

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 429 of 2002

Jabalpur, this the 3rd day of September, 2004

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

Shri Durga Prasad Kewat,
S/o Shri Ram Prasad Kewat, aged
52 years, R/o Near Jhara,
Tugaria Masjid, Katni, Madhya
Pradesh.

APPLICANT

(By Advocate - Smt. S. Menon)

VERSUS

1. Union of India
Through: the Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi.
2. The General Manager,
Central Railway,
C.S.T. Mumbai
3. Divisional Railway Manager,
Central Railway,
Jabalpur.
4. Sr. Divisional Mechanical
Engineer,
Central Railway,
Jabalpur.
5. Divisional Mechanical Engineer,
Central Railway,
Jabalpur.

RESPONDENTS

(By Advocate - Shri S.S. Gupta)

ORDER

By Madan Mohan, Judicial Member -

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

"(i) quash the order dated 15.6.2000 (Annexure-A-2) as also the proceedings initiated by issuance of memorandum of chargesheet dated 29/30.8.2000 resulting in the order of penalty dated 12.9.2001 (Annexure-A-6) as also the memo dated 1.5.2002 (Annexure-A-10) and hold it as malafide and unjustified;

(ii) direct the respondents, in particular, respondent No.5 to release the salary and other service benefits for the period 17.7.2001 to 17.9.2001 illegally withheld, along with interest at the rate of 21% per annum;

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(iii) impose a compensation to a tune of Rs. 25,000/- in favour of applicant against the respondents for the harassment and mental agony suffered by the applicant,

2. The brief facts of the OA are as follows:

The petitioner is presently functioning as Technician Grade-I in the Carriage Wagon Department of Central Railway, New Katni Junction. In relation to an incident of 16.4.2000 wherein it was alleged that he attended his place of work at 8.35 a.m. instead of 8.00 a.m. and had submitted a false report against the Supervisor to Sr.Mechanical Engineer resulting in unnecessary loss of time of the department. It was a memo issued under Rule 11 of the Railway Servants Rules, 1968. The applicant was imposed with a penalty of censure by the disciplinary authority vide memo dated 15.6.2000 (Annexure A2). The applicant preferred a representation to the authority concerned. The applicant denied the charge. The authority concerned issued a memo of charge sheet for the same set of allegations as levelled in A-1 dated 12.5.2000 vide memo of charges dated 29/30.8.2000. The disciplinary authority in a most arbitrary manner issued the order dated 17.7.2001 whereby he imposed the penalty of removal from service (Annexure A-4). The applicant preferred an appeal to the competent authority. The appellate authority modified the order of removal to censure vide order dated 12.9.2001. The issuance of the order dated 12.9.2001 was a clear example of "double jeopardy" resulting in violation of the Constitutional provisions in particular Article 20. After issuance of the aforesaid order, the applicant was allowed to resume his duty on 18.9.2001. The applicant made a representation on 31.10.2000 requesting that he was not paid salary and other dues for the period 19.7.2001 to 18.9.2001. Vide memo dated 1.5.2002 (Annexure A10) the intervening period i.e. from 17.7.2001 to 17.9.2001 was treated to be "dies non". All actions taken by the respondents are against law. Hence the OA was filed.



3. Heard the learned counsel for both parties. It was argued on behalf of the applicant that two penalties had been imposed on the applicant by the authorities on the same set of allegations and incident while the applicant cannot be punished two times for one incident. It is apparently illegal. The counsel further argued that due opportunity of hearing was not given to the applicant and the alleged incident was not proved against him, the order of the authorities concerned is not speaking and the order treating the period from 17.7.2001 to 17.9.2001 as 'dies non' is also illegal because the final penalty of censure was passed against the applicant and his salary was withheld for the above said period.

4. In reply the learned counsel for the respondents argued that the dates of incidents alleged are not the same and the orders passed by the authorities are legal and justified. Due opportunity of hearing was given to the applicant and the order dated 1.5.2002 (A10) treating the period from 17.7.2000 to 17.9.2000 as 'dies non' was passed after due consideration of the facts and circumstances and hence the order is legal.

5. After hearing the learned counsel on both sides and carefully perusing the records, we find that the disciplinary authority had passed the order of censure on 15.6.2000 (A-2) and subsequently he had passed the order of removal from service on 17.7.2001 (A-4) and the appellate authority had passed an order modifying the order of removal to censure vide order dated 12.9.2001. We also find that in this case earlier the applicant was issued a minor penalty charge sheet under Rule 11 of the Railway Servants Rules, 1968. After receiving the representation of the applicant the disciplinary authority imposed

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the penalty of Censure. Thereafter, the disciplinary authority issued a major penalty charge sheet for the same set of allegations, which is not permissible under the rules and after holding ex-parte proceedings, imposed the penalty of removal from service on the applicant. As the disciplinary authority has already punished the applicant earlier by issuing the penalty of Censure, he has become functus officio and cannot issue a fresh charge sheet for major penalty for the same set of allegation. In view of the aforesaid the second charge sheet and subsequent actions are liable to be quashed and set aside.

6. We, therefore, quash and set aside the second charge sheet dated 29/30.8.2000, removal order dated 17.7.2001 and the appellate order dated 12.9.2001. The applicant shall be entitled for all consequential benefits. However, he shall not be entitled for any interest on the arrears of salary. The original Application stands allowed, No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

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प्रकाशन से ओ/न्या..... जवलपुर, बि.....
प्रतिलिपि अनुष्ठित:-
(1) राधिक, उच्च व्याधालय वार एसोसिएशन, जवलपुर
(2) अखेदक थी/वीरेन्द्री/मी..... के कानूनी सेवा संस्थान
(3) दुर्दली थी/ईमानी/मी..... सेवा संस्थान
संस्कृत विद्यालय, जवलपुर, बिहार
प्रकाशक कानूनी विद्यालय

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