

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 17 day of September, 2008

ORIGINAL APPLICATION NO.442/2005

CORAM :

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.B.L.KHATRI, ADMINISTRATIVE MEMBER

Abdul Shakoar,
Passenger Driver,
West Central Railway,
Gangapur City.

... Applicant

(By Advocate : Shri C.B.Sharma)

Versus

1. Union of India through
General Manager,
West Central Railway,
Jabalpur.
2. Divisional Railway Manager,
West Central Railway,
Kota Division,
Kota.
3. Sr.Dvl.Electrical Engineer (TRO),
West Central Railway,
Kota Division,
Kota.

... Respondents

(By Advocate : Shri S.P.Sharma)

ORDER

PER HON'BLE MR.B.L.KHATRI

This application, under Section-19 of the Administrative Tribunals Act, 1985, has been filed by the applicant against the order dated 11.7.2005 (Ann.A/1), by which appeal of the applicant has been rejected by respondent No.2, order dated 18.7.2003

(Ann.A/2), by which respondent No.3 has imposed punishment of reversion to the post of Goods Driver from the post of Passenger Driver in the scale of Rs.5000-8000 from the scale of Rs.5500-9000 by fixing pay of the applicant at the stage of Rs.5750/- for two years with cumulative effect with the loss of seniority, and the Memorandum dated 7.1.2003 (Ann.A/3), by which the applicant was served with a major penalty charge-sheet. The applicant has prayed for the following relief :

- “(i) That entire record relating to the case be called for and after perusing the same appellate order dated 11.7.2005 (Ann.A/1) with the punishment order dated 18.7.2003 (Ann.A/2) be quashed and set aside with all consequential benefits.
- (ii) That the charge memo dated 7.1.2003 (Ann.A/3) be quashed, as the same is not justified as per facts and circumstances with the enquiry proceedings with all consequential benefits.”

2. Brief facts of the case are that the applicant while working as Passenger Driver in the scale of Rs.5500-9000 served with a major penalty charge-sheet vide memo dated 7.1.2003 (Ann.A/3), by respondent No.3, alleging therein that on 5.12.2002 while working at Awadh Express, the applicant crossed the Home Signal outside danger mark. Respondent No.3, vide order dated 25.4.2003, appointed one Shri Harish Ranjan as Inquiry Officer. The Inquiry Officer obtained statement of one Shri Rajeev Saxena, Junior Engineer, as prosecution witness. On the basis of statement of said Shri Rajeev Saxena, Incharge of Data Logger, and report of Shri Piyush Mathur, who had sent communication to the Senior Divisional Electrical Engineer, the inquiry officer held that the charge was proved and on the basis of report of the inquiry officer, the disciplinary authority imposed upon the applicant penalty of reversion to the post of Goods Driver from the post of Passenger Driver in the scale of Rs.5000-8000 from the scale of Rs.5500-9000 by fixing pay at the stage of Rs.5750/- for two years with cumulative effect with the loss of seniority, vide Ann.A/2. This order has been upheld by the appellate authority. The applicant had

submitted appeal, against the order of penalty, on the following grounds ;

- a) That the charge memo has been issued on the basis of data logger and the same is not supported by any witness and documents and no complaint has been made by any other controlling officer. Besides, the applicant and his co-workers, who were eye witness of the Train Position, categorically apprised that the train never crossed the home signal and also not entered in danger line and after signal the train proceeded for further destination. Thus, charges leveled against the applicant are not at all justified and liable to be quashed and set aside.
- b) That the inquiry officer acted against the procedure and as per his own imaginary presumptions submitted his report and also proved the charges without taking note of the statements of Shri Rajeev Dube and P.C.Jain. The inquiry officer ignored the statements of these officials, including the applicant, and put his version without any base, inspite of the fact that the officials relating to duties nowhere stated that the train in question crossed the home signal. Thus, the enquiry proceedings and the inquiry report are liable to be quashed and set aside, as the same are based on no evidence.
- c) That the disciplinary authority without due consideration of representation of the applicant against the inquiry report and without considering the statements of Shri P.C.Jain, Rajeev Dube and the applicant, imposed the punishment and also discussed the necessity of Shri Piyush Mathur as a prosecution witness inspite of the fact that he himself issued the charge memo and annexed the document signed by Shri Piyush Mathur and

also put the name in the list of witnesses and while passing the punishment order justified that there is no necessity of Shri Piyush Mathur in the inquiry proceedings and another official Shri Rajeev Saxena can act as a prosecution witness inspite of the fact that name of Shri Saxena does not find place in the list of prosecution witnesses nor any document attached with the charge memo supporting by Shri Saxena. Besides, all the officials working in the train including the Assistant Station Master categorically stated that no such incident took place. Thus, punishment awarded by the disciplinary authority is against the facts and circumstances and the same is liable to be quashed and set aside.

- d) That the disciplinary authority while passing the punishment order did not consider the facts and circumstances of the case and on the ground of discrimination as well as quantum/nature of punishment, awarded the punishment of reversion upon the applicant from the post of Passenger Driver to the post of Goods Driver from the scale of Rs.5500-9000 to the scale of Rs.5000-8000 fixing his pay at the stage of Rs.5750/- for two years with cumulative effect with the loss of seniority. Besides, the disciplinary authority also debarred the applicant to work as Passenger Driver. Thus, the punishment awarded is not sustainable in the eye of law and the present case is of no evidence and the punishment order is liable to be quashed and set aside.
- e) That the appellate authority did not consider the appeal of the applicant which preferred on various grounds and also discussed beyond the subject matter while passing the appellate order. Thus, the appellate order is not sustainable in the eye of law and is liable to be quashed and set aside.

3. The respondents have contested this application and filed their reply. In reply, the respondents have rebutted the contentions raised by the applicant, as above, in the following terms :

- a) That the contents of para-(a) above are not disputed to the extent of issuance of charge memo on the basis of date logger, however, it is submitted that the inquiry officer after recording the statements had found the charges proved against the applicant which were severe in nature and considering the same the disciplinary authority had imposed punishment. It is denied that the charges leveled against the applicant are not justified.
- b) That the contents of para-(b) above are denied to the effect that the inquiry officer acted against the procedure and had proceeded with imaginary presumption. It is also denied that the inquiry officer had ignored the statements including that of the applicant and had given his presumptions without any basis. It is further denied that the inquiry proceedings and the inquiry report are liable to be quashed.
- c) That so far as the contents made in para-(c) above, it is denied that the disciplinary authority without considering the representation of the applicant had imposed punishment. It is submitted that the inquiry officer has rightly, after perusing the statements, had passed the order of imposition of penalty upon the applicant. It is also denied that the punishment awarded by the disciplinary authority is against the facts and circumstances.
- d) That so far as the contents made in para-(d) above, it is denied that the disciplinary

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authority had not considered the facts and circumstances while passing the punishment order. It is also denied that there has been discrimination in awarding punishment. It is submitted that on the basis of severe charges against the applicant punishment has been imposed. It is denied that the punishment is not sustainable in the eye of law.

e) That so far as the contents made in para-(e) above, it is denied that the appellate authority had not considered the appeal of the applicant. It is also denied that the order of appellate authority is not sustainable in the eye of law. It is submitted that the appellate authority had rightly passed the order.

4. Learned counsel for the applicant had pointed out various infirmities in the inquiry report and had relied upon the case of S.K.Mishra v. Union of India and Ors. [2004 (2) ATJ 488], and contended that the inquiry officer did not examine the material witnesses. Any document which is produced in an inquiry cannot be validly proved if the maker of that document is not summoned in the inquiry for the purpose of affording a reasonable opportunity to the charged officer to cross examine him.

5. Learned counsel for the applicant also referred to **RBE No.217/2002**, on the basis of which he submitted that the directions of seniority and pay are two separate ones and have to be passed independent of each other. For example, the authority imposing the penalty may order that the penalty will have the effect of postponing the future increments of pay of the railway servant in the higher grade or post on his restoration to that higher grade or post but will not affect his seniority in the higher grade or post and vice versa.

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6. In the end, learned counsel for the applicant contended that the penalty imposed was harsh and thus he relied upon the case of Union of India & Anr. v. S.C. Parashar [2006 (2) SLJ 490], and submitted that the applicant was entitled to be considered for the benefit of seniority after a period of two years.

7. On the other hand, learned counsel for the respondents reiterated the submissions made through reply. He relied upon the statement of the applicant, as per Ann.A/6, wherein the applicant had admitted, in answer to question No.1, that on 5.12.2002 he was on duty at Train No.5064 - Awadh Express, which was standing at home signal at 18.55 hrs. and after stoppage of 17 minutes, at 19.12 hrs. this train was received at loop line of Arnetha Station. This train, after having parked outside home signal, could not be taken back. However, in question No.2 it was submitted that this train started after the signal. Thus, learned counsel for the respondents submitted that this admission on the part of the applicant is the base evidence and no further proof is required. Therefore, the penalty has rightly been imposed by the disciplinary authority and confirmed by the appellate authority.

8. We have heard the rival submissions and perused the record and relevant law on the subject. We are of the opinion that the infirmity pointed out by learned counsel for the applicant in the inquiry report is of no relevance as the applicant has admitted his fault in the statement recorded by the inquiry officer, as per Ann.A/6, on 7.1.2003. In this regard, it is considered pertinent to rely on the case of Swadesh Pal Baliyan v. Air Force Commanding-in-Chief [2005 (1) SLJ 285], in which it was held that when one has admitted one's fault, no other proof is required. Unconditional admission is the base evidence against the applicant. It was also held in the case of Secretary to the Panchayat Raj & Ors. v. Mohd. Ikramuddin [1995 (8) SLR 816], that charge of misappropriation and misuse of government

funds proved upon respondent's own admission. Hence we hold that fault/misconduct on the part of the applicant is proved. However, we find that though the train had crossed the home signal outside the danger mark, which could have caused an accident, but no accident had taken place. Looking to the facts and circumstances of the present case, it appears that the penalty imposed by the disciplinary authority and confirmed by the appellate authority is not commensurate with the offence committed by the applicant.

9. Learned counsel for the applicant also placed reliance on the case of Union of India & Ors. v. S.C.Parashar (supra), in which the charged person was found guilty for damage of the car and penalty of reduction for three years with cumulative effect with loss of seniority and recovery from pay was imposed upon him. The disciplinary authority, being the President, imposed the following penalty upon Shri S.C.Parashar;

"In the light of the above, having regarding to all other aspects of the case and after consultation with UPSC the President considers that ends of justice would be met if in this case if the penalty of "reduction to minimum of the time-scale of pay for a period of 3 years with cumulative effect; including loss of seniority and penalty of 25% of the loss incurred by the Govt. to the tune of Rs.74,341.89 i.e. 18,585.47 on account of damage to the Gypsy in 18 equal monthly installments" is imposed on Shri S.C.Parashar, Dy. 42 Bn. CRPF. The President hereby orders accordingly."

After having considered the provisions of penalty, the Hon'ble Apex Court held that the penalty imposed upon the respondent, in their considered view, therefore, should be kept confined to the reduction to the minimum of the time-scale of pay for a period of three years with cumulative effect. The effect of such a penalty has been considered by the Apex Court in *Shiv Kumar Sharma v. Haryana State Electricity Board, Chandigarh, & Ors.* [AIR 1988 SC 1673] in the following terms :

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"We are unable to accept the above contention. The penalty was imposed on April 15, 1968, and, as a result of which, he was deprived of the monetary benefit of one increment for one year only. The penalty by way of stoppage of one increment for one year was without any future effect. In other words, the appellant's increment for one year was stopped and such stoppage of increment will have no effect whatsoever on his seniority. Accordingly, the Board acted illegally and most arbitrarily in placing the juniors of the appellant above him in the seniority list and/or confirming the appellant in the post with effect from Dec.1, 1969, that is, long after the date of confirmation of the said respondents No.2 to 19. The question of seniority has nothing to do with the penalty that was imposed upon the appellant. It is apparent that for the same act of misconduct, the appellant has been punished twice, that is, first, by the stoppage of one increment for one year and, second, by placing him below his juniors in the seniority list."

Ratio of the said decision was held to be applicable to the facts of the case of Union of India & Anr. v. S.C. Parashar (supra) and it was held that the charged officer was entitled to be considered for promotion after a period of three years.

10. In the case before us, the penalty has been imposed under the head 'Major Penalties' under Rule-6(vi) of the Railway Servants (Discipline & Appeal) Rules, 1968, which reads as under :

"Rule-6(vi) -Reduction to a lower time scale of pay, grade, post or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the Railway servant was reduced and his seniority and pay on such restoration to that grade, post or service;"

Similar provision for major penalty also exists in Rule-11(b) of the CCS (CCA) Rules, 1966. Therefore, the facts and law being similar, the ratio laid down in the case of Union of India & Anr. v. S.C. Parashar (supra) is applicable to the case of the present applicant. In this case, we find that the disciplinary authority, after completion of punishment for two years, restored the position of the applicant on the original post of Passenger Loco Pilot in the scale of Rs.5500-9000 with loss of seniority.

11. However, having regard to the facts of the case, order of the disciplinary authority and the law laid

down by the Apex Court in the case of Union of India & Anr. v. S.C.Parashar (supra), we are of the opinion that the penalty of reversion to the lower post with loss of seniority was not commensurate with the offence, fault or misconduct committed by the applicant. The disciplinary authority should have taken into consideration the doctrine of proportionality on punishment. The disciplinary authority should reconsider the point of effect of his order on the seniority of the applicant as this order tantamounts to punishing the delinquent official/applicant twice for the same offence. We, therefore, set aside the order of disciplinary authority dated 18.7.2003 (Ann.A/2) and the order of the appellate authority dated 11.7.2005 (Ann.A/1) with a direction that the disciplinary authority should review the quantum of penalty in view of judgement of the Apex Court in the case of Union of India & Anr. v. S.C.Parashar (supra) and in the light of RBE No.217/2000.

12. The OA stands disposed of with the above direction. The parties are left to bear their own costs.


(B.L.KHATRI)
MEMBER (A)


(M.L.CHAUHAN)
MEMBER (J)

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