

(Signature)

**Central Administrative Tribunal
Jabalpur Bench**

OA No.453/05

Jabalpur, this the 26th day of December 2006.

CORAM

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

N.Srinivasa Rao
S/o late Shri N.Appa Rao
Junior Stenographer
Under Sr.DCM/S.E.C.Railway/Raipur.
R/o C/o 299/2 Type-II
R.V.H.Colony, Raipur. Applicant

(By advocate Shri B.P.Rao)

Versus

1. Union of India
through the General Manager
South Eastern Central Railway
G.M.Office
PO, Bilaspur
District Bilaspur.
2. The Chief Engineer
South East Central Railway
Bilaspur Division
Bilaspur.
3. The Chief Engineer (Constructions)
South East Central Railway
Bilaspur.
4. The Dy.Chief Engineer
(Survey & Construction)
South East Central Raiway
Raipur Division
Raipur. Respondents

(By advocate Shri M.N.Banerjee)

ORDER

By A.K.Gaur, Judicial Member

This Original Application has been filed for the following reliefs:

- (i) Quash the entire departmental inquiry held against the applicant and the consequential punishment order dated 17.11.03 passed by respondent No.4 (A-25), order dated 24.3.04 (A-27) passed by respondent No.3 and order dated 28.2.05 (A-30) passed by the reviewing authority.
- (ii) Direct the respondents to restore the applicant in his promoted post of Senior Stenographer from the date of issuance of charge sheet and illegal suspension order to the applicant w.e.f. 9.5.2003 with all consequential benefits.

2. Briefly stated, the facts are that the applicant is a stenographer under respondent No.4. On 25.10.2002, respondent No.4 issued a warning letter to the applicant alleging that the applicant remained unauthorizedly absent for 3 days from 22.10.02 to 24.10.02. According to the applicant, he was under sanctioned leave for the period in question. Thereafter on 14.11.02, respondent No.4 issued a minor penalty charge sheet (A-3), alleging lapses on his part in attending phone calls etc. Denying the allegation, the applicant submitted a representation on 22.11.02 (A-4). Again a warning letter was issued to the applicant on the same day i.e. 22.11.02 (A-5) alleging the earlier charges and also mentioning that the office timings 9.45 am to 5.30 pm are not applicable to the applicant. Vide office order dated 11.3.2003 (A-6), the applicant was promoted as Senior Stenographer in the pay scale of Rs.5000-8000/- . The promotion order was not implemented by respondent No.4 on the ground that the applicant did not submit his explanation to the minor penalty charge sheet (A-3). Ventilating his grievance including physical assault by respondent No.4, the applicant submitted a confidential representation dated 7.4.03 (A-7) to his next higher authority i.e. respondent No.3. Vide order dated 4.4.2003, the applicant was transferred to the office of Sr.D.P.O., SEC Railway, Raipur. While so, respondent No.4 rejected the representation submitted by the applicant to the minor penalty charge sheet and vide order dated 10.4.2003 (A-9) imposed a penalty of stoppage of one increment for one year without cumulative effect. In the meantime, respondent No.3 redirected the confidential representation of the applicant to

respondent No.4 who, according to the applicant, became more biased and prejudiced and issued a major penalty charge sheet on 14.4.2003 (A-10). On the same date, the applicant was placed under suspension vide A-11 and a departmental inquiry was initiated immediately thereafter. Thereupon, on the advice of respondent No.3, the applicant withdrew his confidential representation/complaint vide A-12. The applicant submitted a written statement on 17.5.03 (A-13) to the charge sheet. The inquiry officer submitted his report to which the applicant made a detailed representation dated 11.10.03 (A-18). It has been alleged in the OA that the inquiry officer continued the inquiry even after submission of the inquiry report, for the purpose of recording evidence of remaining witnesses. Subsequently vide order dated 17.11.03 (A-25) passed by respondent No.4, the applicant was removed from service without any pensionary benefits. Against the penalty, the applicant submitted an appeal dated 1.12.03 (A-26) to the respondent No.3 who modified the punishment as reversion with cumulative effect, with loss of seniority, break in service and reduced pay scale of Rs.4000-6000/- . Against this modified punishment, the applicant submitted a revision petition to the revisional authority (respondent No.2) who rejected the same vide his order dated 28.2.2005 (A-30). Hence the applicant has filed this original application seeking the aforementioned reliefs.

3. The learned counsel for the applicant has argued that the applicant has been meted out double punishment, first by way of stoppage of increment and then by removing him from service on alleged frivolous grounds of not attending telephone calls and negligence in duty. The respondent No.4 with whom the applicant was attached to work was totally biased and prejudiced with the applicant and in order to wreck vengeance against the applicant, he has imposed the extreme penalty of removal from service. The applicant who was posted as junior stenographer was subsequently promoted as senior stenographer but he has all along been treated as junior stenographer by respondent No.4 till the impugned order of removal was passed. Therefore the appellate order of reversion, without treating the

applicant as senior stenographer is illegal and liable to be quashed. The learned counsel for the applicant vehemently argued that respondent No.4 was not competent to act as disciplinary authority and he cannot act as a prosecutor as well as judge in his own way, in view of the decision rendered in the case of Thomas Pothen Vs. Sr. Supdt. Of Post Offices - 1987 3 ATC 876 (Madras). The learned counsel for the applicant further argued that the charge sheet itself is defective in as much as it is not clear as to what misconduct was committed by the applicant and the procedure adopted in conducting the departmental enquiry against the applicant is very defective and the same cannot be sustained in the eyes of law.

4. Respondents were directed to file a counter reply but a short reply has been filed. In the short reply, the facts specifically pleaded by the applicant were not denied. It has been stated that the performance of the applicant cannot be said to be satisfactory and he did not care to attend official telephone calls. The inquiry has been properly conducted providing reasonable opportunity to the applicant to defend his case.

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

6. Having heard the learned counsel for the parties and on a perusal of the order passed by the revisional authority dated 28.2.05, we are of the considered view that the serious contentions raised in the revision petition have not at all been considered so as to enable this Tribunal to ascertain whether there was application of mind to the grounds alleged. Learned counsel for the applicant has cited 2006 SCC L&S 840 - Narender Mohan Arya vs. Union of India and 2006 volume 6 SCC 358 - Director, Indian Oil Corporation vs. Santhosh Kumar in order to show that the revisional authority has not all applied its mind while deciding the revision petition of the applicant. The Supreme Court has clearly held that the revisional jurisdiction involves exercise of appellate jurisdiction in a case where the employee has raised serious contentions in revision petition. Revisional order must contain the reasons so as to enable the courts to

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ascertain whether there is application of mind or not to the points raised. In view of the two decisions of the apex court, we are of the considered view that the revisional authority has passed the order in a most casual and perfunctory manner and the same requires to be reconsidered. Accordingly, we set aside the revisional order and direct ^{without interfering with the orders of the disciplinary and appellate authorities} the revisional authority to reconsider and decide the revision petition of the applicant by passing a reasoned and speaking order, taking into account all the pleas taken in the OA and also grant an opportunity of personal hearing to the applicant. This exercise must be completed within three months.

7. With these observations, the OA is finally disposed of.

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

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

aa.

मृत्युकल सं. ओ/न्या..... जबलपुर, दि.....
प्रतिनिधि अच्यु पिल :--
(1) संघिज, उच्च न्यायालय पर एक्सीजिशन, जबलपुर
(2) आपेल नी/ट्रिम्पली/ए..... के काउंसल
(3) प्रस्तवी श्री/प्रीताली/एतु..... के काउंसल
(4) वायपल, लोगो, जबलपुर एवं अंतर्र
सूचना एवं आवश्यक कार्यालयी हेतु

B.P.Rao Dr.Suri
M.N.Pandey
B.T.J.B

Desired
on 3/1/01

3/1/00
उप सचिव