

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 28.02.2003

OA No.160/2001

Adityendra Bahadur Kulshrestha s/o Shri Balkrishan Kulshrestha employed in the O/o the Senior Divisional Mechanical Engineer/Divisional Railway Mechanical Manager (Establishment), Western Railway, Jaipur Division, Jaipur

.. Applicant

VERSUS

1. The Union of India through the General Manager (E), Western Railway Head Office, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Jaipur Railway Division, Jaipur
3. Senior Divisional Mechanical Engineer, Western Railway, Jaipur Railway Division, Jaipur
4. Shri Anand Swaroop Gautam, Sr.Section Engineer, C&W Depot, Jaipur Railway Division, Jaipur.

.. Respondents.

Mr.R.B.Kulshretha, counsel for the applicant

Mr. T.P.Sharma, counsel for the respondents

CORAM:

HON'BLE MR. JUSTICE G.L.GUPTA, VICE CHAIRMAN

HON'BLE MR. H.O.GUPTA, MEMBER (ADMINISTRATIVE)

O R D E R

Per Hon'ble Mr. H.O.GUPTA.

The applicant is aggrieved of the order of the Appellate Authority dated 27.10.99 (Ann.A1) whereby on appeal, the Appellate Authority has awarded the punishment to stoppage of increments for 6 months in place of one year awarded by the Disciplinary Authority. In relief, he has prayed for quashing the said order and also for refunding



the whole amount so deducted from his salary alongwith due interest. He has also prayed for awarding damage-compensation of atleast 10 lakhs from respondent Nos. 2 and 3 for the infringement of his birth and fundamental right to reputation. He has further prayed for awarding damage of Rs. 25,000 in view of deliberate and motivated harassment and agony. He has also prayed for fixing the responsibility on the erring officers.

2. The case of the applicant as made out, in brief, is that:-

2.1 Having been selected by the Western Railway Recruitment Board for the post of Section Engineer, he underwent one year's practical training from December, 1996 at different places successfully before his posting as Section Engineer at Gandhidham in Ajmer Division. He worked there from 28.1.98 to 21.11.98 without any complaint about his work and conduct. Thereafter, he was transferred from Ajmer Division to Jaipur Division on the same post. At Jaipur Division, he also worked with utmost sincerity and dedication without any complaint.

2.2 A chargesheet dated 13.7.99 (Ann.A5) was issued on the allegation that he was found guilty for not maintaining the history register of the schedule of coach maintenance and the schedule date etc. were not printed on the coach and this has been adjudged as work against safety. He submitted his explanation and clarification vide his representation dated 25.7.99 (Ann.A2). Without considering his representation in right perspective, the same was rejected vide order dated 16.8.99 (Ann.A6) awarding penalty of withholding of annual grade increment



for one year. He filed an appeal to the Additional Divisional Railway Manager, who passed the impugned order dated 27.10.99 (Ann.A1) reducing the penalty to that of withholding of annual grade increment for six months.

3. The main grounds taken by the applicant are that:-

3.1 The work and conduct during the periods of training, his posting as Gandhidham in Ajmer Division and during his posting at Jaipur Division till the tenure of Shri R.C.Meena, the then Senior Divisional Mechanical Engineer, Jaipur Division, Jaipur, remained quite excellent and there was no complaint against him. After the transfer of Shri Meena one Shriman Ramesh Kumar ji took over the charge of Senior Divisional Mechanical Engineer. Certain goonda elements and mischief-mongers began to take advantage of the time/situation and they started poisoning his ears. Consequently, he got annoyed and became prejudiced and angry with the applicant. He started giving warnings, chargesheets and suspension orders in addition to verbal threatening to remove and dismiss him from service on lame excuses. This is being done from April, 1999 till now. On account of this malacious and malafide intentions of the Senior Divisional Mechanical Engineer, he has been served with several chargesheets and suspension order for no fault of his on false frivolous and motivated grounds. He submitted representation dated 25.7.99, 2.10.99 and legal notice through his counsel on 21.9.2000 (Anns.A2, A3 and A4) but no action has been taken.

3.2 As regards the first allegation in the memo dated 16.8.99 (Ann.A6), it is submitted that on 3rd

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June, 1999, there was no safety work due i.e. dash pot oiling and ICV due. Their dates were already painted by the side fitter. All the remaining 'A' schedule works, which are not related to the safety, were also got to be done and painted by the painter working in the general shift under the supervision of the Section Engineer, General Shift because the painter works only in general shift as has been the past practice since long. Up to that date, no painter was ever given or provided to the applicant in his shift. Due to shortage of staff, all other necessary work except painting were completed in all respect. Hence, he never worked against the safety.

3.3 With regard to the second allegation, it is submitted that all the complete history register was fully filled up by him except a few minor and minute entries. The history register in question was checked by the DCWI, Jaipur, 3 hours before the completion of his shift duty. On that day, due to shortage of cleaner in-charge and other necessary staff i.e. sweeper, the applicant has to pay more attention and devote more time to the cleaning of the train. Secondly, for this purpose, he had to borrow the sweeper from another gang. Hence, this allegation that he did not prepare the history register is false and malacious. The applicant was never given and provided full staff according to the norms as laid down by the Railway Department, but on the contrary, he was given almost half staff as compared to the other metre gauge train gangs.

3.4 Before imposing the penalty, he was neither afforded opportunity of personal hearing nor any preliminary on spot enquiry was ever made before imposing and initiating any disciplinary proceedings against him.

3.5 He was not given any second show-cause notice



according to the legal requirement and procedure of the disciplinary proceedings by the authorities in power after receipt of complaint and reply thereof in pursuant to which the applicant had given detailed reply.

3.6 Rule of natural justice warrant that whenever some material adverse to a person is sought to be used against him in the disciplinary proceedings, such adverse material must be made available immediately to him and he must be given a reasonable opportunity to submit a representation. Such material was not given to him. Therefore, he was not given reasonable opportunity of submitting his representation.

3.7 The Appellate Authority should have passed a cogent and reasoned order while disposing of his appeal after applying his mind objectively. It is obligatory on the part of the Disciplinary Authority and the Appellate Authority to record detailed cogent and convincing reasons for imposing penalty. The reply submitted by the applicant on 25.7.99, 2.10.99 and 21.9.2000 (Anns. A2 to A4) should have been considered by applying their mind objectively to the facts and circumstances and material on record and thereafter the Disciplinary Authority and the Appellate Authority should have imposed the penalty in question, which is required to be just and proper.

3.8 The chargesheet and statement of allegation is only a statement and bundle of lie, false and bogus material which was not found in existence on the spot. A close scrutiny of the order 13.7.99, 16.8.99 and 27.10.99 (Ann.A5, A6 and A7) passed by the Disciplinary and Appellate Authorities would clearly reveal that both these authorities neither considered nor applied their mind

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objectively to the reply/explanation/representation and legal notice dated 25.7.99 (Anns. A2, A3 and A4).

3.9 The order of the Appellate Authority does not contain any cogent and convincing reasons in support and also for reducing the minor penalty. The order is bad in law on account of violation of the principles of natural justice.

4. The respondents have contested this application.

Briefly stated, they have submitted that:-

4.1 It is a case of imposition of minor penalty as per Railway Servants (Disciplinary and Appeal) Rules, 1968 and imposition of minor penalty does not call for spot enquiries. There is no violation of rules, regulations and hence this OA is liable to be rejected.

4.2 The representation dated 25.7.99 was duly considered by the Disciplinary Authority as per rules while ordering imposition of penalty. The Disciplinary Authority has recorded speaking orders with reasons. The Disciplinary Authority has imposed the penalty as per merit of the case and in accordance with the rules.

4.3 The applicant has committed grave mistake in carrying out the maintenance of coaches/rake while working as Section Engineer. As per the applicant's own acceptance, he has worked at Gandhidham only for few months which is very limited period for forming opinion of the work of the Railway supervisor specially working on safety category jobs.

4.4 The coaches in the Indian Railway are given preventive maintenance, painting the schedule attended and writing their details which is safety work. In case the



concerned person does not write their details of schedule of being attended or the balance remaining pending, there will be chance of omission and commission. The role of the supervisor comes only when they are required to maintain the work even in case shortage of staff.

4.5 The applicant was afforded all reasonable opportunity of personal hearing to defend himself in this case. There is no provision of show-cause notice as per RS(D&A) Rules, 1968. The applicant was served with proposal for imposition of penalty. The applicant's representation was considered by the competent authority and taken into account while considering his case. The applicant did not ask for inspection of relied upon documents at any time of the case. If the applicant wanted to examine the relevant documents, his request would have been considered as per merit of the case but the applicant has not demanded any document.

4.6 The Appellate Authority has passed the speaking order which is clear and comprehensive. Based on reasons given, the Appellate Authority has clearly held that the applicant was responsible for the charges levelled against him. The order of the Appellate Authority is as per rules and he has not committed any illegality.

4.7 The orders of the Disciplinary and Appellate Authorities are based on reasons, just and fair and for the minor penalty case, it is not mandatory to conduct the detailed enquiry. The applicant has accepted the mistake committed by him by not doing the maintenance of coaching work of coaching record as per technical requirement. The respondents have given full opportunity to the applicant to defend his case and has also considered his representation

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while passing the order after considering all facts and circumstances of the case as per rules.

4.8 The punishment awarded to the applicant is very less in comparison to the gravity of the mistake committed by him. The same was reduced by the Appellate Authority taking the humanitarian view. The whole case is legally lawful and constitutional and dealt with provisions of RS(D&A) Rules, 1968.

5. The applicant has filed rejoinder.

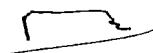
6. Heard the learned counsel for the parties and persued the record.

6.1 It is a case relating to the impositon of minor penalty. The applicant was awarded a penalty of stoppage of next increment for one year without cumulative effect. On appeal, this period was reduced by the Appellate Authority from one year to six months. As per Railway Servants (Discipline and Appeal) Rules, 1968, in a minor penalty chargesheet, the respondents are not required to conduct the enquiry unless the same is specifically sought by the delinquent employee giving reasons thereof. In his representation against the minor penalty chargesheet, the applicant has not sought for the enquiry. The respondents have submitted that the applicant has not sought for inspection of documents before sending his representation. The contention of the respondents have not been denied by the applicant. In fact, there is nothing on record that at any time, the applicant has sought for inspection of documents before sending his representation. There is no requirement of show-cause notice before imposition of

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penalty under Railway Servant (Discipline and Appeal) Rules, 1968. The applicant himself, in his representation dated 25.7.99 (Ann.A2) addressed to the Disciplinary Authority, has submitted that he may be pardoned and that, in future, he will carry out his work with sincerity and dedication. Further the applicant, in Para 5 (vii) of the OA, has stated that all the complete history register was fully filled up by him except a few minor and minute entries. The applicant was engaged on a supervisory work, which entails safety aspects. He has been punished with a minor penalty of stoppage of next increment for one year without cumulative effect. The period of one year was further reduced by the Appellate Authority to six months.

7. In view of what is stated above and the material on record, this case cannot be said to be a case of no evidence. There is no violation of the principles of natural justice. The penalty imposed cannot also be said to be disproportionate to the misconduct. Therefore, no judicial interference is called for in this case and accordingly, this OA is dismissed without any order as to costs.



(H.O.GUPTA)

Member (Administrative)



(G.L.GUPTA)

Vice Chairman