

Central Administrative Tribunal
Jabalpur Bench

OA No.450/05

Jabalpur, this the 8th day of December 2006.

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Mr.A.K.Gaur, Judicial Member

Jethu Ram
Ex-Gate Keeper
S.E.C.Railway, Kotarlia
District Raigarh (CG). Applicant

(By advocate Shri B.P.Rao)

Versus

1. Union of India
through the General Manager
South East Central Railway
BilaspurZone, G.M.office
PO, Bilaspur
District Bilaspur.
2. The Additional Divisional Railway Manager
South East Central Railway
Bilaspur Division
Bilaspur.
3. The Senior Divisional Operating Manager
South East Central Railway
Bilaspur Division
Bilaspur.
4. The Divisional Operating Manager (Main Line)
South East Central Railway
Bilaspur division
Bilaspur.
5. The Station Manager
South East Central Railway
Kotarlia
District Raigarh (CG) Respondents

(By advocate Shri H.Siddiqui)

ORDER

By A.K.Gaur, Judicial Member

The applicant seeks to quash the impugned orders dated 26.5.2003 (A-6) issued by the disciplinary authority, 28.7.2003 (A-8) issued by the appellate authority and 17.1.2004 (A-10) issued by the revisional authority and for a direction to the respondents to reinstate him in service with all consequential benefits.

2. The applicant was appointed as Gate Keeper in 1997 and posted at Kotarlia Railway Station of Bilaspur Division of South East Central Railway. According to the applicant, 12th & 13th of April 2001 were weekly rest days for him as per his duty roster. 12th April 2001, according to him, happened to be the birth day of his son and on account of the birthday celebrations, the applicant consumed some alcoholic drink in the morning hours, along with his relatives, as was permissible in such type of social functions. At 7.30 hours, the Station Manager of Kotarlia Station (respondent No.5) called the applicant to the station office and asked him to join duties immediately as his reliever was on leave and no other employee was available to look after the railway crossing gate. Though the applicant expressed his inability to do duty in an intoxicating condition, the Station Manager allegedly forced him to work. The applicant accordingly complied with the instructions. Immediately thereafter, the Station Manager sent message to Sr.DMO and CDTI, Raigarh and on receipt of the message, they came to Kotarlia Railway Station and examined the applicant and took his blood sample. The blood sample was sent to Forensic Science Laboratory at Nagpur and, without waiting for the test report, the applicant was placed under suspension as per verbal orders of the Station Manager from 13.4.2001. However, the suspension was revoked on 2.5.2001. On 20.8.2001, a major charge sheet was issued to the applicant (A-1) for the same alleged offence of drinking alcohol on 12.4.2001. Since the applicant failed to give a representation to the charge sheet in time, a departmental inquiry was initiated on 23.6.02. In the meantime, respondent No.4 issued a

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corrigeendum dated 17.9.02 (A-2) in respect of four documents based on which the articles of charges were framed against the applicant. According to the applicant, he was thereafter advised by respondent No.5 i.e. Station Manager, Kotarlia to submit a mercy appeal to respondent No.3, accepting the alleged charges so that the inquiry may be dropped. As per the assurance of respondent No.5, the applicant submitted his appeal on 15.10.02 (A-4). While the appeal was pending for consideration with respondent No.3, the inquiry officer submitted his inquiry report (A-5) and on the basis of the inquiry report, respondent No.4- the disciplinary authority- imposed on the applicant the extreme penalty of removal from service (A-6). The applicant submitted an appeal dated 15.6.03 (A-7) against this penalty to respondent No.3 – the appellate authority. The said appeal was rejected vide letter dated 28.7.03 (A-8). Thereafter a revision appeal was submitted by the applicant on 11.10.2003 (A-9) to the Additional Divisional Railway Manger, SEC Railway Bilaspur (revisional authority) who modified the punishment order as 'compulsory retirement with full pensionary benefits as a measure of penalty' (A-10). This final punishment order is under challenge in this application.

3. According to the applicant, the punishment of compulsory retirement is still too disproportionate to the alleged misconduct and it has no use for him as he would not get any pensionary benefits and pension and his service with the railways spanned only 5-6 years. Learned counsel for the applicant argued that the allegation that the applicant consumed alcoholic drinks during duty hours is absolutely false and incorrect. The learned counsel argued that the inquiry findings went beyond the scope of the charge sheet. It was not alleged in the charge sheet that on the said date, the applicant left the gate unmanned from 12.30 hrs to 13.45 hours, but the inquiry officer mentioned in the inquiry report at para 2.1 that the applicant left the gate unmanned from 12.30 hrs to 13.45 hrs. and this finding is his own imagination. There was also no allegation in the charge sheet to the effect that the applicant misbehaved with certain employees and

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caused disturbance to the duty staff. Therefore the inquiry report contained baseless allegations which are not reflected in the charge sheet. The charge sheet contained only one allegation i.e. consumption of alcoholic drinks while performing duty. Hence the inquiry findings are perverse, argued the counsel vehemently. The learned counsel for the applicant further argued that the relied upon documents were not supplied to the applicant to defend his case properly and the applicant was not afforded any opportunity to cross examine the prosecution witnesses. Moreover the recommendation of the Station Manager vide his forwarding note dated 15.10.2002 (A-4) for giving one chance to reform himself out to have been considered by the appellate authority before imposing the punishment. The extreme punishment has been meted out to the applicant after revocation of his suspension which itself had been done verbally. This is a great injustice to the applicant, argued the counsel.

4. The respondents have admitted that as per the duty roster, the applicant was due for periodical rest on 12.4.01, but he was not allowed to take rest due to shortage of staff and the same was done as per the rule laid down in HOER, wherein it is clearly indicated that in exigencies any employee can be called to join duty and in lieu of it compensatory leave is given later. The further contention of the respondents is that if the applicant was having any problem on the rest day, he should have intimated the same to the concerned authority but the applicant had not intimated anything and agreed to perform duty on 12.4.01. The respondents have denied that the applicant was in intoxicating condition while he reported for duty. The applicant had consumed alcohol during the duty hours only and the same was established during the course of medical check up. According to the respondents, while the applicant was on duty from 8.00 hrs to 16.00 hrs on 12.4.01, he left his working place from 12.30 hrs to 13.45 hrs without taking any prior permission from Station Manager and during that period he consumed alcohol and disturbed/obstructed the cabin staff, which act amounted to indiscipline and accordingly the Station Manager informed the higher authorities. Regarding supply of relied

upon documents, the respondents have stated that the applicant had not claimed any documents for verification during the course of enquiry; hence the question did not arise to supply documents to the applicant. A reasonable opportunity was given to the applicant to defend his case.

5. We have heard the learned counsel for the parties and perused the records carefully.

6. On a perusal of the para-wise reply, it is seen that the respondents have not disputed what is averred by the applicant in paragraphs 2 & 3. In para 2, the applicant has stated that he was called by the Station Manager at 7.30 a.m. and forced him to work and even after explaining his inability, the applicant was constrained to join duties because of the warning for taking disciplinary action. Thus it is clear that the applicant was forced to work on a day which was meant for his rest as per the duty roster, as admitted by the respondents. It is also clear that the applicant has expressed his inability to join duty. This goes against the contention of the respondents in the reply that the applicant did not intimate anything and agreed to perform duty. In para 3, the applicant has stated that the Station Manager falsely reported through his diary entry against the applicant that he consumed alcohol during duty hours. This statement of false reporting by the Station Manager is not denied by the respondents, as is clear from para-wise reply – Paras 2 & 3. In the inquiry report under the heading “discussions by the E.O”, it is stated that the applicant confessed/admitted to have taken alcohol in the morning between 7.00 and 7.30 hrs on 12.4.01. The penalty imposed on the applicant is based on his misconduct of taking alcoholic drinks during duty hours. The enquiry report as well as the charge sheet nevertheless does not mention anything about the timing of the alcohol consumption by the applicant. The enquiry report mentions about the examination of the applicant by the Sr.DMO at 4 pm but does not say anything about the precise timing of the incident. The charge sheet is also vague about the timing. It only mentions as duty hours. It is also seen that the charge sheet speaks only about alcohol

consumption, which formed the basis of the penalty. The respondents have taken other grounds as well in penalizing the applicant. This, in our opinion, shows that the action of the respondents is not in accordance with the accepted procedure and established norms. The enquiry officer has recorded in the enquiry report that "the applicant is honest and truthful by nature and SS/KRI asked for his transfer only considering his family and children". These findings, it seems, have been given a go-by by the respondents while imposing the punishment.

7. Now coming to the articles of charges which formed the basis of the penalty, let us discuss these. According to the respondents, there are two articles of charges. These are (i) "the applicant is alleged to have committed serious misconduct in that on 12.4.01 while performing his duty he consumed alcoholic drinks and found in drunken state and (ii) as per CMS/BSP's letter No.MED/62/B/1431 dated 16.5.2001 the percentage of alcohol present in his blood was 0.143%.

8. The first article of charge itself is vaguely worded with the use of the word "alleged", projecting thereby a confusion about the statement. The second article of charge is not an independent and separate charge and it correlates with the first one. Therefore it cannot be said to be a second article of charge.

9. Learned counsel for the applicant has argued that the inquiry was conducted in a hotch potch manner and the applicant could not defend himself properly. No opportunity of cross examination was granted to the applicant and he also remained a mute spectator during the course of enquiry. The applicant who belongs to SC category is the sole earning member of the family and the penalty imposed on the applicant is disproportionate to the alleged misconduct.

10. The learned counsel for the applicant has vehemently argued that the order passed by the revisional authority is cryptic and non-speaking and none of the grounds has been taken into consideration by the revisional/reviewing authority except that the punishment awarded by the appellate authority has been altered to that of

compulsory retirement which, according to the learned counsel for the applicant, would be nugatory and meaningless, in view of the fact that the applicant has rendered only six to seven years of service. Learned counsel for the applicant also argued that in view of decision rendered by Hon'ble Supreme Court in 2006 SCC (I&S) 840 – Narinder Mohan Arya vs. United India Insurance Co. and AIR 1986 SC 1173 and 1986 SCC (I&S) 383 – Ram Chandra vs Union of India and others, the revisional jurisdiction involves exercise of appellate jurisdiction and the competent authority was bound to consider all the grounds taken by the applicant. Moreover, such application of mind ought to have been apparent from the order passed by the revisional authority. We have also gone through the decision rendered in AIR 2003 SC 1571 – Chairman & Managing Director vs. P.C.Kachker.

11. Having seen the records carefully, we find that the revisional order dated 17.1.04 has been passed without proper application of mind except that the punishment has been altered to compulsory retirement, without adverting to the grounds raised in memo of revision.

12. Accordingly we allow this application, set aside and quash the order of revisional authority dated 17.1.04 and remit the matter to him, to consider and decide the revision application, by a reasoned and speaking order, taking into account the various pleas taken in the OA, including the quantum of punishment, within a period of three months from the date of receipt of this order.

13. With the aforesaid directions, the OA is disposed of.

A.K.Gaur
(A.K.Gaur)
Judicial Member

Gaurai
(Dr.G.C.Srivastava)
Vice Chairman

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प्राप्तकर्ता सं ओ/न्या..... प्रतिनिधि अन्वे शिरो-..... जबलपुर, दि.....
 (1) संहिता, दाता व्यवसाय द्वारा उपर्युक्त जबलपुर
 (2) दाता व्यवसाय द्वारा उपर्युक्त जबलपुर
 (3) प्रत्यक्षी को/कोर्टीज़ बुद्धि..... के काउसल
 (4) कायमान, गोपाल, द्वारा उपर्युक्त सूचना एवं आवश्यक घार्डियर

P.P.Rao Adv.Dung
H.Siddiqui Adv
H.C.Bisht Adv

उप रजिस्ट्रार

11/11/2006

H.Siddiqui
11/12/06