

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 5th January, 2009

ORIGINAL APPLICATION NO. 25/2006

CORAM:

HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

Jagpal Singh son of Shri Ghanshyam Singh by caste Jat, aged 59 years, working as Mechanical Signal Maintainer (MSM) Grade I, West Central Railway, Baran, Kota Division, Kota. Resident of Railway Quarter, Baran

.....APPLICANT

(By Advocate: Mr.S.K. Jain)

VERSUS

1. Union of India through the General Manager, West Central Railway, Jabalpur.
2. Senior DSTE, West Central Railway, Kota Division, Kota.
3. Divisional Signal & Telecom Engineer (S), West Central Railway, Kota Division, Kota.
4. Additional Signal and Telecom Engineer (T), West Central Railway, Kota Division, Kota.

.....RESPONDENTS

(By Advocate: Mr. Anupam Agarwal)

ORDER

PER HON'BLE MR. B.L. KHATRI

The applicant has filed this OA under Section 19 of the Administrative Tribunal's Act 1985 thereby praying for the following relief:-

- "(i) That by an appropriate order or direction, the impugned charge sheet dated 28.07.2004 (Annexure A/1), impugned order of punishment dated 29.09.2004 (Annexure A/2), order of appellate

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authority dated 05.05.2005 and the order of revisional authority dated 17.08.2005 (Annexure A/3 & A/4) be quashed and set aside.

- (ii) That the respondents be directed to refund the amount of increments already deducted from the salaries of the applicant along with interest @ 18% per annum.
- (iii) Any other relief which this Hon'ble Tribunal deems fit may also be granted to the humble applicant."

2. Brief facts of the case are that the applicant while working as Mechanical Signal Maintainer (MSM) Grade-I in the pay scale of Rs.4500-7000, at Baran Station, was issued the charge-sheet dated 28.7.2004 (Ann.A/1) with the allegation that he misbehaved with the Supervisor CSI (S), Kota, on 20.5.2004, and threatened for life and property. The applicant filed reply to the charge-sheet on 24.8.2004 (Ann.A/5) denying the charges and stating that the said Supervisor asked him to pay Rs.250/- per month else he will make the service impossible for the applicant. Vide order dated 29.9.2004 (Ann.A/2) respondent No.4 i.e. Addl.DSTE imposed the penalty of forfeiture of two grade increments without future effect on the ground that the employee was not working regularly and there is no evidence that money was demanded hence the reply is not satisfactory. The applicant then filed an appeal on 7.10.2004 (Ann.A/6), which was rejected by the appellate authority vide order dated 5.5.2005 (Ann.A/3). The applicant then filed a revision petition on 15.5.2005 (Ann.A/7) before the revisionary authority i.e. respondent No.2, which was also rejected vide order dated 17.8.2005 (Ann.A/4) on the ground that the complaint of

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misbehavior with the employees is received again and again and there is no improvement in the behavior.

3. The applicant was awarded penalty of withholding of increment of pay for two years without future effect. As the appeal and revision petition of the applicant were rejected, he has challenged the orders of the authorities through this OA.

4. Learned counsel for the applicant had relied upon the averments made in the petition and specifically made reference to the following points:-

(i) That the charge sheet dated 28.07.2004 (Annexure A/1) is wholly vague and unspecific. Therefore, the same is liable to be quashed and set aside.

(ii) That the allegation of misbehavior alleged to have been made by the CSI (S), Kota, is baseless. A copy of the complaint was neither relied upon nor supplied. The charge-sheet was issued without any evidence. Therefore, the charge sheet is liable to be quashed and set aside on this ground also.

(iii) That the charge sheet is wholly frivolous and malafide inasmuch as the Supervisor CSI (S), is situated at Kota and on 20.5.2004, the applicant was working in his office at Baran, therefore, he could not have misbehaved with the supervisor at Kota. This clearly shows that the charge sheet is wholly frivolous and is liable to be quashed and set aside.



(iv) That since the above charge sheet (Annexure A/1) does not show any document relied upon and any witness relied upon and since the applicant denied the commission of any such misconduct totally vide his reply dated 24.08.2004, no punishment of any sort can be imposed upon the applicant by the disciplinary authority. The only alternative available was to hold a regular inquiry and come to the conclusion about the guilt of the applicant. Since no regular inquiry was held and since there was no evidence on record, the above punishment order is wholly illegal and liable to be quashed and set aside.

(v) That the above punishment order is wholly illegal and violative of rules of natural justice inasmuch as the applicant has not been found to be guilty of any misconduct in the above order.

(vi) That respondent no. 4 committed grave mistake in imposing the punishment on the ground that the working of the employee is not regular and that the reply is not satisfactory. It was submitted that the charge against the applicant was not regarding failure of regular working of the applicant, but on the ground that he had misbehaved with the Supervisor and had threatened him. Since neither the allegation of misbehavior is found to have been proved against the applicant nor of the threat, the punishment is liable to be quashed and set aside.

(vii) That the above charge sheet is also malafide inasmuch as vide complaint dated 11.5.2005 the allegation was made that the CSI (S), Kota, (who is now designated as SSE) had demanded Rs.250/- per month from the applicant and Rs.100/- per month from Shri Om Prakash, Khallasi. The above complaint was sent to the department on 11.05.2005 and on that basis the impugned charge sheet (Annexure A/1) was given on 28.07.2004 to



pressurize and withdrawal of the complaint. The allegation of misbehavior with that officer was alleged on 20.05.2004 which was after 9 days of lodging of the complaint by Shri Om Prakash. The above charge sheet was given to the applicant as Shri A.K. Modi, CSI, thought that the applicant was a main tool for filing of the complaint. The above charge sheet is, therefore, liable to be quashed and set aside alongwith the punishment order. It may be stated that in the reply dated 24.08.2004, the applicant had very clearly alleged that the CSI had demanded Rs.250/- per month from the TA of the applicant.

(viii) That before leveling the allegation of non-regular working of the applicant and leveling wrong allegation of demand of money, which was the basis of imposing the above punishment (Annexure A/2) was never brought to the notice of the applicant and, therefore, the user of the above facts violated the rules of natural justice vitiating the order of penalty.

(ix) That the order of rejection of appeal of the applicant is also illegal and contrary to the provisions of Rules. The appellate authority did not consider whether the procedure prescribed in the rules has been complied with or not and whether such non compliance has violated the Constitution of India or in the failure of justice. The appellate authority has not even considered as to whether the findings are warranted by the evidence on the record in as much as there was no evidence on record against the applicant. The above order being based upon no evidence, the punishment order alongwith appellate order and revisional order are liable to be quashed and set aside.

(x) That the ground on which the appeal has been rejected is regarding no change in the behavior of the applicant. If the charge sheet (Annexure A/1) is looked



into, it shall reveal that there is no allegation about the behavior of the applicant. Therefore, on this ground the appeal could not be rejected. The order of the appellate authority is, therefore, liable to be quashed and set aside.

(xi) That the order of rejection of appeal is also liable to be quashed and set aside in as much as it violates Rule 22(2)(iv)(b) of the Discipline and Appeal Rules, which requires that if the inquiry has not already been held, the same shall be held or directed to be held in accordance with the provisions of Rule 9 by the appellate authority. Since no such direction was given, the order of rejection of appeal is liable to be quashed and set aside.

(xii) That the appellate authority does not mention that the charge has been brought home by the evidence on record. Therefore, the above order of rejecting the appeal is liable to be quashed and set aside being a non speaking order.

(xiii) That similarly, the order of revisionary authority rejecting the revision petition is wholly illegal and liable to be quashed and set aside. The above order dated 17.8.2005 (Annexure A/4) relies upon the alleged complaint regarding mis-behaviour of the applicant with the employees and there is no improvement in it. The above ground is not germane from the charge sheet and, therefore, it amounts to a new charge for which the appeal could not be rejected.

(xiv) That the appellate authority had directed the applicant to file the revision petition before the Senior Divisional Signal and Telecom Engineer in his order. Under Rule 25, the power of revision is available only with an authority not below the rank of DRM or the Deputy head of the department. Therefore, the rejection of the revision

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petition by the Senior DSTE is wholly illegal and without jurisdiction and is, therefore, liable to be quashed and set aside.

(xv) That revisionary authority's order dated 17.08.2005 (Annexure A/4) is also illegal inasmuch as it is a non speaking order and does not hold the applicant guilty of any misconduct.

5. Learned counsel for the applicant had specifically invited my attention to Annexure A/1 i.e. charge sheet in which the allegation of mis-behavior with the supervisor and threat to life & property was leveled. In this connection, learned counsel had also invited my attention to the reply of the applicant dated 24.08.2004 (Annexure A/5). In this reply, the applicant had denied all the charges leveled in the charge sheet. He stated that he had not threatened to life & property of the Supervisor. Had it been so, he could have lodged an FIR against him. He had also denied charge of mis-behavior with the supervisor and stated that reasons for mis-behaviour and nature of mis-behaviour are not supported by any evidence or documents.

6. Learned counsel for the applicant also invited my attention to Railway Board's letter No. E(D&A) 56 RG 6-14 dated 20.12.1956 wherein it has been held that where a charge sheet has been issued and explanation received thereto, if the competent authority is not satisfied with the explanation, the reasons for rejection should invariably be recorded. It is very necessary that officers dealing with delinquencies who find it



necessary to award any specific punishment, should record reasons for coming to this conclusion.

7. Learned counsel for the applicant referred to the charge memo dated 28.7.2004 (Ann.A/1) and to the order of penalty (Ann.A/2) and submitted that the disciplinary authority imposed minor penalty under Rule 6(IV) of the Railway Servants (Discipline & Appeal) Rules, 1968 without application of mind as the charge sheet was issued for different allegations and the penalty was leveled on altogether different allegations for which no opportunity was given to the applicant.

8. Learned counsel for the applicant has also stated that copy of the complaint was also not served upon the applicant and as such he was not in a position to submit complete defence except denying the charges leveled by the charge sheet.

9. The appellate authority has not passed a reasoned and speaking order. In this connection, learned counsel for the applicant referred to sub rule of Rule 22 of Railway Servants (Discipline & Appeal) Rules, 1968, which reads as under :-

"(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider-

- (a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

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- (b) whether the finds of the disciplinary authority are warranted by the evidence on the record; and
- (c)"

Sub clause (b) of clause IV of the proviso under sub rule 2 of Rule 22 of the DA Rules, also reads as under:-

"(b) Where an inquiry in the manner laid down in Rule 9, has not already been held in the case, Itself hold such 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, pass such orders as it may deem fit."

The appellate authority should have ordered for inquiry in accordance with the provisions contained in the DA Rules and thereafter he should have passed such order. Thus, the appellate authority has not followed the procedure under the relevant rules and has not passed a reasoned and speaking order.

10. The revisionary authority has also not passed the reasoned and speaking order as per Rule-25 of the Railway Servants (Disciplinary and Appeal) Rules, 1968.

11. Learned counsel for the applicant has relied on the cases of (i) **Shrishail Bhajantri vs. The Principal, Kendriya Vidyalaya No. 2, Hubli & Others** [ATJ 2003(2) 388], (ii) **Kunhikannan Nambiar vs. Government of Kerala** [ATJ 2002 (3) 354], & (iii) **O.K. Bhardwaj vs. Union of India & Others** [2002 SCC (L&S) 188].

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12. Notice of this application was given to the respondents. The respondents have filed their reply. In the reply, the respondents have controverted the averments made in the OA in the following manner:-

(i) That the contents of Para (i) are not admitted. Applicant has no right to challenge the charge sheet on the ground at such a belated stage. He cannot do so also in view of the fact that he had submitted himself before the same by taking part in its proceedings. The allegations being not so as to hit it at its core. Therefore also any challenge to the same is not maintainable and should be rejected.

(ii) That the contents of Para (ii) are not admitted in the manner stated. It is wrong to say that there was no basis for issuance of the charge sheet. Answering respondents want to place on record the complaint on the basis of which the charge sheet was issued. Thus any allegation to the contrary being not correct deserves to be rejected. A copy of the complaint is annexed herewith and marked as Annexure R/1.

(iii) That the contents of Para (iii) cannot be admitted in absence of any plea to this effect his reply to the charge sheet or at any stage subsequent to that. Applicant cannot take any new plea at this stage. It being nothing but an after thought should be rejected and in consequence thereof any challenge on the basis of the same should also be rejected.

(iv) That the contents of Para (iv) are also not admitted in the manner stated. Applicant was issued only a minor charge sheet and had been punished with minor

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punishment for which no detailed inquiry is required as per rules. Thus any submission asking for regular inquiry being against the rules deserves to be rejected.

(v) That the contents of Para (v) are totally false. Applicant failed to submit his reply within a stipulated period. Despite of it the reply was considered. Thus there is no violation of principles of natural justice as alleged by him.

(vi) That the contents of para (xii) are not admitted in the manner stated. Applicant has tried to twist the reasons to his advantage. In fact its plain and simple reading would refute such allegations. After receipt of reply from by the applicant a scrutiny of the facts was made by the authority which disclosed the fact of misconduct. Even his allegation with regard to demanding of money were also not found correct as despite of working of about 130 staff under him no complaint what so ever was received in this regard. Even no such complaint was ever made by the applicant also either prior to filing of the reply or subsequent to it. The complaint of Shri Om Prakash was also received by the office after imposing of penalty on the applicant. Further for the charge sheet of minor penalty no strict proof as that of major penalty is required. Therefore also the fact so narrated cannot be admitted so as to vitiate the punishment.

(vii) That the contents of Para (vii) cannot be admitted in absence of impleadment of a person in his personal capacity. The allegations being not found correct in the enquiry were rejected as stated herein above. The complaint of Shri Om Prakash was also received after 29.09.2004 alongwith the appeal i.e. after imposition of penalty on the applicant. Even the allegations of demanding money was nothing but an afterthought to

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misguide the administration by side tracking the issue. In case it would have been correct the applicant would have lodged a complaint to that effect if not taken any criminal action against him. Rather he failed to take any such action even subsequent to filing of reply. It clearly refutes his allegations. The original application on the basis of the same is not sustainable and should be rejected.

(viii) That the contents of Para (viii) being contrary to the fact cannot be admitted.

(ix) That the contents of Para (ix) are also not admitted. Applicant has failed to demonstrate the violation. In absence of which the allegations so leveled cannot be admitted. The finding being as per rules should be upheld.

(x) That the contents of Para (x) are also not correct. Applicant misbehaved on telephone and disobeyed the orders of his superiors for which he has been punished with minor punishment only. Bare perusal of his reply to charge sheet would clearly indicate his attitude towards his superiors. The appellate order being just legal and proper should be upheld.

(xi) That the contents of Para (xi) being legal are replied in terms that applicant failed to lodge any such protest during the inquiry or even subsequent to it. No prejudice has been caused to the applicant. Therefore any challenge on the basis of the same is not sustainable and should be rejected.

(xii) That the contents of Para (xii) are replied in terms that applicant has failed to show any perversity to sustain his challenge. The fact so narrated should be ignored.



(xiii) That the contents of Para (xiii) are also not admitted. Mere recording of a fact causing no prejudice to the applicant cannot sustain his challenge, particularly when his conduct was not conducive with the conduct as per rules. The punishment being commensurate with the misconduct should be upheld.

(xiv) That the contents of para (xiv) are also not admitted. The authority next in hierarchy has the powers. He may act under the delegated powers as well. Further the same being not an order by an authority lower than that of appellate authority no prejudice has been caused to the applicant; therefore, also the original application for this reasons is not maintainable.

(xv) That the contents of Para (xv) cannot be said to be a non speaking order as alleged by the applicant. Bare reading of it refutes such allegations.

13. Learned counsel for the respondents has relied upon relevant portion of Rule 11 of Railway Servants (Discipline & Appeal) Rules, 1968 for "Procedure for imposing minor Penalties" which reads as under:-

"11. Procedure for imposing minor penalties

(1) Subject to the provisions of sub-clause (iv) of Clause (a) of sub-rule (9) of Rule 9 and of sub-rule 4 of Rule 10, no order imposing on a Railway servant any of the penalties specified in Clauses (i) to (iv) of Rule 6 shall be made except after -

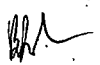
- (a) informing the Railway servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal.
- (b) Holding an inquiry in the manner laid down in sub rules (6) to (25) of Rule 9, in every case in

- which the disciplinary authority is of the opinion that such inquiry is necessary.
- (c) Taking the representation, if any, submitted by the Railway servant under Clause (a) and the record of inquiry, if any, held under Clause (b) into consideration.
 - (d) Recording a finding of each imputations of misconduct or misbehaviour; and
 - (e) Consulting the Commission where such consultation is necessary.

14. Learned counsel for the respondents contended that all the requirements laid down for imposition of minor penalty under Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968 had been complied with. He has referred to the complaint filed by the Senior Section Engineer, South Kota, against the applicant. He has also referred to the letter dated 22.09.2004, placed after Annexure R/1, wherein Shri Rambalak Kushvaha had confirmed the statement of misbehavior at the time of receipt of telephone call from Baran in the office of Shri Modi at Kota at that time.

15. As regards passing of speaking and reasoned order by the Appellate as well as Revisionary Authorities, it was stated that both the authorities were in agreement with the reasons recorded for imposition of penalty. Thus, there was no necessity to pass speaking & reasoned order.

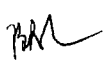
16. Learned counsel for the respondents had also submitted that charge memo, at Annexure A/1, was issued and explanation of the applicant was called for and the same was considered while imposing penalty. Learned counsel for the respondents had



also referred to sub Rule 6 of Rule 9 of Railway Servants (Discipline & Appeal) Rules, 19068 i.e. Procedure for imposing major Penalty and he has specifically relied upon sub rule 6(b) of the said Rule. It has been prescribed that a list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained should be enclosed with the Memorandum of charge. He had submitted that there was complaint by the officer against the applicant, therefore, no documents or witnesses were required to establish the authenticity of the complaint.

17. Learned counsel for the respondents submitted that this Tribunal cannot reappraise the evidence and cannot go into the sufficiency of evidence. This Tribunal cannot sit as a court of appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. For this preposition, he relied upon the case of **Government of Tamil Nadu & Anr. v. A.Rajapandian** [1994 (5) SLR 745].

18. I have heard learned counsel for the parties and gone through the relevant facts and law on the subject. The brief facts have already narrated in this order that the applicant while working as Mechanical Signal Maintainer (MSM), Baran Station, was issued a charge-sheet dated 28.7.2004 with the allegation that he misbehaved with the Supervisor CSI(S), Kota, on 20.5.2004. He disobeyed his order and threatened for his life and property. The applicant through his reply dated 24.8.2004




denied the charges. After going through the explanation of the applicant, the disciplinary authority imposed the penalty of withholding of increments for two years without cumulative effect. The disciplinary authority had imposed the penalty on the charge that the applicant was not doing his work properly and his reply was not satisfactory. Therefore, increments were withheld for two years without future effect. Thus, I find that the charge leveled through the charge-sheet and the charge on which the penalty was imposed are different. No opportunity was given for the charge leveled as per the penalty order. Thus, the principle of audi-alteram-partem was violated. Opportunity of being heard could not be dispensed with even in case of minor penalty, as held by the Apex Court in the case of **O.K.Bhardwaj v. Union of India and Others** [2002 SCC (L&S) 188]. I also find that copy of the complaint was neither relied upon nor supplied. The applicant had denied the charge. However, he could not refute the charge in toto leveled against him as copy of the complaint was not supplied to him. I also find that the disciplinary authority has not passed a detailed and reasoned order rather he has passed a cryptic and non-speaking order. Rule-11(d) for imposition of minor penalty provides that recording a finding on each imputation of misconduct or misbehavior is necessary. The disciplinary authority is also required to record reasons for imposition of penalty. The charges framed against the delinquent must be specific and not vague. I find that the charges leveled against the applicant are vague in this case. A list of documents relied upon should also




have been supplied to the delinquent railway servant alongwith the charge-sheet and statement of allegations. In this case, neither copy of the complaint had been supplied to the applicant nor it has been relied upon. In this case no inquiry has been held. Where no inquiry has been held, the disciplinary authority while passing orders should communicate brief reasons for the final decision regarding the guilt of the employee, as per Railway Board's Circular No.E (D&A) 86 RG 6-12 of 17.2.86.

19. Learned counsel for the respondents has contended that where the appellate and revisionary authorities agree with the reasons given by the disciplinary authority in the order, no detailed and specific order is required to be passed by them. However, in this case, I find that the disciplinary authority has not given any specific reason for the specific charge leveled. Under such a situation, the appellate and revisionary authorities were required to pass a detailed and reasoned order. Thus, I find that the appellate as well as revisionary authorities have not passed a detailed and speaking order. It was also made clear through circular No.E(D&A)78RG6-11 dated 3.3.78 that the disciplinary and the appellate authorities are required to pass speaking order and they are required to give specific reasons for imposition/ confirmation of penalty order. Appellate and revisionary authorities are required to give reasons while confirming views of the disciplinary authority, as held in the case of Divisional Forest Officer, Kothagudem & Ors. v. Madhusudhan Rao [(2008) 1 SCC (L&S) 788].



20. Learned counsel for the applicant had placed reliance on the case of **Kunhikannan Nambiar v. Government of Kerala** [2002 (3) ATJ 354], wherein it was held that allegations are to be proved by adducing evidence and not by a mere perusal of records prepared by superior officers behind the back of the accused employee. In this case, charges have not been proved by adducing evidence in support of the allegations rather the charges leveled in the charge-sheet had altogether been altered while imposing the penalty. Copy of the complaint was not supplied to the applicant but has now been filed before this Tribunal as Ann.R/1 with the reply. Thus, the principles of natural justice have been violated. I also find that the respondents have also enclosed a photo-stat copy of the letter, at page 43, alongwith Ann.R/1, written by one Shri Ram Balak Kushwaha, wherein it is stated that he had heard the telephonic conversation regarding misbehavior. This letter is dated 22.9.2004, whereas the charge-sheet is dated 28.7.2004. It is seen that materials in support of the charges collected after finding the accused employee guilty are relied on by the respondents to uphold the orders passed by subordinate officers. This is a very strange procedure and has to be deprecated, as held in the case of **Kunhikannan Nambiar** (supra).

21. Learned counsel for the applicant has also rightly placed reliance on the case of **Shrishail Bhajantri** (supra), wherein it was held that even in the case of a minor penalty an opportunity



has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an inquiry should also be called for. Imposition of penalty of withholding of annual increment without holding an inquiry and without evidence on specific lapses not justified and quashed, as held in the case of Shrishail Bhajantri (supra).

22. Thus, in view of what has been stated above, the OA is allowed and the impugned charge-sheet dated 28.07.2004 (Ann.A/1), impugned order of punishment dated 29.09.2004 (Ann.A/2), order of appellate authority dated 05.05.2005 (Ann.A/3) and the order of revisional authority dated 17.08.2005 (Ann.A/4) are quashed and set aside. It will, however, be permissible for the respondents to proceed further in the matter as per rules. No order as to costs.


(B.L. KHATRI)
MEMBER (A)

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