

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Jaipur, the 15th day of March 2005

ORIGINAL APPLICATION NO. 554/2002

CORAM:

HON'BLE MR. M.L. CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. A.K. BHANDARI, MEMBER (ADMINISTRATIVE)

R.P. Madan son of Shri B.S. Madan, aged about 57 years, resident of suit No. 6, Ganpati Nagar, Railway Rest House, Jaipur, working as Chief Mechanical Engineer, North Western Railway, Jaipur.

.....Applicant

By Advocate: Mr. Virendra Lodha.

versus

- 1 Union of India through its Secretary to Government of India, Ministry of Railways (Railway Board), New Delhi.
- 2 The Member (Mechanical), Railway Board, New Delhi.
- 3 The Union Public service Commission through its Secretary, New Delhi.

.....Respondents.

By Advocate : Mr. S.S. Hassan.

ORDER

PER HON'BLE MR. A.K. BHANDARI

This OA filed u/s 19 of the Administrative Tribunal's Act, 1985, to seek the following reliefs:-

(i) by an appropriate order or direction, the impugned orders dated 25.1.2002 and 09.10.2002 (Annexure A/1 & A/2, respectively) may kindly be quashed and set aside.

(ii) Any other appropriate relief, which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case, may also kindly be passed in favour of the applicant.

24

2 Brief facts of the case, as stated in this OA, are that the applicant was served with a charge sheet (Annexure A/3) regarding irregular engagement of 25 Hot Whether Watermen in the year 1996 when he was DRM Nagpur. The charge sheet contained nine charges and although the Inquiry Officer found all the nine proved but the Disciplinary Authority after careful consideration concurred with the findings of the Inquiry Officer, regarding charge No. 4 and 5 only. In other words, the remaining charges were dropped by him and penalty of reduction by two stages in time scale of the grade Rs.18400-22400/- for a period of one year having effect of postponing the further increments was imposed (Annexure A/1). The applicant then preferred appeal dated 26.3.2002 (Annexure A/4). This was rejected by the Appellate Authority and punishment, as stated above, was sustained. Aggrieved by this, the OA was preferred.

3 In the grounds of the OA, it is stated that the Departmental inquiry has been conducted in violation of Railway Service (Disciplinary & Appeal) Rules which render Annexure A/1 and Annexure A/2 illegal. Elaborating this, it is stated that fair and adequate opportunity of hearing was denied, copies of relevant documents were not given nor was he given opportunity to inspect all the relevant records, and the Inquiry Officer also failed to explain the procedure of the inquiry before starting it. It is further stated that he has been wrongly punished because General Manager's regret letter for continuation of 25 casually engaged Hot Whether Watermen service beyond one month was not shown to him by the subordinate staff. With the result required follow up action of the General Manager's refusal could not be taken by him. This fact was specifically brought out during the inquiry and relevant original

records were demanded by the applicant to prove this but of no avail. The UPSC have also wrongly held applicant guilty because mistake of not showing the regret letter by the Divisional Personnel Officer was missed by them. For the resultant mistakes DPO and not the applicant is responsible but the DPO has gone unpunished. Also that even though the applicant has been punished, no subsequent action to disengage 25 Hot Whether Watermen was taken, rather ex-post facto sanction was granted by the General Manager for continuing them on account of need of additional hands which were not available in the division. In these circumstances, applicant cannot be held guilty of misconduct. Further that in the action of the applicant, there was no malafide and that he has acted purely in the interest of Administration. These facts are mentioned in the representation and the appeal but they have been over-looked. Applicant also feels that Railway Board's Circulars on the basis of which applicant's action has been faulted and punishment has been awarded, have been wrongly interpreted by the Inquiry officer and the UPSC to pin point the responsibility of misconduct on the applicant. According to the him, the duty of maintaining Live Register is of the DPO and not of the DRM. Therefore, finding of charge No. 4 is wrong. Further that the punishment awarded is not justified because all the nine charge are part of one sequence and ^{while} finding seven of them not proved finding charge No. 4 & 5 as proved is self contradictory. Therefore, punishment order is bad in law.

4 Respondents have submitted exhaustive reply. In it, it is explained that the charge sheet for major penalty was served under Rule 9 of Railway Servant (Discipline & appeal) rules, 1968 by the Disciplinary Authority, the Railway Board and after careful consideration of written

statement of the applicant, Disciplinary Authority remitted the charges for inquiry. The Inquiry officer conducted inquiry while following relevant rules and procedure and giving required opportunities to defend and cross examine the witnesses and submitted his report, holding all the nine charges as proved. Copy of the inquiry report was made available to the applicant to submit his representation. The Disciplinary Authority then after careful consideration of the Inquiry report and applicant's representation dropped seven charges and held articles of Charge No. 4 & 5 as proved and passed the order imposing above penalty. Against the said penalty, the applicant, preferred appeal to the President, the Appellate Authority. The same was considered by the Appellate Authority in consultation with the UPSC as per provisions of Railway Servant (Discipline & Appeal) Rules, 1968. The UPSC, an autonomous body, after careful consideration of the records tendered its advice that the penalty imposed on the applicant was not excessive and his appeal should be rejected. Therefore, the President i.e. the Appellate Authority after careful consideration of the appeal in the light of the case record decided to accept the UPSC's advice and rejected the appeal of the applicant. Thus the procedure for departmental inquiry for awarding major penalty has been scrupulously followed and, therefore, the action of the respondents cannot be considered arbitrary. The allegation of not affording reasonable opportunity has also been denied. The punishment and appellate orders are exhaustive and they cover all contentions of defence contained in applicant's representation and appeal. The advice rendered by UPSC is similarly exhaustive and covers all the points of defence and rules of disciplinary inquiry on one hand and rules governing powers of General Manager and DRM regarding engagement / continuation of

casual workers engaged for emergent work for short duration etc. on the other. In the reply, it is elaborated that on one hand, applicant approved the proposal on 18.6.1996 for seeking General Manager's permission for extension of tenure of 25 Hot Weather Watermen for another month upto 31.7.1996 whose approved tenure was to expire on 30.6.1996, on the other hand, without waiting for any decision on the said proposal, he approved another proposal on 28.6.1996 that these 25 Hot Weather Watermen be taken on Live Register and on the same day placed them as Substitute Khalasis at various places even though necessary approval of General Manager as required by the Railway Board instructions had not been received. These 25 persons had to be engaged as casual workers basis for a fixed tenure ending on 30.6.1996 as Hot weather Watermen and, therefore, their engagement as substitute Khalasis was clearly a re-engagement afresh for which the General Manager's personal approval is required under the extant rules. This was evidently not ^{given} by the General Manager. The applicant has thus not only shown lack of regard for his own proposal but at the same time he has not shown any regard for the General Manager's approval. Therefore, the penalty is fully justified. Regarding allegation of not supplying of documents during inquiry, it is stated that all documents demanded by the applicant were furnished except these which were not properly described. For this attention is drawn to Para No. 2 of Daily order sheet dated 19.3.2001 of the inquiry proceedings (Annexure R/1) in which it is mentioned that copies of documents received from custodian already supplied to the Charged Officer and the Presenting officer. Copies of these documents were taken on record as Exhibit D-1 to D-10. This daily order sheet has been signed by the applicant and his Defence assistant. While doing so, neither of them mentioned anything about non supply of any

defence document. During the inquiry, applicant had ~~demanded~~ ^{vd} ~~framed the necessity of~~ ^{in orig} one document marked as Exhibit 14 which did not contain the signature of the Initiator and he stated that perhaps this is not an original and genuine document because he normally uses red ink for approving proposals and passing orders, which is not the case in this document. But this contention was dropped by him during inquiry itself when Inquiry Officer asked pin pointed questions to the applicant, **"please see document Exhibit S-14. In your written statement of defence you have stated that this is a forged document. Please state whether you specifically own or disown the orders alleged to have been given by you as DRM/SGP/S.E. Rly."** To this specific question, the reply of the applicant was **"I own the order and they were given by me."** This shows that the plea of forgery and of placing wrong documents during inquiry stood disproved. The respondents have also denied that Railway Board's circulars dated 10.12.1984 and 25.10.1990 have been wrongly applied in this case because the applicability of these circulars for this matter has been clearly explained in the inquiry report and analyzed by the Disciplinary Authority and the UPSC.

5 Applicant has submitted a detailed rejoinder and attached more documents as Annexure A/14 to emphasize his pleadings that respondents have dealt with the matter irregularly and punished him wrongly. He has also alleged that the UPSC has merely endorsed the Inquiry Officer and has not acted as independently.

6 Parties were heard at length during arguments. Learned counsel for the applicant prefaced his arguments by saying that although only two charges have been found proved but

reading through all the nine articles of charges is necessary to explain contradictions and argued that if seven charges are not proved, remaining two charges also cannot be considered to be proved. He also read through Circular dated 10.12.1984 and portions of inquiry report at internal pages No. 9 to 12 where charge No. 4 and Charge No. 5 have been discussed by the Inquiry officer to show that no Casual Live Register was being maintained in Nagpur Division and that original records had not been produced during inquiry and emphasized that in view of his reply to the Inquiry officer, which are also mentioned in the inquiry report, the remaining seven charges could not be considered proved especially when DPO, who had received the refusal note in the matter of General Manager office had not shown the same to the applicant.

7 Learned counsel for the respondents on the other hand relying on the same portions of Inquiry report and Railway Boards circulars of dated 10.12.1984 and 25.10.1990 argued that even if the letter of the General Manager was not shown, it is clear that applicant did not wait for the same and not only extended the engagement but deployed 25 Hot Weather Water Men as substitute before the expiry of the original sanction which is not only against the rules, but shows that he had ulterior motive behind this hurried action. He also pleaded that applicant is the overall incharge, he had intimated the entire issue, and it was his responsibility to ensure that it was progressed as per rules by the subordinates. Therefore, he cannot be allowed to shun the responsibility of wrong action upon his subordinates.

8 Before parting, counsel for the applicant drew out attention to following case law (i) 1995 (1) SCC 332,


Transport Commissioner, Madras vs. A. Radha Krishna Moorthy
and 1999(7) SCC 409 Zunjarrao Bhikaji Nagarkar vs. Union of
India & Others to support his pleadings.

9 We have carefully considered the facts and pleadings of this case and feel that the action of the Disciplinary Authority and the Appellate authority in awarding and sustaining the punishment respectively in pursuance of a detailed departmental inquiry for awarding major penalty cannot be faulted. The ground of not following the procedure correctly and not supplying the documents, demanded by the applicant, are not sustained because the relevant order sheet cited by the respondents as Annexure R-1 proves that the same were supplied and the Charged Officer and his Defence Assistant have acknowledge this under their signatures on 19.3.2001. The grounds of regret letter of General Manager not shown to the applicant by the DPO, due to the ignorance of which applicant continued the services of 25 Hot Weather Water Men after expiry of sanctioned period is also not substantiated because applicant had taken action of placing these 25 persons on Live Register and redeploying them as substitute on 28.6.1996 that is even before the expiry of the approved period up to 30.6.1996. This shows that he even did not wait for the approval of his own proposal by the General Manager before taking this futuristic action. In normal course, when the proposal was forwarded for certain approval to the competent authority, the applicant should have reminded the competent authority or tried to ascertain the fate of proposal but under no circumstances he should have acted pro-actively before approval. No such action was taken by the applicant and due to this reason, suspicion of ulterior motive is not out of place. His plea of having

taken this proactive action in the interest of Administration is also not correct because the inquiry report clearly states that in Nagpur Division, need of engagement of Hot Weather Water Men had never arisen in the past and for the same reason, permission for engagement of 25 Hot Weather Water Men was initially granted for one month only. Therefore, their continuance by the applicant and entering their name in the Live Register as substitutes proves that he had violated administrative propriety. After careful reading of Circulars of 1984 and 1990, we find that their application to the instant case is correct. The reason why the competent authority did not considered seven charges proved (excluding charge No. 4 & 5) have been elaborated in the punishment order and we find that there is no contradiction in his finding. We have carefully seen the above judgements of the Hon'ble Supreme Court copies of which have been supplied by the counsel for the applicant but they in no manner help the applicant because it is neither a case of no evidence nor is the question of competence of Tribunal to interference in this case is involved.

9 In the light of what has been stated above, the OA is dismissed with no order as to costs.


(A.K. BHANDARI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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