IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Date of Order : 25-7-2003

O.A. NO. 435/1998

P.K.Bhattacharjee aged 43 years, Occupation P.W.I. Instructor Dongargarh District Rajnandgaon, resident of Quarter No. L 17/2 Railway Colony, Dongargarh, District Rajnandgaon (MP).

..... Applicant

versus

1. The Union of India through the Secretary, Ministry of Railways, New Delhi. 110 001.

2. The Divisional Railway Manager, Nagpur Division, South Eastern Railway, Nagpur.

3. The Additional Divisional Railway Manager, Nagpur Division, South Eastern Railway, Nagpur.

4. The Senior Divisional Engineer (Coordination), South Eastern Railways, Nagpur.

5. The Divisional Engineer(Central), South Eastern Railway, Nagpur.

.....Respondents.

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CORAM :

HON'BLE MR.J.K. KAUSHIK, JUDICIAL MEMBER
HON'BLE MR.ANAND KUMAR BHATT, ADMINISTRATIVE MEMBER

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Mr. M.R. Chandra, counsel for the applicant.

Mr. M.N. Banerjee, counsel for the respondents.

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PER MR. J.K. KAUSHIK, JUDICIAL MEMBER :

Shri P.K. Bhattarjee has assailed the order Annexure A/9 dated 9.1.96 vide which penalty of stoppage of increment for 12 months with cumulative effect has been imposed on him and has also sought consequential relief thereof.

2. The material facts leading to filing of this O.A. which are necessary for adjudication of the controversy involved are that applicant is presently holding the post of Permanent Way Inspector (PWI)/Instructor at Dongargarh. Earlier to this, he was employed on the post of Incharge PWI, Kamptee. He was served with a Chargesheet dated 28.7.94 under Rule 11 of Railway Servants (Discipline and Appeal) Rules, 1968 (for brevity 'the Rules') alleging negligence in maintaining the track to safe standard which caused derailment of KKF/Goods Train at Kalumna Yard on 19.2.94. The applicant could not submit reply to chargesheet in time due to his busy schedule of working and a minor penalty of with-holding of increment for one year without cumulative effect was imposed on him vide order dated 9.8.94.

3. The further facts of the case are that applicant was served a letter dated 28.12.94 whereby he was informed that his case has been reviewed by the respondent No.2 and the punishment order have been cancelled. A major penalty chargesheet was also annexed along with the said communication containing the similar charge regarding the incident which were the charges in the chargesheet dated 28.7.94.

4. The applicant denied the charges and submitted that the Sectional PWI Grade II Itwari, was in fact responsible

for maintenance of the said track. It has also been submitted that the person who was directly responsible was safe-guarded and was listed as departmental witness inthe inquiry. An inquiry was conducted and the inquiry officer found that the charge of slack guage could not be proved and the charge of the availability of two consecutive unserviceable sleepers was proved and opined that the primary responsibility for this lapse lies with the Sectional PWI-II Itwari Shri A.K.Pandey and the Mate of the gang. Despite this, the disciplinary authority imposed the punishment of with-holding of increment for 12 months with cumulative effect vide impugned order dated 9.1.96. An appeal was also preferred in the matter but the same remain undecided.

5. A detailed return has been filed on behalf of the respondents wherein it has been submitted that the case was reviewed by the Divisional Railway Manager and found that the punishment imposed as inadequate as per the yardstick laid down by the Railway Board. Therefore, it was decided to cancel the chargesheet and the punishment order without prejudice to issue a major penalty chargesheet and, therefore, the earlier chargesheet was cancelled and an another chargesheet for major penalty was issued.The inquiry officer has given his findings and has stated that being Incharge of the Section, the applicant cannot be kept aside from the responsibility of proper maintenance of the track. Accordingly, a penalty of stoppage of increment for twelve months with cumulative effect was imposed upon the applicant. The overall Incharge was also responsible for safe maintenance of the track in accordance with the rules. The appellate authority has decided his appeal vide order dated 15.12.98 and has upheld the punishment. The grounds have been generally denied.

6. A detailed rejoinder has been filed on behalf of applicant wherein, it has been submitted that the Divisional Railway Manager desired that major penalty instead of a minor penalty should be imposed. Certain discussion has been made regarding application of mind and it has been averred that once the disciplinary authority has already applied his mind in the same matter and imposed minor penalty, the decision of imposing major penalty cannot be said to be free from outside influence and has not been taken after due application of mind.

The learned counsel for applicant has reiterated the facts and grounds mentioned in OA as well as in the rejoinder. Great emphasis had been led on the ground that the impugned order has been passed without application of mind inasmuch as the disciplinary authority has acted under the dictation of the revising authority and the very cancellation of the minor penalty chargesheet smacks arbitrariness and biasness. It has also been submitted that applicant was the only overall incharge but the actual responsibility rested with the concerned PWI who has been safe-guarded and brought as a witness from departmental side against applicant. It is also urged that the revising authority has not acted according to rules in force and there was no reason for cancellation of earlier chargesheet. Inquiry under Rule 9 could have been conducted on the same chargesheet as per the procedure prescribed under the rules for dealing with the revision when it is proposed to enhance the penalty. Thus, the impugned order is ex facie void and has no legs to stand.

7. On the contrary, learned counsel for respondents has vehemently opposed the contentions raised on behalf of applicant.

It has been submitted that applicant was the overall incharge and there is a finding of the inquiry officer that applicant being Incharge PWI cannot be kept aside for the responsibility of proper maintenance of track. The learned counsel for respondents has reiterated the defence as set-out in the reply. It has also been submitted that the revising authority had ample power even to cancel the chargesheet for minor penalty and direct issuance of chargesheet for major penalty. In this respect, he has placed heavy reliance on a judgement of one of the Bench of the Tribunal in the case of R. K.Gupta Vs. UOI & Ors. (1990) 14 ATC 628. There has been no infirmity in passing of the impugned order of penalty. Thus, the O.A. has no substance and merits rejection.

8. We have heard the elaborate arguments advanced on behalf of both sides and have carefully considered the submissions made therein, pleadings, records and the rules as well as the case laws relied upon by the parties.

9. Before proceeding to crux of the matter,it would be appropriate to examine the relevant rules involved in the present case.To appreciate the same,an extact ofthe relevant portion of the sub rule 22(2)(c) Proviso (ii) and sub rule 25 (1) (iv)&(v) Proviso (a)&(b) andsub rule 25(3) of the rules are relevant which reads as under :-

> "22.Consideration of appeal -
> 22(2)(c). xxxxx
> 22(2)(c) Proviso (ii).
>
> if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an inquiry under Rule 9 has not already beenheld in the case, the appellate authority shall, subject to the provisions of Rule 14, itself holdsuch inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry make such orders as it may deem fit;

25. Revision

25(1) xxxxx

25(1)(iv). the appellate authority not below the rank of a Divisional Railway Manager in cases where no appeal has been preferred;

25(1)(v). any other authority not below the rank of a Deputy Head of a Department, in the case of a Railway servant serving under its control (may at any time, either on his or its own motion or otherwise, call for the records of any inquiry and revise any order made under these rules or, under the rules repealed by Rule 29, after consultation with the Commission where such consultation is necessary, and may) --

(a). confirm, modify or set aside the order, or

(b). confirm, reduce, enhance,or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c). xxxx
(d). xxxx

Provided that --

(a) no order imposing or enhancing any penalty shall be made by any revising authority unless the Railway servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed;

(b) subject to the provisions of Rule 14, where it is proposed to impose any of the penalties specified in Clauses (v) to (ix) of Rule 6 or the penalty specified in Clause (iv) of Rule 6 which falls within the scope of the provisions contained in sub-rule (2) of Rule 11 or to enhance the penalty imposed by the order under revision to any of the penalties specified in this sub-clause, no such penalty shall be imposed except after following the procedure for inquiry in the manner laid down in Rule 9, unless such inquiry has already been held, and also except after consultation with the Commission,where such consultation is necessary.

25(3) An application for revision shall be dealt with inthe same manner as if it were an appeal under these rules."

10. A conjoint reading of the aforesaid rule clearly brings out that in case minor penalty is proposed to be ehhanced to that of major penalty by the revising authority, procedure of inquiry laid down in Rule 9 of the Rules is required to be conducted in case no such detailed inquiry earlier has been conducted in the matter. Further, it is also clear that the revision petition is also required to be dealt with in the same manner as if it were an appeal. As far the provision in relation to the enhancement of penalty in the similar circumstances, it has specifically been mentioned in Rule 22(2)(c)Proviso (ii) that the inquiry under Rule 9 of the Rules may be conducted by the appellate authority itself or it may be conducted through other agency but, final order is required to be passed by the appellate authority itself. Similar is the position in regard to the revising authority. It is the revising authority who has to pass the final order for enhancement of the penalty and there is no provision for cancelling the chargesheet and directing the disciplinary authority to issue another chargesheet for major penalty in case the minor penalty is to be enhanced to that of major penalty.

11. In support of our conclusion, we appreciate the logical and analytical averments made in the rejoinder to the reply wherein, it has been specifically said that when disciplinary authority has been directed to issue a major penalty chargesheet, it cannot be expected to apply its independent mind and that is what it has happened in the present case. The disciplinary authority has issued chargesheet for major penalty and has also imposed major penalty in the matter whereas with due application of mind to the same matter at earlier occasion when the disciplinary authority

was acting independently it thought fit only to impose a minor penalty. How it came to change its mind from a minor penalty to major penalty has genesis with the direction of the revising authority and that would clearly show that there was no application of mind while inflicting major penalty on the second chargesheet by the disciplinary authority.

12. Now, we would advert to the judgement in R.K. Gupta's case (supra) on which heavy reliance has been made by the learned counsel for respondents. We have perused the judgement. In that case there were two minor penalty chargesheets wherein penalty in were issued one was of censure and in the other a warning was given. The revising authority set aside the order passed by the disciplinary authority in the proceedings conducted for minor penalty and directed the authority to initiate a fresh inquiry for minor penalty under Rule 16 and for major penalty under Rule 14 in the light of the facts and circumstances of the case. There was no direction that the disciplinary authority should hold inquiry in a particular manner. The disciplinary authority was directed to pass a necessary order for the penalty as may be justified under provisions of CCS (CCA) Rules and we find that in the peculiar facts and circumstances of the case, the order was issued did not contain any direction as to whether chargesheet should be issued under Rule 14 i.e. for major penalty or for minor penalty and complete matter was left at the discretion of the disciplinary authority. The facts of the present case and the case relied upon by the learned counsel for respondents are distinguishable inasmuch as in the case of applicant a very specific direction for major penalty was given that the chargesheet has to be issued under Rule 9 of the Rules (corresponding to Rule 14 of the CCS(CCA) Rules 1965). No option is given to the disciplinary authority in

the present case but such is not the position in respect of the case cited by the learned counsel for the respondents as indicated hereinabove. Thus,the said decision does not support the respondents' case.

13. On the other hand it comes to our mind that in a similar situation a coordinate Bench of this Tribunal at Jodhpur in the case of Udai Saiju Vs. UOI & Ors. reported in SLJ 1992 (1) CAT 203, has held that the appellate authority can remit the case only for holding inquiry but final orders on inquiry must be passed by it only. It has already been indicated in the rules that the application for revision is required to be dealt with within the same manner as it was an appeal. There is a similar provision for enhancement of penalty in case where no inquiry was conducted while imposing the minor penalty and major penalty is sought to be inflicted by the revising authority.

14. Looking to the aforesaid analysis and the position of the rules, we are of the firm opinion that the very cancellation of the chargesheet and directions to issue a fresh chargesheet under Rule 9 of the Rules is not in consonance of the Rules. Once a specific provision has been made regarding the procedure required to be followed while enhancing the penalty that procedure ought to have been followed. We are not impressed but find ourselves unable to subscribe with the view of the learned counsel for ~~applicant~~ respondents that the revising authority had ample power to cancel the chargesheet and direct the disciplinary authority to issue a fresh chargesheet for major penalty.

15. Now, examining the matter from another angle and if the submissions and contentions of learned counsel for

the respondents that there was nothing wrong with the action of the revising authority and the subsequent action of imposing penalty is taken to its logical conclusion as true, the result would be absurd.. One can imagine that after due application of the mind, the disciplinary authority has passed an order and thought it fit to impose minor penalty in respect of certain misconduct.The revising authority directed such authority to issue a chargesheet for major penalty and he is required to pass another order of penalty in the same matter. Thereafter, an appeal has been filed to the appellate authority or a revision reaches to the revising authority, what would be the implication. Probably, the implication would be that while imposing the major penalty the disciplinary authority would not apply its mind rather cannot apply its mind since working under dictation, the matter goes to the appellate authority or to the revising authority. If, it goes to the appellate authority, the appellate authority will not apply its mind since he would say that the revising authority wanted imposing of higher penalty and the fate will be the same if the matter goes to the revising authority who will say that he himself wanted the major penalty to be imposed. Thus, the employee would be punished by various authorities without application of mind at the required time of passing of the orders of penalty. In our opinion, the action of the authorities cannot be construed to be fair since the essence of discharging the quasi judicial function lies with the application of mind and quasi judicial authority cannot be expec-ted to discharge his functioning when it has to work under the dictation of superior authorities against whose orders he cannot ~~be dare~~ to divert. Thus, the very action of the revising authority for cancelling the minor penalty chargesheet and directing the disciplinary authority

to issue chargesheet for major penalty itself is void ab initio and without jurisdiction and even the same is not required to be so declared by any Court of law in view of a celebrated decision of Hon'ble the Supreme Court in State ofMadhya Pradesh Vs. Syed Qamarali,reported in SLR 1967 Page 228.

16. Once we have come to the conclusion that when the order of cancelling the chargesheet and directing the disciplinary authority to issue chargesheet for major penalty itself is void, the subsequent action cannot be sustained and the Original Application deserves to be allowed on this count itself without going and examining the other grounds raised in this O.A.

17. In normal course, we would have remanded the case back to the revising authority for passing a fresh order but, the matter is quite old inasmuch as the incident relates to 1994 and applicant has admittedly not been held directly responsible, we think it proper to close the matter and set the controversy at rest and do not wish to remand the same to the revising authority at this stage.

18. In the premises, the Original Application has much force and the same deserves to be allowed and we do so. The impugned order dated 9th January, 1996 (Annex. A/9) is hereby quashed and applicant shall be entitled to all the consequential benefits. However, in the facts and circumstances of this case, there shall be no order as to costs.

(Anand Kumar Bhatt)
Administrative Member

(J.K.Kaushik)
Judicial Member

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