

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No. 370/04

Jabalpur this the 6th day of March, 2005

CO R A M

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

Akilesh Katare
S/o Shri O.P.Katare
R/o 73/103, Patrakar Colony
Ranital Chowk
Jabalpur.

Applicant.

(By advocate Shri S.Paul)

Versus

1. Union of India through
Its General Manager
West Central Railway
Indira Market
Jabalpur.
2. The Chief Operating Manager
(Revising Authority)
West Central Railway
Headquarters' Office
Personnel Branch
West Central Railway
Jabalpur.
3. The Divisional Railway Manager
West Central Railway
(Appellate Authority)
Jabalpur.
4. The Senior Divisional Operating Manager
(Disciplinary Authority)
Divisional Railway Manager Safety Office
West Central Railway
Jabalpur.

Respondents.

(By advocate Shri M.N.Banerjee)



ORDER

By Madan Mohan, Judicial Member

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

- (i) Set aside the revisional authority order dated 7.7.2003 only to the extent indicated in para 4.5
- (ii) Set aside the disciplinary proceedings and punishment against the applicant by directing his reinstatement with full back wages and other consequential benefit.
- (iii) Set aside the revisional authority order to the extent it treats the intervening period as suspension and direct the respondents to relate back the punishment order dated 7.7.03 to the date of original punishment, in the event the aforesaid reliefs are not granted.
- (iv) Set aside the order dated 3.3.2004 (Annexure A8).
- (v) Set aside the order RBE No.123/99 (Annexure R-1) and letter dated 12.5.2000 (Annexure R-2) being contrary to law, unconstitutional and invalid.

2. The brief facts of the case are that the applicant while working as Assistant Station Master, Kachhpura Station, Jabalpur, was served with a charge sheet dated 8/16.2.2001 (Annexure A1). He denied the charges. A departmental enquiry was instituted against him. Show cause notice along with the enquiry report was given to the applicant. The applicant submitted his reply to the enquiry officer's report. The disciplinary authority vide order dated 20.3.2002 imposed a punishment of removal from the service on the applicant (Annexure A2). The applicant preferred an appeal to the appellate authority, which was rejected vide order dated 20.6.02 (Annexure A3). Another order dated 30.8.02 (Annexure A4) was passed by the appellate authority declining compensatory allowance to the applicant. He preferred a revision appeal (Annexure A5). The revisional authority decided the revision vide order dated 7.7.2003 (Annexure A6). In the detailed order, he found illegality in the enquiry report and the decision of the disciplinary authority as well as appellate authority was



found to be improper and illegal. The revisional authority found that the punishment was extremely disproportionate and directed to post the applicant in the equivalent grade of Rs.5000-8000 with minimum pay for 3 years with cumulative effect. The applicant is further aggrieved by the decision of the revisional authority whereby he treated the intervening period as suspension. After filing of this OA, Annexure A8 dated 3.3.04 was served on the applicant whereby the earlier order dated 7.7.2003 was cancelled by the COM. After passing the order dated 7.7.2003, the revising authority has become functus officio and has no authority, jurisdiction and competence to revise, cancel, amend, modify, annul or change his order in any manner. The said action of the revising authority in passing the order dated 3.3.2004 runs contrary to the statutory provisions of D&A Rules, 1968 and the same is liable to be set aside. No railway order can prevail over the statutory provision of D&A Rules. Hence this OA is filed.

3. Heard the learned counsel for both parties. It is argued on behalf of the applicant that the disciplinary authority passed the order of removal of the applicant from service vide order dated 20.3.2002 (Annexure A2). His appeal was rejected but the revisional authority was kind enough to reduce the penalty vide its order dated 7.7.2003 (A-6). However, the revisional authority had treated the intervening period as suspension. This order is not legal. Subsequently, without issuing any notice to the applicant or affording any opportunity of hearing, the revisional authority suo motu passed the impugned order dated 3.3.2004 canceling the earlier order dated 7.7.2003 and upheld the orders passed by the disciplinary and appellate authorities, which is apparently illegal. There is no provision to pass such type of order. Our attention is drawn to AIR 1987 SC 2186 Dr.Smt.Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur and others, in which the Hon'ble Supreme Court has held that such type of second order cannot be passed by the authorities. The learned counsel also argued that the revisional authority has further passed an



order treating the intervening period as suspension. It is also against the rules and law. Hence the OA deserves to be allowed.

4. In reply, the learned counsel for the respondents argued that the applicant preferred the revision appeal and by order dated 7.7.03 the revising authority has passed a detailed speaking order. Since the orders which were passed earlier were not in conformity with D&A Rules, for rectification defective orders, fresh orders dated 3.3.04 were passed in terms of Railway Board's order dated 3.6.99 by the COM/WCR, Jabalpur by which the earlier order dated 7.7.03 was cancelled and further held that the decision taken by the disciplinary/appellate authority stand good (Annexure R1). The applicant was found guilty for violation of statutory rules for which the disciplinary/appellate authority has passed the order. The learned counsel for the respondents has drawn our attention to Annexure R-2 in which it is mentioned that "if the orders of the Appellate/Revising authority is not in conformity with the D&A Rules, then the papers, case file will again be put up to the same authority who had passed the defective/incorrect orders for issuing correct order." In compliance with the letter, the revising authority has rightly passed the impugned order dated 3.3.2004. The allegations levelled against the applicant were serious and the charges were proved and he was given due opportunity of hearing. The respondents have not committed any illegality in their action in passing the impugned orders.

5. After hearing the learned counsel for both parties, and carefully perusing the records, we find that the disciplinary authority has passed the order of removal from service vide order dated 20.3.2002 (annexure A2). The appeal of the applicant was rejected vide order dated 20.6.02 (Annexure A3) but the revisional authority vide order dated 7.7.03 reduced the penalty and he passed an order whereby the applicant was posted in the equivalent grade of Rs.5000-8000 with minimum pay for 3 years with cumulative effect. It is further mentioned that the intervening period will be treated as suspension but subsequently the revisional

authority has passed the impugned order whereby he had himself cancelled his earlier order and confirmed the decision taken by the disciplinary authority as well as the appellate authority. We have perused the ruling cited on behalf of the applicant AIR 1987 SC 2186 (supra) in which it is held that "Dismissal of Principal of College – Chancellor for approval – Order disapproved –and order for reinstatement made – Subsequently Vice Chancellor reviewed order and approving dismissal order – Order is illegal as no power is granted under law." Similarly in the present case, the reviewing authority has passed the order reducing the penalty against the applicant imposed by the disciplinary and appellate authorities and subsequently he has also upheld the order of removal imposed by the disciplinary as well as appellate authorities. We have also perused Annexure R2 which is a letter issued from the General Manager's Office and by this letter, the Railway Board was requested to confirm the proposed guidelines. These guidelines are not approved by any document but even then these guidelines cannot be considered against the ruling of the Supreme Court. So far as the question of treating the period of suspension by the respondents, the respondents should have given an opportunity of hearing to the applicant as the order of removal was modified and reduced by the revising authority

6. After considering all the facts and circumstances of the case, we are of the considered opinion that the OA deserves to be allowed. Accordingly, the impugned order dated 3.3.04 (Annexure A8) is quashed and set aside and the letter dated 12.5.2000 (Annexure R2) is also quashed and set aside. The respondents are directed to give notice to the applicant about taking decision on the intervening period whether it is to be treated as suspension or not. The applicant be given an opportunity of hearing and then the respondents shall pass orders according to rules.



7. With the above observations, the OA is disposed of. No costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

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प्राप्तिक्रिया सं अम/न्ता जखलपुर, दि.....
प्राप्तिक्रिया द्वारा दिनांक:—
(1) सचिव, उत्तर प्रदेश विधायिका, जखलपुर
(2) आवेदक श्री/श्रीमती/— द्वे काउंसल
(3) प्रत्यक्षी श्री/श्रीमती/— द्वे काउंसल
(4) व्यापाल, को.पा. अम/न्ता द्वारा दिनांक:—
सूचना एवं आवश्यक कार्यकारी देखा
काउंसल
28/3/05

Issued
On 28/3/05
By M.P.Singh

S. P. S. Adv. DBB
M. P. Singh
Adv. DBB