

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 5.12.2014

OA No. 291/00059/2014

Mr. Amit Mathur, Counsel for the applicant.

Mr. Anupam Agarwal, Counsel for the respondents.

Heard the learned counsel for parties.

Order Reserved.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Adm/

10/12/14.
order
pronounced
today in
the open
Court by
the aforesaid
Bench

By
10/12/14.
C.O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.**ORIGINAL APPLICATION No. 291/00059/2014****ORDER RESERVED ON 05.12.2014****DATE OF ORDER : 10.12.2014**

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Jivan Ram Meena son of Late K.L. Meena, aged around 50 years, by caste Meena, working as Office Superintendent, Chief Works Manager, West Central Railway, Kota. Resident of Gali No. 1, Saraswati Colony, Rotera Road, Kota.

... Applicant

(By Advocate: Mr. Amit Mathur)

Versus

1. Union of India through General Manager, West Central Railway, Jabalpur (M.P.).
2. The Chief Works Manager, West Central Railway, Jabalpur (MP).
3. The Chief Per. Manager, West Central Railway, Kota (Rajasthan).
4. The Deputy Chief Yard Engineer 1, West Central Railway, Kota (Rajasthan).

... Respondents

(By Advocate: Mr. Anupam Agarwal)

ORDER**PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

The applicant has filed the present OA praying for the following reliefs:-

"(i) the present OA may kindly be allowed and Order Annexure A/1 to A/4 dated 01.02.2013, Memorandum dated 21.10.2011, Disciplinary Authority order dated 03.01.2012 and Appellate Authority dated 27.02.2012 may kindly be quashed and set aside, the directions may be issued to the respondents to give all consequential benefits to the applicant.

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- (ii) any other order or direction which deem fit and proper in the facts and circumstances of the case may also be passed in favour of the applicant.
- (iii) Cost of this OA also may be awarded in favour of the applicant."

2. Heard the learned counsel for the parties and perused the documents on record. The learned counsel for the applicant argued that the applicant had filed a representation for assigning correct seniority to him. Feeling annoyed from the applicant, the respondents served a charge memo dated 21.10.2011 (Annexure A/2) under Railway Servants (Discipline & Appeal) Rules, 1968. In that Memorandum, it was alleged that on 14.10.2011, some documents were marked to AWM (G) and after checking, it was found that the aforesaid document was found in Nirman Section 1 on 19.10.2011. It was alleged that because of movement of file took place from the applicant's Section and that the applicant was the In charge of the Section, hence, files were not dispatched in time and, therefore, as per the charge sheet, the applicant was responsible for the delay.

3. The learned counsel for the applicant argued that the charges leveled upon the applicant were unjust and unlawful. The charges were leveled with mala fide intent because the applicant had earlier prayed for the due seniority. In response to the Memorandum the applicant made a request for supply of certain documents to file his reply to the Memorandum but the respondents have not supplied the copies of the documents required by him. He submitted a representation to the Chief Factory Manager on 22.11.2011 (Annexure A/5) but without

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considering the representation/application dated 22.11.2011, the Disciplinary Authority held the applicant is having no defense, therefore, liable to punished and passed the punishment order dated 03.01.2012 (Annexure A/3) by which the penalty of one stage below in the same pay scale and pay band for three years without cumulative effect was imposed upon the applicant.

4. The learned counsel for the applicant argued that the applicant being aggrieved by the punishment order filed an appeal before the Appellate Authority. In the appeal, he has mentioned that there was no delay in dealing with the files at the level of the applicant. That the file was processed on 14.10.2011 and was marked to the Deputy CYME-II and Deputy CYME-II sent the same on 17.10.2011 in Nirman Section I, which was sent to AWM (G) on the same date. As such, there is no delay in dealing with the file (Annexure A/6). The learned counsel for the applicant argued that the Appellate Authority vide its order dated 27.02.2012 (Annexure A/4) modified the order of punishment by reducing the period of penalty from three years to two years. However, the Appellate Authority in its order has held that it is not a case of treating the applicant In-charge of the Section but because of delay in the movement of file.

5. The learned counsel for the applicant further argued that the applicant filed a revision before the Revising Authority against the order of the Disciplinary Authority dated 03.01.2012 (Annexure A/3) and the order of the Appellate Authority dated 27.02.2012 (Annexure A/4). He clearly mentioned that he was

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not the In-charge of the Section and the fact that the file was not in the Section of the applicant from 14.10.2011 to 19.10.2011, as alleged in the Memorandum of charge as is clear from the report of the Section (Annexure A/6). He also stated that the files are processed through Establishment Section but this particular file was not processed through Establishment Section and as per conspiracy, the file was placed in the Section of the applicant. The Revising Authority further modified the punishment order and reduced the punishment to one stage below at Rs. 11960 + 4200 GP with non cumulative effect for a period of three months vide order dated 01.02.2013 (Annexure A/1).

6. The learned counsel for the applicant argued that the punishment order has been passed without supplying him the documents required by him and, therefore, these orders have been passed in violation of principles of natural justice. He further argued that the applicant was not the In-charge of the Section and one Shri Umrao Singh Meena was the In-charge being the Office Superintendent. As per the report of the Section, which is available at Annexure A/6, the particular file was sent through his Section to Deputy CYME II on 14.10.2011. From the office of Deputy CYME II, the file was marked to AWM (G) on 17.10.2011. Thus this particular file was in the office of Deputy CYME II between 14.10.2011 and 16.10.2011. Then this file was sent to AWM (G) on 17.10.2011. That the Disciplinary Authority has not proved the charge even though the applicant did not submit his reply to the Memorandum of charge. The Disciplinary Authority has stated in the penalty order that since the Charged

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Officer has not submitted any reply, hence, the Disciplinary Authority has come to the conclusion that the charge leveled against the charged officer are correct and therefore, the penalty was imposed. The learned counsel for the applicant argued that even though the applicant had not submitted any reply to the charge memo, even then the Disciplinary Authority should have given a finding as to how the charge is proved. There was no documentary evidence examined by the Disciplinary Authority before imposing the penalty. The onus to prove the charge is on the Department but the Department has failed to give any reason that the charge is proved against the applicant.

7. The learned counsel for the applicant further argued that even the Appellate Authority did not try to verify the submission made by the applicant in the defense. The Disciplinary Authority as well as the Appellate Authority ignored the defense of the applicant. Charges were incorrect and baseless. Further the Appellate Authority in Para No. 6 of its order dated 27.02.2012 (Annexure A/4) has categorically stated that the present case is not based on the fact that whether the applicant was In charge of the Section or not. The present case is with regard to the delay in the movement of a particular file for the applicant is responsible whereas the learned counsel for the applicant drew my attention to the Memorandum of charge dated 21.10.2011 (Annexure A/2) in which it has been stated that the applicant is responsible for the delay being In charge of the Section. The main ground in the charge is that the applicant being In charge of the Section was responsible for the proper movement of the file. Once it has been

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admitted by the Appellate Authority that the question does not involve whether the applicant was an In-charge or not then the charge itself is not made out. Thus the order of the Appellate Authority needs to be set aside.

8. The learned counsel for the applicant submitted that the Revising Authority in its order dated 01.02.2013 (Annexure A/1) has stated that it appears that the file was received in the Section of the applicant on 14.10.2011 and it was found in his Section on 19.10.2011 but he has not stated that this file remained in the Section of the applicant from 14.10.2011 to 19.10.2011. The learned counsel for the applicant submitted that the file was received on 14.10.2011 and it was marked to the office of Deputy CYME II, which was received back in this Section 17.10.2011 as is evident from the movement register, which is enclosed with Annexure A/6. Thus even the charge of delay of 05 days on the part of the applicant is not proved. Therefore, even the order of the Revising Authority needs to be quashed and set aside. Therefore, the learned counsel for the applicant prayed that the charge Memo dated 21.10.2011 (Annexure A/2), Disciplinary Authority's order dated 03.01.2012 (Annexure A/3), Appellate Authority's order dated 27.02.2012 (Annexure A/4) and Revising Authority's order dated 01.02.2013 (Annexure A/1) be quashed and set aside.

9. On the other hand, the learned counsel for the respondents stated that the applicant has not submitted reply to the Memorandum of charge and filed his appeal as well as revision

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against the order passed by the Disciplinary Authority and Appellate Authority and now cannot challenge Memorandum. The applicant had never prayed for a detailed inquiry. He was found guilty of the charge leveled against him. Therefore, the punishment order was passed. The Disciplinary Authority provided an opportunity to the applicant to submit his representation against the charge memo but he did not submit his reply instead he asked for certain documents. In the absence of any representation against the charge memorandum, the Disciplinary Authority passed its speaking order. The learned counsel for the respondents emphatically denied that there was any malice against the applicant in issuing the memorandum. Every employee has a right to make representation for redressal of his grievances. The representation filed by the applicant with regard to his due seniority is a routine exercise and no-one can be annoyed due to such representation.

10. The learned counsel for the respondents stated in fact the charge sheet has been served to the applicant based upon the report submitted by Shri Raj Kumar Sharma, OS (Establishment - 2) dated 19.10.2011 wherein it was provided that File No. WCR/PWRS/2010/7/E2 dated 19.10.2011 was found in Works Section-1 which was marked by Deputy Chief Mechanical Engineer (II) to Assistant Works Manager (G). It is not denied that Shri Umrao Singh Meena was the Office Superintendent. In fact the applicant being next to him and thus senior most employee was In charge of the Works Section I. He failed to justify the lapse rather did not respond at all. Thus the

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competent authority finding him guilty of the charge passed the ex-party order of penalty dated 03.01.2012 (Annexure A/3).

11. The learned counsel for the respondents further argued that in the cases of minor penalty charge sheet, it is for the competent authority to decide whether the detailed inquiry is necessary or not. In the present case, the applicant even did not submit his representation against the charge memorandum. Therefore, now he cannot claim that an inquiry was not held. Moreover, a detailed inquiry is not even necessary in the cases involving minor penalty.

12. The learned counsel for the respondents further submitted that Annexure A/6 was not before the Disciplinary Authority and these could not be considered by him at the time of passing the order of penalty. The Appellate Authority passed a reasoned & speaking order on the appeal filed by the applicant and he also reduced the penalty. It clearly proves that the Appellate Authority applied its mind and considered every aspect of the appeal. Therefore, the order passed by the Appellate Authority is just and legal.

13. The learned counsel for the respondents argued that there is no malice against the applicant. In fact the applicant himself time & again had threaten the officers to file case against them under SC/ST Act (Annexure R/1).

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14. He further submitted that the Revising Authority after carefully consideration of the entire aspect has further reduced the penalty of the applicant vide order dated 01.02.2013 (Annexure A/1). Thus the entire action against the applicant is as per the provisions provided under the rules and the OA has no merit and. Therefore, the OA be dismissed with costs.

15. I have carefully perused the charge memorandum dated 21.10.2011 (Annexure A/2). Basically it states three things. One, that the particular file was marked on 14.10.2011 to AWM (G) and it was found in Nirman Section on 19.11.2011 from where the file movement takes place. Secondly that the applicant being the In-charge of the Nirman Section I, therefore, he is responsible for the timely movement of the files and thirdly, the applicant is responsible for the delay in the movement of that particular file. In this connection, the learned counsel for the applicant drew my attention to the documents as referred to in Annexure A/6. It is a letter from the applicant in which the movement of this file has been found as correct according to the applicant's information given in this letter. According to information annexed along with Annexure A/6, the concerned file is entered at sr. no. 27 on 14.10.2011 and marked to Deputy CYME II. This file has been marked from the office of Deputy CYME II on 17.10.2011 to AWM (G) and entry to this effect is in the relevant register at sr. no. 5. This fact has not been denied by the learned counsel for the respondents neither in their reply nor during the arguments. Thus this proves that the concerned file was not in Nirman Section I from 14.10.2011 to 19.10.2011.

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Thus at best, the delay in the movement of this file can be said from 17.10.2011 to 19.10.2011. The second plea of the applicant was with regard to the Incharge of the Section. The learned counsel for the applicant denied that the applicant was the In-charge of the Section and one Shri Umrao Singh Meena was the In-charge of the Section. Though the respondents in their written reply have accepted that Umrao Singh Meena was the Office Superintendent but they have stated that the applicant being next to him and thus senior most employee was In-charge of the Nirman Section I. In this regard, the Disciplinary Authority has not given any finding whether the applicant was the In charge of the Section or not. In fact the applicant vide letter dated 22.11.2011 has categorically stated that Shri Umrao Singh Meena is In-charge of the Nirman Section I and on what basis, the applicant has been treated as Incharge of the Section but the Disciplinary Authority while passing the order has not taken into consideration this point of the applicant and has given no finding whether the applicant was In charge or not. Since this fact that the applicant was responsible for the movement of the file in Nirman Section I because he was the Incharge, therefore, the finding on this fact was necessary from the Disciplinary Authority. I am inclined to agree with the averments of the learned counsel for the applicant that even if the applicant did not submit a proper representation against the memorandum even then the Disciplinary Authority ought to have proved the charge by examining the documents available with him. He even did not call for the record from the Section with regard to the movement of the concerned file.

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16. In fact the Appellate Authority in the order dated 27.02.2012 (Annexure A/4) in Para NO. 6 has categorically stated that it is not a case as to whether the applicant was In charge of the Section or not, it is a case of delay in movement of a particular file for which the applicant is responsible. I am not inclined to agree with this finding of the Appellate Authority. From the perusal of the charge memorandum dated 21.10.2011 (Annexure A/2), the allegation against the applicant is that he being In charge, it was his responsibility to ensure the timely movement of the files. If the applicant was not the In charge of the Section, as stated by the Appellate Authority, then in what capacity was the applicant responsible for the movement of file in that Section particularly with regard to the file in question. From the perusal of order passed by the Revising Authority, it is clear that he has not come to the conclusion that the concerned file was in the Section of the applicant between 14.10.2011 and 19.10.2011. In fact he has stated in his order that it appears that the file was received in the Section of the applicant on 14.10.2011 and was again found in his Section on 19.10.2011 but the Revising Authority has not examined as to where was the file between 14.10.2011 and 19.10.2011, whether the file during this period remained in the Section of the applicant or it was sent to the Deputy CYME II on 14.10.2011 and was received back from him on 17.10.2011 but since the respondents have not denied the movement of file as per the movement register annexed with Annexure A/6, therefore, it can be said that the said file was not in the Section of the applicant from 14.10.2011

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to 19.10.2011. Thus even this part of the charge that there was delay in the movement is not well established. At best it can be said that the file remained in the Section of the applicant from 17.10.2011 to 19.10.2011. Thus the respondents have failed to prove that applicant was In-charge of Nirman Section I and that, therefore, he was responsible to delay in the movement of file between 14.10.2011 and 19.10.2011.

17. Thus on the basis of above discussion, I am of the opinion that the respondents have failed to prove charge against the applicant and, therefore, Disciplinary Authority's order dated 03.01.2012 (Annexure A/3), Appellate Authority's order dated 27.02.2012 (Annexure A/4) and Revising Authority's order dated 01.02.2013 (Annexure A/1) are quashed and set aside. To this extent, the OA is allowed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

Abdul