith loss of seniority is not one of the penalties listed in Rule-6 of the Railway Servants (Discipline and Appeal) Rules, 1968. We find some merit in the said argument of the applicant. Rule-6 (v) & (vi) of the Railway Servants (Discipline and Appeal) Rules, 1968 reads as follows :

"Major Penalties

(v) **[Save as otherwise provided for in clause (iii-b)] reduction to the lower stage in the time-scale of pay for a specified period, with further directions as to whether on the expiry of such

period, the reduction will or will not have the effect of postponing the future increments of his pay;

(vi) Reduction to a lower time scale of pay, grade, post or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the Railway servant was reduced and his seniority and pay on such restoration to that grade, post or service;"

The applicant has been imposed the penalty of reduction to a lower stage in the same pay scale, as provided in Rule-6(v) of the Railway Servants (Discipline and Appeal) Rules, 1968. The said penalty does not provide for loss of seniority. Loss of seniority can be a part of the penalty listed at Rule-6(vi) where reduction to a lower pay scale is envisaged as a penalty. Since the punishment imposed upon the applicant is reduction to a lower stage in the same pay scale, it is not open for the respondents to add further punishment of loss of seniority.

8. Learned counsel for the applicant has relied upon the order of the Principal Bench of this Tribunal in OA 1543/2003 [Sunil Parashar v. Union of India & Ors.]. We have perused the said order (Ann.A/21). It is seen that the charge against the applicant in that OA was different inasmuch as the applicant in that OA had complained to the General Manager about the harassment faced by him and non-payment of certain dues, whereas in the present case the charge against the applicant is that he manipulated a memorandum against the superior officer alleging bribery and corruption in the selection process and some of the employees subsequently revealed before the vigilance officials that they had not signed the complaint. In view of this vital difference in the nature of


the charge, the conclusion drawn by the Principal Bench in OA 1543/2003 cannot be applied to the facts of this case.

9. The applicant has also relied on an order passed by the Jaipur Bench of this Tribunal in OA 442/2005 [Abdul Shakoor v. Union of India & Ors.], which was remitted to the competent authority for reconsideration of the quantum of punishment. We find that the finding of the Tribunal in that case was that the quantum of punishment deserves reconsideration. The quantum of penalty depends upon the gravity of misconduct in each case and, therefore, the finding in one case cannot be applied to another case. In any case, the applicant in that OA was imposed a higher penalty under Rule-6(vi), whereas the penalty imposed on the applicant in the present case is as per Rule-6(v).

10. In view of the above discussion, we are of the considered opinion that the contention raised by the applicant regarding non-listing the employees who disowned the signatures on the complaint as witnesses in the inquiry cannot be sustained at this stage. However, there is merit in the applicant's contention that loss of seniority cannot be added to the penalty of reduction to a lower stage in the same pay scale.

11. For the reasons stated above, this OA is partly allowed and the respondents are directed to modify the penalty by deleting the loss of seniority within a period of three months

from the date of receipt of a copy of this order. No order as to costs.


(K.S. SUGATHAN)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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