

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

O.A. No. 212/2003 with M.A. No.223/2003.

Jaipur, this the 3rd day of May, 2005.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. A. K. Bhandari, Administrative Member.

Thanwar Singh,
S/o Shri Hari Singh,
Aged about 57 years,
R/o 8, Adarsh Colony,
Malaroad, Kota Junction,
Kota.

... Applicant.

Applicant present in person along with his Counsel Shri
Pradeep Asthana.

Vs.

1. Union of India
Through General Manager (Establishment),
Central Western Railway
Jabalpur (M.P.)
2. The Divisional Railway Manager,
Central Western Railway,
Kota.
3. The Addl. Divisional Railway Manager,
Western Railway, District Kota.
4. The C.E.E. Central Western Railway,
Jabalpur (M.P.)

... Respondents.

By Advocate : Shri S. S. Hassan.

: O R D E R :

By A. K. Bhandari, Administrative Member.

This OA has been filed by the applicant under
Section 19 of the Administrative Tribunals Act, 1985 to
seek the following reliefs :-

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- "a) the impugned punishment order dated 14.12.2000 be declared illegal and consequentially quashed and set aside.
- b) The respondent may be directed to pay arrear of salary and allowances from the date the order of punishment came into effect.
- c) Any other appropriate order or direction which the Hon'ble Tribunal thinks just and proper in the facts and circumstances of the case may kindly also be passed in favour of the applicant.
- d) The exemplary cost may also be awarded in favour of the applicant."

2. The applicant has filed MA No.223/2003 also along with the OA for condonation of delay stating therein that in course of deliberation over OA No.394/2001 by the same applicant objection of multiple relief was raised by the respondents and permission was given to file this OA. This is a legitimate reason for condoning the delay.

~~Accordingly, MA is allowed.~~

3. The facts of this case as stated in the application are that the applicant was initially appointed as Apprentice Electrical Charge-man on substantive basis on account of his selection through Railway Recruitment Board and communication regarding such selection was issued in his favour by the Chairman of the Commission on 11.4.69 (Annexure A/2). Pursuant to this letter, he was given appointment by CEE, Churchgate, Mumbai, vide order dated 12.5.69 and was allotted Kota Division for further training of 52 weeks. The schedule of training issued by the Divisional Electrical Engineer (E) Kota dated 1.7.69 is annexed as Annexure A/3. On the basis of good record of service and seniority the applicant was promoted as

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Senior Electrical Charge-man in the year 1984 vide order dated 10.12.84 (Annexure A/4) to the post of Chief Electrical Foreman in the pay scale of Rs.7450-11500 on 21.10.93, copy of which has been placed on record as Annexure A/5. However, in 1998 even though there was no complaint against him, some clerical errors of the period from 1985 to 1991 were noticed by the respondents who served a charge sheet dated 2.3.98, ^{and} ~~va~~ awarded punishment, which is under challenge through a separate OA before the Tribunal. That during his posting under Senior DEE, Tuglaquabad, he brought to the notice of higher authorities certain dues by staff in relation to electrical consumption and non realization of dues from contractors and this action of the applicant was not liked by Senior DEE, Tuglaquabad, Shri A. K. Garg, due to which reason Shri Garg indulges in act of illegal victimization of the applicant. Such illegality is also under challenge through a separate OA before the Tribunal.

4. However, during this period due to acute illness of his daughter the applicant was required to proceed on leave, for which he informed the authorities telephonically and later on the leave was formally sanctioned for such period namely 24.8.00 to 26.8.00 on 15.9.00. A true copy of the sanction of leave is enclosed as Annexure A/6. However, due to the reason that authorities were annoyed with the applicant, they

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illegally issued a charge sheet (SF 11) dated 29.8.00 (Annexure A/7), considering the leave period as willful absence. In the same charge sheet another allegation of sending a subordinate to Kota on duty without sufficient reasons was also raised. The applicant submitted reply but the same was not considered and the punishment was awarded by NIP dated 14.12.00 (Annexure A/9) of reduction in time scale of Rs. 6500-10500 for three stage below for three years without future effect. In these circumstances, the applicant preferred a representation to Respondent No.1 and copy of the same was endorsed to Chairman, Railway Board, also but till date nothing has been heard from them. Thus, feeling aggrieved, applicant has preferred this OA.

5. In the grounds, it is stated that the action of the respondents is illegal, arbitrary and order awarding punishment dated 14.12.00 deserves to be quashed. Further that his appointing authority being General Manager/Principal Chief Electrical Engineer, Churchgate Mumbai, any authorities subordinate to him could not have awarded the punishment due to incompetency under disciplinary rules. For this reason also, the impugned order deserves to be quashed. The order is also bad in law because it has been passed due to the prejudice and biasness of the authorities against the applicant and lastly respondents have failed to see that reasons for proceeding to Delhi on leave were genuine, prior

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permission through controlling authority was taken and when circumstances were explained the competent authority had sanctioned leave for the period from 24.8.00 to 26.8.00 on 15.9.00 (Annexure A/6) and this fact was clearly stated in his representation dated 18.10.00 but on frivolous ground punishment has been awarded to the applicant.

6. Notices were issued to the respondents and detailed reply has been filed by them.

7. In the preliminary submissions they have raised objection of limitation in relation of punishment order dated 14.12.00 but respondents have not filed any reply for the MA filed for condonation of delay. The details about how the applicant was appointed and got his promotions are not disputed but it is stated that his record of service by no accounts was clean and that he was found dis-obedient, indisciplined, negligent and reluctant to follow orders for which reasons he was punished on 28.1.74, 13.2.76, 28.10.78 and was also placed under suspension w.e.f. 13.9.78 and NIP dated 19.4.79 was served upon him. Then again vide NIP dated 12.11.84, the Divisional Engineer (Elec) Kota on the charge of negligence and careless supervision debarred the applicant from promotion for two years without future effect which was converted into punishment of withholding of one set of privilege passes vide order dated 6.2.85.



To support this contention, respondents have attached copy of service record as Annexure R/1. He has also been punished for the charges conveyed to him on 2.3.98 and the OA filed by the applicant against this order is of no relevance in the instant OA. Regarding charge sheet for minor punishment dated 29.8.00 (which concerns this OA), it is stated that the applicant had left the Headquarter without any permission and was not found present at his Headquarter during the inspection of Senior DEE at Sawaimadhopur on 26.8.00. It is not correct that the applicant had informed the authorities telephonically of the urgency to leave Headquarter. The applicant was, however, sanctioned Casual Leave later, on 15.9.00 when the circumstances were explained by the applicant and by giving sympathetic consideration. Charge sheet dated 29.8.01 contains other allegations regarding violation of sub rule 3.1(i), (ii) & (iii) of Service Conduct Rules 1966. The allegations of prejudice and bias are misplaced. Regarding proof of absence from duty in August 2000 Annexure R/2 is annexed, it being a photo copy of attendance Register of the month of August, 2000. Regarding representation dated 18.10.00, it is stated that the same was received by the respondents on 29.10.00 and it was considered but it was rejected for the reasons well explained in the speaking order awarding penalty of reduction by 3 stages in time scale of Rs.6500-10500 as per extent DAR Rules 1968. Further that order dated 7.12.00 concerning premature retirement ^{is} ~~are~~ not relevant

to this OA because the same ^{was} ~~were~~ issued after thorough review of his service record under rule 1802 (A) and 1803 (A) of Indian Railway Establishment Code Vol.II and Railway Board letter No.E(P&A) I-891 (R&T)/20 dated 3.7.89 by the competent authority. On the basis of above explanation the illegality and arbitrariness are denied and further stated that in view of Rule 7 sub Para 2 of the Railway Servants (Discipline & Appeal) Rules 1968 read with Schedule I, II & III, the authority lower than appointing authority is competent to award punishment other than dismissal removal from service or compulsory retirement, and due to this reason the allegation of incompetence of disciplinary authority to award punishment is denied. ^{thus} ~~ta~~

8. The applicant has filed detailed rejoinder. In it, it is emphasized that the Appointing Authority of the applicant is General Manager (E) CCG, Mumbai and that Senior DEE, Kota, much below the rank of appointing authority had no jurisdiction to issue charge sheet and award punishment to him. Also, that this punishment has been awarded entirely as a result of prejudice and deserves to be quashed.

9. Parties were heard at length during arguments.

10. Learned Counsel for the applicant and with the permission of the Court, applicant himself pleaded that

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it is wrong on the part of respondents to think that his Appointing Authority is the office of DRM, Kota. Further that punishment has been awarded to him due to malafide and the prejudice of Senior Officers who were poisoned by Shri A. K. Garg, Sr.DEE, Tuglaquabad,. Further that promotion order dated 14.12.00 has been issued after he was compulsorily retired on 7.12.00 which renders it in violation of all established rules. While drawing attention to Annexure A/6, it was argued that when the competent authority had sanctioned his leave for a period from 24.8.00 to 26.8.00 on 15.9.00, the charge of absence contained in charge sheet dated 29.8.00 is illegal and that in Annexure R/2, the photo copy of attendance register for the month of August 2000, absence as was stated is not marked in columns meant for 24.8.00, 25.8.00, and 26.8.00, and the 27.8.00 is marked as Sunday holiday. On the contrary, alphabet 'L' is written in the column, meaning leave. This also renders the charge of absence without permission as wrong. He also argued that the additional charge of sending his subordinate Shri Rakesh Ranjan, to Kota on 14,15,19 & 21 August of 2000 and to Delhi on 26.8.00 are frivolous and were added only to pad up the charge sheet.

11. Per contra, Learned Counsel for the respondents argued that in view of the position of the rules explained above, the Senior DEE, Kota was competent to award punishment of withholding of increments, it being

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punishment other than dismissal/removal from service and compulsory retirement which punishment only have to be awarded by the Appointing Authority. Thus, the respondents, however, have full powers for awarding punishment dated 14.12.00 which is the subject matter of this OA.

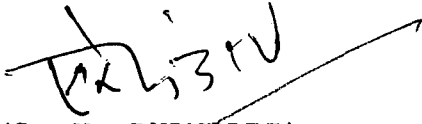
12. We have considered the Misc. Application No.223/2003 for condonation of delay. After careful consideration of all the facts of this case and the pleadings made in the Misc. Application No. 223/2003 for condonation of delay, the MA is allowed and delay, if any, in filing the OA is condoned.


13. In view of the fact that the punishment order dated 14.12.00 was passed after the applicant was compulsorily retired on 7.12.00 without giving any reason or justification, the same is considered violative of rules. We also feel that the charge of absence from duty from 24.8.00 to 26.8.00 is wrong because this period was allowed as Casual Leave by the competent authority on 15.9.00, copy of which order is available on the file as Annexure A/6. Also because the attendance register does not disclose the above period as absence but clearly states it as 'L' meaning leave.

14. In view of what has been stated above, the OA is allowed and the impugned order dated 14.12.00 is quashed

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and set aside. Since the applicant stood retired on the day of imposition of this quashed punishment, as such it will not have any effect on his pension.


(A. K. BHANDARI)
ADMINISTRATIVE MEMBER


(M. L. CHAUHAN)
JUDICIAL MEMBER

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