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**Central Administrative Tribunal
Jabalpur Bench**

OA No.445/05

Jabalpur, this the ^{2nd} day of ^{August} ~~July~~ 2006.

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman

Hon'ble Mr.A.K.Gaur, Judicial Member

M.P.Rao

S/o M.Bhaskar Rao

R/o Nudurupadu

Rly Station Qrs.No.B-4

Firangipuram Mandal

Distt. Guntur (A.P.

Applicant

**(By advocate Shri S.K.Nandi on behalf of
Shri S.Paul)**

Versus

1. Union of India through
General Manager
South East Central Railway
Bilaspur.
 2. The Assistant Divisional Railway Manager
South East Central Railway
Bilaspur Division
Bilaspur.
 3. The Sr.Divisional Electrical Engineer (Operating)
South East Central Railway
Bilaspur Division
Bilaspur.
 4. The Asstt. Divisional Electrical Engineer (Operating)
South East Central Railway
Bilaspur Division
Bilaspur.
- Respondents**

(By advocate Shri M.N.Banerjee)

ORDER

By A.K.Gaur, Judicial Member

By filing this OA, the applicant has prayed for quashing the orders dated 17.10.2003 (A-1), 31.5.2004 (A-2) and 12.10.2004 (A-3).

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2. The brief facts of the case are that the applicant was placed under suspension on 29.11.2002 on the basis of a complaint made by one Mohd. Suleman Ansari, Driver of Train No.UP-LE-20504. A charge sheet dated 2.12.2002 was served upon the applicant under Rule 9 of Railway Servants (Discipline & Appeal) Rules, wherein it was mentioned that the applicant misbehaved with the driver on 21.10.2002, thereby violating GR-2.06 (a) (b). The applicant submitted his reply and denied the allegation. However, the disciplinary authority, not satisfied with the reply, initiated a departmental inquiry against him. It is, submitted by the applicant that no presenting officer was appointed and the enquiry officer acted as prosecutor during the course of inquiry. On completion of the inquiry, the inquiry officer submitted his report to the disciplinary authority on 27.5.03 (A-6), wherein it was held that the charges were not proved against the applicant. However, the disciplinary authority was not satisfied with the report of the inquiry officer. Therefore, the disciplinary authority issued a dissenting note dated 6.8.2003 (A-7) wherein it was mentioned that the applicant was guilty of not taking permission of the driver before working in return trip to headquarters with BSP driver. It is alleged that the disciplinary authority had not mentioned in the dissenting note, that under which rule, it was necessary to take permission of the driver before working in any other train. After receiving the dissenting note, the applicant preferred a representation dated 27.8.2003 (A-8). However, not satisfied with the reply, the disciplinary authority inflicted a punishment on the applicant vide order dated 17.10.2003 whereby the annual increment due on 1.6.2004 raising his pay from Rs.3175/- to Rs.3350/- was withheld for a period of two years without cumulative effect. Feeling aggrieved by the order dated 17.10.2003, the applicant submitted an appeal (A-9) to the appellate authority, which was rejected vide order dated 31.5.2004 (A-2). Against the rejection of his appeal, the applicant preferred a revision before the revisional authority (A-10) and the revisional authority vide order dated 12.10.2004 (A-3) modified the order of the disciplinary authority to the extent of

withholding of increment for a period of one year. This order is under challenge in the instant application. It is urged on behalf of the applicant that the order of the revisional authority is also a non-speaking order.

3. The respondents have filed their reply and submitted that the disciplinary authority while passing the order had specifically mentioned all the points on the basis of which he came to the conclusion and imposed a minor penalty even though major penalty charge sheet was issued to the applicant. They have also stated that the order of the disciplinary and appellate authorities are very specific and speaking orders mentioning all the points on the basis of which the applicant has been imposed the punishment.

4. We have carefully gone through the orders passed by the disciplinary, appellate and revisional authorities and we find that the inquiry officer held the charges as not proved and also observed that although the charged officer neither informed nor took permission from his driver before working return trip, it does not come under GR 2.06 (inadvertently mentioned as 6.02). The disciplinary authority, without differing from this specific finding and observation held that the charged officer has committed violation of conduct rules because "it is a normal practice that if one AED is booked with Driver from HQ, the same will return to HQ". The appellate authority, on the other hand, upheld the penalty, only on the ground that "the relationship of Driver with you is boss Vs. subordinate type and you have to follow all legal orders of you as per GR". The grounds cited by the disciplinary authority and those by the appellate authority are thus at variance with each other. While the disciplinary authority has imposed the penalty for not informing and taking permission of the Driver, the appellate authority has confirmed the penalty for not following the orders of the driver. The revising authority agreed that no violation of GR 2.06 has been proved but held that part of misconduct i.e. neither informing the driver nor taking his permission amounted to misconduct as per the charge sheet.

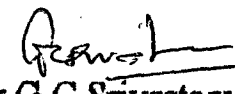
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5. We have carefully gone through the orders passed by the disciplinary, appellate and revisional authorities. It is an admitted fact that the applicant has not violated GR 2.06, which is mandatory in nature. The only alleged misconduct is returning to BSP without permission or without informing the driver. This was expected only out of normal practice and not based on any written instructions or guidelines. We are, therefore of the considered view that the applicant does not deserve a formal penalty, and a written warning, which does not form a part of the character roll may be sufficient. However, instead of passing an order in this regard, we leave it to the revising authority to reconsider the matter and pass a reasoned order keeping our observations in view, within a period of two months of receipt of this order.

6. In the result, the OA is partly allowed and the order of the revising authority is quashed; the case is remitted back to the revising authority for reconsideration and passing a reasoned order within a period of two months of the receipt of this order, taking our observations in Para into consideration. No order as to costs.


(A.K. Gaur)
Judicial Member


Dr. G.C. Srivastava
Vice Chairman

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पृष्ठंकन से ओ/न्या.....जवलपुर, दि.....

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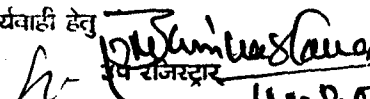
(1) सचिव, उच्च न्यायालय वार एसोसिएशन, जवलपुर

(2) अध्यक्ष श्री/श्रीमती/कु.....के काउंसल

(3) प्रत्यक्षी श्री/श्रीमती/कु.....के काउंसल

(4) ग्रंथपाल, से.प्र.अ., जवलपुर न्यायपीठ

सूचना एवं आवश्यक कार्यवाही हेतु


14.8.06.

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