

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
CIRCUIT COURT SITTING AT GWALIOR

Original Application No 470 of 2004

Indore this the 18th day of October, 2005.

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

D.S. Pachokharia S/o Chiranjilal
Sorting assistant, sub record office
Railway main service M.P. Division Gwalior
R/o Sidheswar Nagar Morar Gwalior -6

Applicant

(By Advocate – Shri B.D. Korgaiyan)

V E R S U S

1. Union of India & Ors through
The Secretary, Ministry of
Communication Dak Bhawan
New Delhi.
2. The Principal Chief Postmaster General
M.P. Circle Bhopal.
3. The Superintendent, Railway mail
Service M.P. Division Bhopal.

Respondents

(By Advocate – Shri S.P. Singh)

O R D E R

By Madan Mohan, Judicial Member –

By filing this Original Application, the applicant has sought the following main relief :-

- “8.1 That the impugned orders Annexure-A/1 and A/2 of reduction to 4 lower stages in the time scale of pay may kindly be set aside and the respondents be directed to promote the applicant as BCR from the date of the juniors to him promoted under BCR scheme.”
2. The brief facts of the case as stated by the applicant are that the applicant was initially appointed as sorting assistant/Railway mail



service on 13.5.1968 at Gwalior. He rendered 36 years of service in the department of post. Applicant contended that he performed journey to Kanya Kumari in a Bus from 31.12.94 to 17.1.1995 for all India L.T.C. for the block year 90-93 with 6 members of his family. A bus conducted by Tourism department, Govt. of Manipur vide certificate Annexure-A-3. The claim of L.T.C. was rejected vide Annexure-A-4 on account of delayed submission of L.T.C. bill. Thereafter he was served with a charge sheet vide Annexure-A-5 and he was imposed a penalty of stoppage of three increments. On filing an appeal, the appellate authority has quashed the order of the disciplinary authority vide order dated 21.1.98 (Annexure-A-7) and remanded back the matter for fresh enquiry. Thereafter the applicant the disciplinary authority issued a charge sheet to the applicant under Rule 14 and imposed the penalty of reduction in pay to 4 lower stages in the pay scale for 2 years and 6 months vide order dated 9.7.2002 (Annexure-A-2). According to the applicant, the enquiry officer has not found the applicant guilty in his report Annexure-A-9 from the charge of false LTC claim. But, the disciplinary authority disagreed with the finding of enquiry officer and punished him straightway without furnishing reasons of disagreements before passing the punishment order and deprived opportunity of hearing or making representation. Thus, the principles of natural justice have not been followed by them. The applicant has preferred an appeal before the appellate authority which was dismissed vide order dated 16.6.2003 (Annexure-A-1). Hence, this OA.

3. The respondents have filed their reply stating that the applicant had submitted his LTC claim much later. He should submit the LTC claim within one month i.e. on 17.1.95 whereas he submitted the LTC claim on 12.6.95. In para 13 of the reply the respondents have stated that "the article of charge-II is not proved. The applicant has submitted his representation dated 12.7.2001. Therefore, reasonable opportunity was given to the applicant. Secondly, reasons for



disagreement has already been furnished in the punishment order. Therefore, there is no violation of principles of natural justice." The applicant was given due opportunity of hearing. The disciplinary authority and appellate authority considered the enquiry report of the applicant and also the representations of the applicant and thereafter they have passed the speaking and reasoned orders. Hence, the OA deserves to be dismissed.

3. Heard the learned counsel for the applicant and subsequently the learned counsel for the respondents appeared and was given time to file the written submission. He has filed the written submission. We have considered the written submission.

4. It is argued on behalf of the applicant that two charges were leveled against the applicant, first charge is delay in submitting the LTC claim was proved. However the second charge of submitting false LTC claim of his two minor son, who did not perform the journey with him was false and not proved by the enquiry officer. The disciplinary authority has not recorded any dissenting notes and the applicant should have been given the opportunity to submit the representation against the dissenting note and after affording the opportunity of hearing to the applicant then the disciplinary authority should pass the impugned order. The learned counsel for the applicant further argued that the disciplinary authority has not recorded any dissenting note and straightway passed the impugned order dated 9.7.2002 (Annexure-A-2). The applicant has preferred an appeal against the said order which was dismissed by the appellate authority vide order dated 16.6.2003 without considering the case of the applicant.

5. We have given careful consideration to the rival contentions and on careful perusal of the records, we find that two charges were leveled against the applicant. First is that the applicant has not submitted LTC claim within stipulated time, was found to be proved



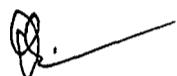
by the enquiry officer. However, the second charge charge of submitting false LTC claim of his two minor son, who have not performed the journey with him was not proved by the enquiry officer but without recording any dissenting note by the disciplinary authority against the report of the enquiry officer about the charge No.2 and without affording any opportunity to the applicant to defend himself by filing representation against the dissenting note had straightway passed the punishment order dated 9.7.2002. In this order the disciplinary authority has mentioned that both the aforesaid charge leveled against the applicant were proved beyond doubt and the appellate authority also dismissed the appeal of the applicant vide order dated 16.6.2003. We have perused both the orders passed by the disciplinary authority and appellate authority and we find that the applicant was punished on the basis that both the charges were proved whereas in the enquiry report Annexure-A-9 it is clearly mentioned that the article one of the charge is fully proved, however, article second of charge is not proved. It was mandatory part of the disciplinary authority to record the dissenting note against the finding of the enquiry officer's report and the applicant should have given a show cause notice to submit the representation against the dissenting note and after considering the representation of the applicant the disciplinary authority should have passed the order according to rules. However, the respondents have not followed this mandatory procedure which is specifically mentioned in the Rules. Hence, both the orders passed by the disciplinary authority and appellate authority are not sustainable in the eyes of law.

6. Considering all the facts and circumstances of the case, we are of the considered opinion that the order dated 9.7.2002 and 16.6.2003 are liable to be quashed. Accordingly, the aforesaid orders are quashed and set aside and the matter is remitted back to the disciplinary authority to consider the enquiry report. If the disciplinary authority is not satisfied with the enquiry report, he may record the



dissenting note and shall give an opportunity of hearing to submit representation to the applicant. Thereafter he may proceed further in accordance with rules and law. The aforesaid, directions will be complied within a period of four months from the date of receipt of a copy of this order.

7. In the result, the OA stands disposed of with the above directions. No costs.



(Madan Mohan)
Judicial Member



M.P.Singh)
Vice Chairman

skm

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सं. दिन.....

- (1) सरिया दिन.....
- (2) अ.के.वा. दिन.....
- (3) अ.के.वा. दिन.....
- (4) अ.के.वा. दिन.....

D.D.Kirgaiyan B/25
P.P.Jayaram B/25

प्रमाण एवं तारीख 2/1/05

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