

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 644 of 2003

Awalior, this the 7th day of December, 2004

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

B.B. Bannerjee, S/o. Barid Baran Bannerjee, aged about 51 years, Head Clerk, Loco Loco Shed, Nainpur, S.E.C. Rly., Nainpur P.O. Nainpur, Distt. Mandla, M.P. ... Applicant

(By Advocate - Shri M.R. Chandra)

V e r s u s

1. The Union of India, through General Manager, S.E.C. Rly., Distt: P.O. Bilaspur, Chhatishgarh.
2. Divisional Railway Manager, S.E.C. Railway, Nagpur.
3. Senior Divisional Railway Engineer, (Mechanical), S.E.C. Railway, Nagpur. ... Respondents

(By Advocate - Shri M.N. Banerjee)

O R D E R

By Madan Mohan, Judicial Member -

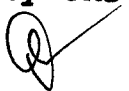
By filing this Original Application the applicant has claimed the following main reliefs :

"8.2 pray for quashing of both charge sheet, departmental enquiry, punishment imposed by disciplinary authority and modification of punishment order of the appellate authority in view of the facts circumstances and grounds canvassed in the petition,

8.2 to allow all consequential benefits after such cancellation and quashment including pay and allowances for period intervening removal to reinstatement and also the refund of the recovered amount towards cost of the pass granted on 29.7.02. Also the damage rent recovered during the period of removal be refunded."

2. The brief facts of the case are that the applicant is presently working in Loco Shed of SEC Rly., Nainpur of Nagpur Division. Vide letter dated 11.9.2001 the Sr. D.E. Mechanical Nagpur made a colourable report of applicant's misuse of one set of pass ^{by} fraud and fabrication of the record on 29.7.2001. On the report a major penalty charge sheet dated 20.11.2001

was issued. This charge sheet is vague, ambiguous and not specific. The respondents did not communicate the impugned punishment notice nor its copy was supplied by any person and made it as a material document in support of the charge by listing as supporting document. The enquiry was conducted in violation of the principles of natural justice as well as violation of the relevant rules. The enquiry officer in his wisdom failed to examine and verify as to who issued and signed the impugned privilege pass on 29.7.2001. He also failed to take a judicial notice of the fact that Shri Signotia, the relieving in charge of Howbagh unit himself handed over the impugned privilege pass. In utter violation of D&A Rules 9(13) i.e. without ensuring finalisation of selection of defence assistant before commencement of enquiry proceeding, the enquiry officer conducted the enquiry to the prejudice of the applicant. The enquiry officer has failed to observe the mandatory provision as laid down in Rule 9(21) of D&A Rule in not scrupulously examining the circumstances appeared against the applicant when he has not examined himself as a witness in his own case. The disciplinary authority without considering the submissions of the applicant imposed a punishment of removal from service on irrelevant, improper and erroneous considerations. The applicant preferred an appeal against it. The appellate authority vide order dated 29th April, 2003 modified the punishment from removal to reversion as Head Clerk in initial stage of the grade i.e. Rs. 5000-8000/- with seniority below the existing Head Clerk and also ordered to recover the cost of one set of privilege pass. This penalty of reversion to a lower stage cannot be imposed permanently without specifying the period of punishment etc. The said cost of pass cannot be deducted in one instalment without any show cause notice, without its computation and calculation of journey fare and also without any opportunity of being heard. Hence, the orders passed by the respondents are liable to be quashed.



3. Heard the learned counsel for the parties and perused the records carefully.

4. During the course of arguments the learned counsel for the respondents has stated that the applicant has not availed all departmental remedies i.e. he has not filed the revision petition and before availing all the statutory remedies, the applicant has approached this Tribunal. He further submitted that the applicant be therefore, directed to first avail all the departmental remedies by way of filing revision petition before coming to the Tribunal. In support of his argument he has drawn our attention to the judgment passed by the Principal Bench of this Tribunal on 22nd April, 2003 in OA No. 2113/2002. The learned counsel for the applicant argued that the revision petition is not necessary to be filed before coming to the Tribunal.

5. We, therefore, without going into the merits of the case direct the applicant to file a revision petition to the respondents within two months from the date of receipt of a copy of this order. If he complies with this, then the respondents are directed to consider and decide the revision petition of the applicant within a period of three months from the date of receipt of such revision petition by passing a speaking, detailed and reasoned order. We, however, make it clear that the respondents will not take the plea of limitation.

6. In view of the aforesaid terms the Original Application is disposed of. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman