

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Date of decision: 24th March, 2004

OA No.521/1999

C.L.Tomar s/o Shri Puran Singh Tomar, aged about 42 years, r/o Jawahar Nagar, Mahucalla Gangapurcity, Distt. Sawaimadhopur, at present employed on the post of Instructor in Divisional Engineering Staff Training Centre, Western Railway, Kota.

.. Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Kota Division, Kota.
3. Additional Divisional Railway Manager, Western Railway, Kota Division, Kota.
4. Senior Divisional Engineer (North), Western Railway, Kota Division, Kota.
5. Shri V.K.Kheda, Senior Divisional Engineer Headquarter, Western Railway, Kota Division, Kota.

.. Respondents

Mr. C.B.Sharma - counsel for the applicant.

Mr. Tej Prakash Sharma - counsel for the respondents.

CORAM:

Hon'ble Mr. M.L.Chauhan, Member (Judl.)

Hon'ble Mr. A.K.Bhandari, Member (Admn.)

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PER HON'BLE MR. M.L.CHAUHAN.

The applicant is aggrieved of the impugned chargesheet dated 18.3.96 (Ann.A1) and the punishment imposed vide impugned HIF dated 4.11.99 and has filed this OA thereby praying for quashing the aforesaid orders with all consequential benefits.

2. Facts of the case are that the applicant while working as IOW Grade-I was issued a chargesheet dated 18th March, 1996 under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as Discipline and Appeal Rules) thereby containing 3 article of charges. A detailed inquiry was conducted by the respondents and only one charge was held to be proved by the Inquiry Officer. Thereafter, respondent No.5, the Disciplinary Authority, imposed the punishment of removal from service vide order dated 24.5.99 (Ann.A4). The applicant preferred a detailed appeal to respondents No.3 pursuant to para (c) of the under instructions in the order passed by the Disciplinary Authority whereby it was mentioned that under Rule 18 of the Railway Servants (Disciplinary and Appeal) Rules, 1968 an appeal against these orders lies to ADPM/Tota ~~31.12.99~~ ^{provided} the appeal is preferred within 45 days from the date of receipt of this notice. The Appellate Authority quashed the order passed by the Disciplinary Authority and directed the

Disciplinary Authority to take further action from the stage of considering the defence of the charged employee dated 18.3.99. It may be relevant to mention here that one of the grounds taken by the applicant in the appeal ^{was} that the order of removal from service has been passed by the authority lower than the appointing authority and this contention of the applicant was accepted by the Appellate Authority thereby holding ^{That} the appointing authority of the delinquent employee ^{as} DPM, Kota in the grade of Rs. 7450-11300. Therefore, the NIP dated 24.5.99 is quashed and the case is remitted back to the Disciplinary Authority for consideration of defence of the charged employee dated 18.3.99 (Ann.A6). Pursuant to the aforesaid order dated 23.7.99, the DPM, Kota passed fresh order vide impugned order dated 4.11.99 (Ann.A2) vide which following punishment has been imposed upon the applicant:-

"Reversion to the next lower grade i.e. reversion to scale Rs. 6500-10500 (RSEP) of pay Rs. 6500 per month for a period of three years with future effect for the reasons mentioned overleaf."

It is against this order, the applicant has filed this OA thereby praying for quashing the order of punishment as well as the chargesheet issued vide memo dated 18th March, 1996 (Ann.A1).

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3. Notice of this application was given to the respondents. The respondents have filed detailed reply thereby opposing this OA.

4. The applicant has also filed rejoinder.

5. Some grievances have been made by the applicant in this OA on the ground of illegality in conducting the proceedings such as - (a) the disciplinary proceedings were initiated by the incompetent authority in breach of Disciplinary and Appeal Rules, inasmuch as, Shri Mukesh Gupta, Senior, DEN, Kota was working on ad-hoc basis only, as such he was not a competent authority to exercise power of disciplinary authority, (b) the applicant was examined prior to prosecution witnesses (c) there is a delay in issuing chargesheet, (d) listed documents were not supplied, (e) penalty imposed by the DRM-Kota amounts to double penalty and lastly that since the matter was remitted by ADRM, Kota to the Disciplinary Authority, the DRM who exercises same disciplinary powers as that of ADRM was not competent to pass fresh order, besides being excessive inasmuch as even if the charge is legally held to be proved than there is a loss of Rs. 1540 only being the cost of 22 piles which was declared as under specification.

6. We have considered the submissions made by the learned counsel for the applicant. However, it is not necessary for us to go into

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the merit of the said grievance, since we are of the view that the applicant has not exhausted the statutory remedy by way of appeal. The learned counsel for the applicant argued that there is no further channel of appeal since in the earlier occasion when the case was remitted back to the Disciplinary Authority, appellate power was exercised by the ADEM. Since both ADEM and DRM have been vested with same powers under the rules and since the impugned order Ann.A2 has been passed by the DPM, as such no further appeal lies under the Discipline and Appeal Rules. We do not agree with contention raised by the learned counsel for the applicant. As can be seen from the order of punishment dated 4.11.99 (Ann.A2) passed by the DPM, it has specifically been mentioned in that order that under Rule 18 of the Railway Servants (Discipline and Appeal) Rules, 1968 appeal against this order lies upon to CE/CCG, if the same is preferred within 45 days from the date of receipt of this notice. As such the contention of the applicant that under the rules, there is no provision for appeal cannot be accepted.

6.1 In view of what has been stated above, we are of the view that the right to file appeal was available to the applicant and it was open for the him to ventilate all the grievances before the appellate authority before coming to this Tribunal. If the contention of the learned counsel for the applicant that in the instant case, the order of punishment Ann.A2 has been passed by the Appellate Authority acting as

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Disciplinary Authority, is accepted, even then the right of appeal and revision/review cannot be denied which is available under the rules. This is the view which has been held by the Apex Court in the case of Surjit Ghosh vs. Chairman and Managing Director, United Commercial Bank and ors., (1995) 29 ATC 373 whereby the Apex Court has held that where an authority higher than the disciplinary authority itself imposes the punishment, the order of punishment suffers from no illegality when no appeal is provided to such authority. However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the rules/regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of disciplinary authority in a given case it results in discrimination against the employee concerned. This is particularly so when there are no guidelines in the rules/regulations as to when the higher authority or the appellate authority should exercise the powers of disciplinary authority. The higher or appellate authority may choose to exercise the power of the disciplinary

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authority in some cases while not doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher/appellate authority which patently results in discrimination between an employee and employee. Surely, such a situation cannot savour of legality. Hence we are of the view that the contention advanced on behalf of the respondent that when an appellate authority chooses to exercise the power of disciplinary authority, it should be held that there is no right of appeal provided under the regulations cannot be accepted.

6.2 As already stated above, in the instant case, the order of Disciplinary Authority itself indicate that the appeal under rule 18 of the Discipline and Appeal Rules, will lie to CE/COG ^{provided} ~~as~~ such appeal should be preferred within 45 days from the date of receipt of the notice. It cannot be said that the applicant has been denied statutory right of appeal. In any case, the order imposing penalties as specified in Rule 6 whether made by the Disciplinary Authority or by any Appellate or Revising Authority is an appealable order under Rule 18 (ii). As such, this statutory remedy has to be availed and ordinarily no application lies before this Tribunal unless remedies available under the relevant service rules as to redressal of grievance is availed at the first instance as per Section 20 (2) of the Administrative Tribunals Act, 1985. Since the right of appeal is substantive right, we are of

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the view that the applicant should firstly raise his grievance before the Appellate Authority, before going into the merit of his grievance in these proceedings.

6.3 Accordingly, the applicant is directed to file appeal before the Appellate Authority mentioned in Ann.A2 within 15 days from the date of passing of this order thereby raising all permissible grounds available to him alongwith copy of this order. In case the appeal is filed within 15 days, the Appellate Authority shall entertain it without raising the question of limitation and decide the same on merits by passing a speaking order within two months from the date of receipt of such appeal.

7. With these observations, the OA is disposed of with no order as to costs.



(A.F. EHANDARI)

Member (A)



(M.L. CHAUHAN)

Member (J)