

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No.773/03

~~Bilaspur~~, this the 9th day of ~~Sept.~~, 2004

C O R A M

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

Kamlapati Dwivedi
S/o Late Shri Nathulal Dwivedi
R/o D-22A, Upper Line
Railway Colony
Jabalpur (MP)

...Applicant

(By advocate Shri S.Paul)

Versus

1. Union of India through
its Secretary
Ministry of Railway
Rail Bhawan
New Delhi.
2. General Manager
West Central Railway
Jabalpur (MP)
3. Chief personal officer
West Central Railway
Jabalpur.
4. Divisional Railway Manager
West Central Railway
Jabalpur Division
Jabalpur.
5. Additional Divisional Railway Manager
West Central Railway
Jabalpur Division
Jabalpur.
6. Additional Divisional Railway Manager
West Central Railway
Bhopal Division
Bhopal.
7. Senior Divisional Personnel officer
West Central Railway
Jabalpur Division
Jabalpur.

...Respondents.

(By advocate Shri S.S.Gupta)

O R D E R

By Madan Mohan, Judicial Member

By filing this OA, the applicant seeks the following
reliefs:



- (i) Set aside the impugned order 4-5/7/2000 (Annexure A1 and the appellate order dated 27.8.03 (Annexure A2).
- (ii) Direct the respondents to provide all consequential benefits to the applicant as if the aforesaid impugned orders and the departmental enquiry in question are never passed/instituted against him.

2. The brief facts of the case are that the applicant was initially appointed on 7.10.1983 as TGT in the pay scale of Rs.1400-2600 in Senior Secondary School, Newyard, Itarsi. He was promoted as PGT on 30.9.92. Applicant was placed under suspension on 21.10.92 (Annexure A4) under Rule 9 of Railway Servants (D&A) Rules, 1968 wherein it was alleged that the applicant had misbehaved with and manhandled the Principal on 20.10.92 and thus he violated Rule 3 (I) (i) (ii) & (iii) of the Conduct Rules. On completion of the enquiry, the enquiry officer submitted his report and thereafter the disciplinary authority had imposed punishment on 18.8.93 by which one increment of the applicant was withheld for one year without cumulative effect. The applicant preferred an appeal against the punishment order dated 18.8.93. Appellate authority issued a show cause notice with an intention to enhance the punishment. Applicant preferred a representation on 18.11.93 against the show cause notice. After considering the representation of the applicant, the appellate authority enhanced the punishment and the pay of the applicant was reduced at the minimum stage of the pay scale of Rs.1400-2600 for a period of three years with cumulative effect vide Annexure A6 order dated 23.3.94. Aggrieved with the order dated 23.3.94, the applicant preferred a revision on 5.5.94. The revising authority reduced the punishment and the pay of the applicant was reduced at the minimum grade in the pay scale of Rs.1640-2900 for a period of two years without cumulative effect by order dated 13.6.94 (Annexure A7).



Applicant filed an OA before this Tribunal on 26.11.96 wherein it was held that the Divisional Personnel Officer is not disciplinary authority of the applicant and, therefore, the DPO cannot impose a punishment on the applicant. Accordingly, the Tribunal quashed the punishment order. However, opportunity was given to the respondents to proceed on the enquiry from the stage of quashing of the punishment (Annexure A8). After a considerable long time, the disciplinary authority sent a letter dated 4.6.98 (Annexure A13) to the applicant informing him that the department had decided to proceed with the enquiry afresh contrary to the decision of the Tribunal dated 26.11.96. Applicant preferred a detailed representation dated 27.6.98 (Annexure A14). The enquiry officer proceeded with the departmental enquiry w.e.f.13.5.99. Disciplinary authority sent enquiry report to the applicant on 7.4.2000. After receiving the enquiry report, applicant submitted his representation on 25.4.2000 (Annexure A23). However, without considering the representation of the applicant, the disciplinary authority imposed a punishment by order dated 4-5/7/2000 (Annexure A1) whereby the pay of the applicant was reduced by three stages from Rs.6725 to Rs.6200 in the pay scale of Rs.5500-9000 for two years without cumulative effect. Applicant preferred an appeal on 19.8.2000 (Annexure A17), which was rejected. He preferred a review petition and the same was decided by order dated 21.3.03. Hence this OA is filed.


3. After he heard learned counsel for both parties, It is argued on behalf of the applicant that the applicant had filed OA No.672/94 which was decided on 26.11.96 in which it was held that "a minor punishment of withholding of increment for a period of one year was imposed by the DPO vide order dated 18.8.93 (Annexure A9). The person competent



to impose the said penalty was Senior Divisional Personnel officer. This fact is not disputed by the learned counsel for the respondents." Hence the orders were quashed and it was ordered that it would be open for the department to proceed with the enquiry. The Tribunal had passed this order to proceed with the enquiry which was already conducted but as the Tribunal held that the impugned order was passed not by the competent authority, hence the respondents had no right to conduct a fresh enquiry while the respondents had initiated disciplinary proceedings afresh, which is apparently not permissible and it amounts to disobedience of the order passed by the Tribunal. Hence the whole proceedings conducted by the respondents ignoring the orders of the Tribunal are illegal. Hence the impugned orders are liable to be quashed and set aside.

4. In reply, learned counsel for respondents argued that the department has started a fresh enquiry against the applicant according to rules. They have not committed any irregularity or illegality in conducting de novo enquiry and the orders passed by the competent authorities are neither irregular nor illegal. The impugned orders passed are justified.

4. After hearing learned counsel for both parties and careful perusal of the records, we find that the order passed on 26.11.96 in OA 672/94 clearly indicates that the punishment order dated 18th August 93 was ^{passed by} ~~passed~~ by a competent authority. Hence subsequent orders passed by the appellate authority were also quashed and it was open for the department to proceed with the enquiry which was already conducted. There is no order about any fresh



enquiry passed by the Tribunal while the respondents have conducted a fresh enquiry against the applicant which was not at all permissible as per the aforesaid order of the Tribunal. Hence the whole proceedings and the impugned orders passed against the applicant are against rules and also against the order of the Tribunal. Hence this OA deserves to be allowed.

5. Accordingly the OA is allowed. Impugned orders Annexure A1 dated 4-5/7/2000 and Annexure A2 order dated 27.8.03 are quashed and set aside and we hold that the applicant is entitled for all consequential benefits in accordance with rules. No Costs

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

aa.

पृष्ठांकन सं ओ/न्य.....जबलपुर, दि.....

पत्तिलिपि अर्जित :-

- (1) सचिव, उच्च न्यायालय वार एसेसिएशन, जबलपुर
- (2) आवेदक श्री/श्रीमती/कु.....के काउंसल
- (3) प्रत्यक्षी श्री/श्रीमती/कु.....के काउंसल
- (4) अध्यक्ष, के.प्र.अ., जबलपुर न्यायापीठ
सूचना एवं आवश्यक कार्यवाही हेतु
उप-निर्देश

Issued
On 14-9-04
BS

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उप-निर्देश

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