

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No.255/04

Jabalpur, this the 10th of March, 2005

CORAM

Hon'ble Mr.M.P.Singh, Vice Chairman
Hon'ble Mr.Madan Mohan, Judicial Member

Omprakash Sharma
S/o Shri Ram Kishore Sharma
Diesel Assistant
West Central Railway
Satna.

Applicant

(By advocate Shri B.K.Pandit)

Versus

1. Union of India through the
Secretary, Railway Department
Rail Bhawan, New Delhi.
2. General Manager
West Central Railway
Jabalpur.
3. Divisional Rail Manager
West Central Railway
Jabalpur.
4. Sr.Divisional Mechanical Engineer
West Central Railway
Jabalpur.
5. Divisional Mechanical Engineer
West Central Railway
Jabalpur.
6. Addl.Divisional Mechanical Engineer
West Central Railway
Jabalpur.
7. Senior DPO
West Central Railway
Jabalpur.
8. Assistant Personnel Officer (M)
West Central Railway
Jabalpur.
9. Nizam Khan, the C.C.C.O.R.Sagar
Presently posted as C.C.C.O.R./
Loco Inspector at NKJ, W.C,Railway
NKJ

Respondents.

(By advocate Shri M.N.Banerjee)

O R D E R


By Madan Mohan, Judicial Member

By filing this OA, the applicant has claimed the following
main reliefs:

(i) To quash the reversion order of the applicant dated 5.1.04 vide which respondent No.8 though had ordered to reinstate the applicant on the post of Diesel Cleaner mentioning therein that it being done by virtue of order dated 6.1.04 passed in OA No.259/03 though the applicant was removed from the higher post of Diesel Asstt. and the reinstatement of the applicant is made by respondent No.8 on the lower post of Diesel cleaner therefore not maintainable.

(ii) Direct the respondents to give the entire financial benefits including wages to the applicant from the date of his removal from service i.e. 1.3.02 till date of reinstatement.


2. The brief facts of the case are that in a major penalty charge sheet of S.F.5 dated 1.9.97, the applicant vide order dated 3.7.2001 was reverted from the post of Diesel Assistant to the lower post of Diesel Cleaner by respondent No.6 (Annexure A1). The applicant immediately filed OA No.774/01 which is pending. The aforesaid reversion order was revoked by respondent No.3, DRM, Jabalpur and the applicant was treated as Diesel Assistant under sick list and the position of the applicant's post was ordered to be corrected vide order dated 22.11.01 (Annexure A2). In an ex-parte departmental enquiry the applicant was removed by respondent No.6, Additional Divisional Mechanical Engineer, Jabalpur while the applicant was on sick list vide order dated 1.3.02 (Annexure A4). In the removal order Annexure A4, the applicant was mentioned as Diesel Assistant and not as Diesel Cleaner. The applicant preferred an appeal which was turned down vide order dated 7.6.02 and in the said order also, the applicant was mentioned as Diesel Assistant. The applicant preferred a revision petition which was partly allowed vide order dated 14.11.02 in which also the applicant was mentioned as Diesel Assistant and not as Diesel Cleaner. The applicant filed OA No.259 of 2003 against the order of removal as well as against the order of 2/3 pension and the Tribunal vide order dated 6.1.04 quashed the order of removal



and the respondents were directed to reinstate the applicant in service within one month. The orders passed by the respondents are not legal. Hence this OA is filed.

3. Heard the learned counsel for both parties. It is argued on behalf of the applicant that the applicant was reverted from the post of Diesel Assistant to the post of Diesel Cleaner vide order dated 3.7.2001. The order of removal was passed by the disciplinary authority on 1.3.02 (Annexure A4). He preferred an appeal which was dismissed vide order dated 7.6.02 (Annexure A5) and he also preferred a revision petition which was partly allowed. In the orders passed by the appellate authority and the revisional authority, the applicant is stated to be as Diesel Assistant and not as Diesel Cleaner, while the respondents are not considering the applicant to be treated on post of Diesel Assistant.


4. In reply, the learned counsel for the respondents argued that the disciplinary authority, on the basis of enquiry report, imposed the penalty of reduction in rank from Diesel Assistant to Diesel Cleaner and his pay was fixed at the lowest of pay scale of Gr.Rs.2550-3220 vide order dated 3/4-7-01. This order was modified vide order dated 30.7.01 by the D.A. mentioning that it is to be read as to ~~burn~~ effigy in place of the word i.e. self immolation (Annexure R1). The OA No.774/01 filed by the applicant was dismissed by the Tribunal vide order dated 15.6.04 (Annexure R-2). The order of reversion of the applicant was not revoked. The applicant has annexed the document as A-2 which is issued by the Chief Crew Controller, Sagar by



mistake and who is a class III employee and is also working under the authority i.e. Assistant Mechanical Engineer who has reverted the applicant. Another major penalty charge sheet dated 5.12.2000 was issued to the applicant for threatening the Railway Administration for self immolation, criticising the policies of Government and entering into unauthorised communication with the Press and therefore the disciplinary authority imposed the penalty of removal from service. His appeal was dismissed and the revision petition was allowed partly. The Tribunal has decided OA 259/03 only. Merely writing and mentioning the applicant as Diesel Assistant on the appeal and the revisional order before issuing a speaking order cannot confer any legal right on the applicant as Diesel Assistant as he was reverted to the post of Diesel Cleaner and in this regard OA 774/01 was dismissed. Hence the action of the respondents is perfectly legal and justified.


5. After hearing the learned counsel for both parties and a careful consideration of the records, we find that the applicant was ordered to be reverted from the post of Diesel Assistant to Diesel Cleaner vide order dated 3.7.2001. He filed OA No.774/01 which was dismissed by the Tribunal vide order dated 15.6.04 passing the following orders:

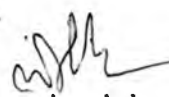
"We find that the impugned orders passed by the disciplinary authority, appellate authority and revisional authority on 3.7.2001, 20.8.2001 and 6.11.2001 respectively are speaking orders and we do not find any irregularity or illegality committed on the part of the respondents. We further find that this is not a case of 'no evidence' and the applicant was given reasonable opportunity of hearing during the entire enquiry proceedings. Moreover, it is settled position of law that the Tribunal cannot re-appraise the evidence and even cannot to into the quantum of punishment."



We have perused the order of the Tribunal passed in the aforesaid OA. The applicant has himself mentioned in para 6.1 of the OA that his earlier OA No.774/01 is pending while it has been decided by the Tribunal vide order dated 15.6.04 (Annexure R2) by which that OA was dismissed by the Tribunal. Subsequently, another charge sheet was issued against the applicant and a major penalty of removal was passed against him by the disciplinary authority. He preferred an appeal which was also rejected and in revision, the penalty was modified. The matter relating to another charge sheet does not relate to the reversion of the applicant at all. Merely mentioning the applicant as Diesel Assistant in the order of the appellate authority dated 7.6.02 and the order of the revisional authority dated 14.11.02 (A-6) cannot be a ground to the applicant to claim himself to be a Diesel Assistant, and the applicant has not filed any document by which he would have sought any legal remedy against the order of the Tribunal dated 15.6.04 passed in OA 774/01.

6. Considering all the facts and circumstances of the case, we are of the considered opinion that the OA has no merit. Accordingly the OA is dismissed. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

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