

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 183 of 2001

Jabalpur, this the 26th day of April, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman

Hon'ble Mr. A.S. Sanghvi, Judicial Member

Mahesh Singh, S/o Late Laxman
Singh, aged 41 years, working
as Cabin Master, Central Railway,
Obdullaganj, Bhopal(M.P.)

APPLICANT

(By Advocate - Shri A.K. Tiwari on behalf of Shri M.Saini)

VERSUS

1. Union of India through its
General Manager, Central
Railway, Mumbai CST.

2. Divisional Rail Manager,
Central Railway, Bhopal.

RESPONDENTS

(By Advocate - Shri S.P. Sinha)

O R D E R (ORAL)

By M.P. Singh, Vice Chairman :-

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

i/ Quash the order of punishment passed by the
disciplinary authority Annexure-A-4 and further be
pleased to quash the entire proceedings.

ii/ Order the respondents to restore the
increments which has been withheld and further be
pleased to direct the respondents to pay the arrears
alongwith interest at the market rate.

iii/ Quash the orders passed in appeal and the
revision Annexure-A-6 and A-8"

2. The brief facts of the case are that the applicant
who was working as Switchman in the Railways, was charge-
sheeted for minor penalty under Rule 11 of the Railway
Servants (Discipline & Appeal) Rules, 1968. No detailed enquiry
was held and after receipt of the representation of the
applicant, the disciplinary authority has imposed the
Penalty of withholding of increment vide order dated
10.12.1998(Annexure-A-4). In the said order it was stated
that his increment raising his pay from Rs.3575/- to Rs.3650/-
in the grade of Rs.3050-4590 normally due on 1.12.1999 was
withheld for a period of 3 years with cumulative effect.

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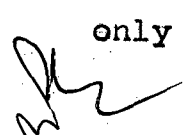
The applicant had filed an appeal against the said order of the disciplinary authority, which was rejected by the appellate authority vide order dated 16.10.1999(Annexure-A-6). Thereafter, the applicant had filed a revision-petition which has also been rejected by the revisional authority vide order dated 17.2.2000. Aggrieved by these orders, the applicant has filed this OA.

3. Heard the learned counsel for both sides.

4. The learned counsel for the applicant has stated that the respondents have issued the charge-sheet under Rule 11 ibid for imposing minor penalty whereas they have imposed the penalty of stoppage of increment with cumulative effect, which is a major penalty. It is only after the applicant has filed this OA in the Tribunal that the respondents have issued an order dated 22.5.2001(Annexure-R-1) whereby the disciplinary authority has modified the letter dated 10.12.1998 by ^{converting &} modifying the penalty of "withholding of increment for three years with cumulative effect" to that of "withholding of increment for three years with non-cumulative effect". Thus, ^{it} converting the major penalty ^{has been} ² converted into minor penalty without following the procedure. Therefore, the penalty imposed by the respondents is illegal and requires to be quashed and set aside.

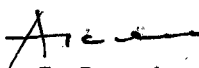
5. On the other hand the learned counsel for the respondents has stated that by mistake a major penalty was imposed by the respondents but the same has been corrected. Therefore, the OA is liable to be dismissed.


6. We have given careful consideration to the arguments advanced by both the sides. We find that a charge-sheet under Rule 11 ibid was issued to the applicant vide memo dated 20.3.1998 (Annexure-A-1) for imposing a minor penalty, whereas a major penalty of withholding of increment for 3 years with cumulative effect was imposed by the disciplinary authority vide order dated 10.12.1998(Annexure-A-4). It was only after the applicant had approached this Tribunal on



13.2.2001, and ^{when} notices were issued by this Tribunal to the respondents on 19.3.2001 that the disciplinary authority has issued an amendment converting the major penalty into a minor penalty vide order dated 22.5.2001(Annexure-R-1). The order issued by the disciplinary authority on 10.12.1998(Annexure-A-4) is itself illegal as no detailed enquiry as required under the Railway Servants (Discipline & Appeal) Rules, 1968 for imposing a major penalty, was held against the applicant. Therefore, the order passed by the disciplinary authority on 10.12.1998 cannot sustain in the eye of law as it has been passed contrary to rules and procedure prescribed under the R.S. (Discipline & Appeal) Rules, 1968. Accordingly, the subsequent orders passed by the appellate & revisional authorities are also liable to be quashed. As regards the order passed by the disciplinary authority on 22.5.2001(Annexure-R-1), we are of the confirmed view that once the disciplinary authority had passed the order dated 10.12.1998(Annexure-A-4) imposing the penalty on the applicant, his function of performance of the duty of disciplinary authority was over, and thereafter he becomes functus officio and he cannot modify his own order of punishment by modifying the major penalty into minor penalty. Therefore, the order dated 22.5.2001 is also liable to be quashed.

7. In the result, the OA is allowed. The orders dated 10.12.1998(Annexure-A-4), 16.10.1999(Annexure-A-6), 17.2.2000 (Annexure-A-8), and 22.5.2001(Annexure-R-1) are quashed and set aside. The respondents are directed to grant all consequential benefits to the applicant within a period of three months from the date of communication of this order. However, the applicant is not entitled for any interest on the arrears to be paid to him. In the facts and circumstances of the case, the parties are left to bear their own costs.


(A.S. Sanghvi)
Judicial Member


(M.P. Singh)
Vice Chairman