

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 456 of 1991

Indore this the 18th day of October 2005

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

B.P. Singh, S/o. Shri K.L. Singh,
Aged about 52 years, Ex. PWI,
Bhilai Marshalling Yard, South
Eastern Railway, Charoda, P.O. BMY,
District Durg (MP). Applicant

(By Advocate – Shri B.da.Silva)

Versus

1. Union of India, through its Secretary,
Ministry of Railway, Rail Bhawan,
New Delhi.
2. General Manager, South Eastern
Railway, Garden Reach,
Calcutta – 700 043.
3. The Chief Engineer, South Eastern
Railway, Garden Reach,
Calcutta – 700 043.
4. The Sr. DEN, South Eastern Railway,
Bilaspur, Distt : Bilaspur (MP). Respondents

(By Advocate – Shri M.N. Banerjee)

ORDER

By Madan Mohan, Judicial Member –

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

“to quash the said charge sheet, proceedings of the DE alongwith the order of punishment dt. 1.11.89, Annexure E-1.”



2. The brief facts of the case are that the applicant was appointed on 1.1.1960 as APWI and was subsequently promoted to the post of Permanent Way Inspector (PWI in short) w.e.f. 7.7.1978. In the said capacity, the applicant was posted to work at the Bhilai Marshalling Section and while working there a charge sheet was issued to him for the following charges –

“Article-I = That the said Shri B.P. Singh while functioning as PWI/BMY during the period 1986-87 had accepted unpassed rejected Sal Wooden Sleepers from one M/s. Singhal Brothers without looking to the instructions from Dy. CE/SLC/GRC or any other proper authority.

By the above act Shri Singh has failed to maintain absolute integrity and acted in a manner which is unbecoming of Railway servant and thereby violated Rule 3(1)(i) & (iii) of Railway Service (Conduct) Rules, 1966.

Article-II = That during the aforesaid period and while functioning in the aforesaid office, the said Shri B.P. Singh has misappropriated 251 Nos. of New Wooden Crossings Sleepers and thereby put the Railway in heavy financial loss.

By the above act Shri Singh has violated Rule 3(1)(i) & (ii) & (iii) of the Railway Service (Conduct) Rules, 1966 which stipulates that every Railway servant shall at all times maintain absolute integrity, devotion to duty and do nothing which is unbecoming of a Railway servant.”

2.1 The contention of the applicant is that, the workload was very heavy in the Bhilai Marshalling Yard Section and to be prepared for any type of eventualities/accidents the Bhilai Marshalling Yard was to be equipped with large number of Wooden Sleepers which were called for from the M.P. Export Corporation Limited Bhopal. That during the process of receiving goods, a check was made by one Shri D.K. Biswas, CVI, Calcutta whereby allegedly 251 pieces of Wagon Sleepers were found short. Therefore, charge sheet for major penalty was issued upon the applicant on 3.3.1988 by the Senior DEN (C), Bilaspur alleging therein that the applicant had accepted unpassed/rejected Wooden Sleepers without verifying from the Booking instructions. The applicant




vide his reply dated 30.5.1988 denied the charges leveled against him. Enquiry was initiated against the applicant. The enquiry officer submitted his report. The disciplinary authority accepting the findings of the Enquiry officer imposed the penalty of removal from service, copy of which is filed as Annexure-E-1 dated 25.10.1989/1.11.1989. Against the said order the applicant preferred an appeal on 20/27.11.1989 (Annexure -F), which is still said to be pending. Hence, this OA.

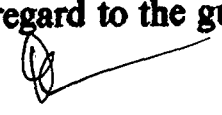
3. Heard the learned counsel for both the parties and carefully perused the pleadings and records.

4. This Original Application was decided by the Tribunal earlier vide order dated 22nd September, 1999 which was challenged by the respondents Union of India and others in the Hon'ble High Court of Chhattisgarh, Bilaspur by filing WP No. 1094/2000. The Hon'ble High Court vide order dated 16.6.2005 has remitted this matter back to this Tribunal for fresh hearing and decision in accordance with law on the grounds not considered by the Tribunal in earlier order dated 22.9.1999 and set aside the order of the Tribunal.

5. It is argued on behalf of the applicant that he mentioned certain irregularities in paragraph 5 of his Original Application which were not considered by the Tribunal. The respondents did not follow the due procedure in conducting the departmental enquiry proceedings and acted against the rules and law. The departmental enquiry proceedings were conducted against the principles of natural justice i.e. without affording any opportunity to the applicant to defend his case. No charge of misconduct was made out against the applicant. In the absence of compliance of the mandatory provisions and rules, the whole departmental enquiry proceedings is vitiated and the applicant is not liable for any punishment.



6. In reply the learned counsel for the respondents argued that the Hon'ble High Court has put a query as to why the applicant has not challenged the order of the Tribunal. The learned counsel for the applicant in the present OA/respondent No. 2 in the Writ Petition submitted that since the Tribunal by the impugned order reduced the punishment from one of removal to one of compulsory retirement and the applicant on such compulsory retirement would be entitled to his pension, hence, the applicant did not challenge the order of the Tribunal. The learned counsel for the respondents further argued that if there was any irregularity or illegality in conducting the departmental enquiry proceedings or in passing the impugned orders the applicant should have legally challenged such type of irregular and illegal order in due time. But he did not challenge. He further argued that the respondents have categorically replied about the alleged irregularities mentioned in paragraph 5 of the OA in their return and have said that the respondents have complied with the rules and law while conducting the departmental enquiry proceedings against the applicant and have passed the impugned orders in accordance with rules and law. He further argued that the applicant did not file any appeal against the order passed by the disciplinary authority and this fact is not controverted by the applicant by filing any rejoinder. Both the charges leveled against the applicant are duly proved by the enquiry officer and he has also given the opportunity of hearing to the applicant. The Tribunal cannot re-appraise the evidence and further argued that the Hon'ble High Court has mentioned in the judgment that the applicant has been found guilty of the two charges in the departmental enquiry and the findings in the enquiry report have been accepted by the disciplinary authority. The two charges quoted above are certainly grave charges and the penalty of removal from service cannot be held to be shocking to judicial conscience or irrational or arbitrary and cannot be interfered with as per the aforesaid decision of the Hon'ble Supreme Court. He further argued that the Hon'ble High Court also observed that in unless the findings of the disciplinary authority with regard to the guilt of applicant



on the two charges are set aside, the Tribunal could not possibly reduce the quantum of punishment from one of removal to that of compulsory retirement. Hence, this OA is liable to be dismissed.

7. After hearing the learned counsel for the parties and on careful perusal of the pleadings and records, we find that the applicant has mentioned certain facts in paragraph 5 of the OA about the irregularities committed by the respondents in conducting the departmental enquiry proceedings and in taking action against the applicant. The respondents have specifically denied all the contentions raised by the applicant in paragraph 5 of the OA in their return and we further find that the applicant has not controverted the contentions raised by the respondents in their return by filing any rejoinder. We further find that the applicant has also not filed any appeal against the order passed by the disciplinary authority by which the order of removal from service was imposed on him. According to the provisions of the CCS (CCA) Rules, the applicant should have filed the appeal against the order passed by the disciplinary authority dated 1.11.1989. Section 20(1) of the Administrative Tribunals Act, 1985 provide that "[A] Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances". In the present case the applicant has not exhausted the departmental remedies available to him before he has approached the Tribunal.

8. Considering all the facts and circumstances of the case, we direct the applicant to file an appeal against the order of the disciplinary authority to the appellate authority within a period of one month from the date of receipt of a copy of this order. If he complies with this, then the appellate authority is directed to consider and decide the said appeal of the applicant by passing a speaking, detailed and reasoned order within a period of two months from the date of receipt of the appeal from the



applicant. It is however, made clear that the appellate authority shall not take the plea of limitation and will decide the appeal of the applicant on merits.

9. In view of the aforesaid the Original Application stands disposed of. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

“SA”

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....

पलिलिपि अयो भितः—

- (1) सचिव, सत्य व्यापारिक बाल एजुकेशन, जबलपुर
- (2) आवेदन श्री/श्रीमती/श्री/.....के सहायसल
- (3) प्रत्यक्ष श्री/श्रीमती/श्री/.....के सहायसल
- (4) बंधुपाल, एडप, जबलपुर, दि

सूचना एवं आवेदन सं. ११११/११११

उप सचिव

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M.N. Benarjee
AB-238

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