

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 18th day October, 2010

ORIGINAL APPLICATION No.417/2006

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMINISTRATIVE)

Kamal Ram Meena
s/o Shri H.R.Meena,
r/o C-8, Ashish Vihar,
Jagatpura, Jaipur,
presently working as
JE-II (PW), Alot,
Kota Division.

.. Applicant

(By Advocate: Shri A.N.Mathur)

Versus

1. Union of India through General Manager, West Central Railway, Jabalpur, M.P.
2. Chief Engineer, West Central Railway, Jabalpur, Madhya Pradesh.
3. Divisional Railway Manager, West Central Railway, Kota Division, Kota.

.. Respondents

(By Advocate: Shri Hawa Singh)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

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- (1) The original application preferred by the applicant may kindly be allowed and the order Annexure A/1 to A/3 may kindly be quash and set-aside. Respondents may be directed to fix the applicant by giving him all consequential benefits.
- (2) That the respondents may further be directed to repay the penal rent deducted from his salary with interest @ 18% per annum to the applicant. They may further be directed to not do deduct any penal rent in future.
- (3) The respondent may further be directed the regular salary to the applicant from 1.7.05 to 24.7.05 when the appellate authority passes the order of the reinstatement to the date when the applicant was allowed joining.
- (4) Any other order or relief which this Hon'ble Tribunal thinks just and proper in the facts and circumstances of the case may kindly be passed in favour of applicant.
- (5) Cost of the original application be awarded in favour of humble applicant.

2. Facts of the case are that the applicant while working as JE-II (P/Way) at Bharatpur on ad-hoc basis in the scale of Rs. 5000-8000 was issued a major penalty chargesheet (SF-5) dated 17.3.2004. The gravamen of the charges against the applicant was that the applicant is responsible for derailment of Goods Train No. UP RAJ NSICT/King Goods on 16.2.2004 at about 9.37 hours at Bharatpur station yard. It may be stated that before issuing the chargesheet for major penalty preliminary enquiry was conducted by the Committee of four officers in which secondary responsibility was fixed upon the applicant. However, the Disciplinary Authority did not agree with the findings of the preliminary report and as such chargesheet for major penalty was issued. After conducting the enquiry, the applicant was held responsible as he did not enforce

the stipulated provisions of G&SR 15.06 (A), 15.08, 15.05 (5)(a), 15.09 and 15.17(1) before taking up the work in and likewise exhibition of relevant stop signals and use of prescribed detonators etc. The Disciplinary Authority imposed a penalty of removal from service. However, keeping in view the contention raised by the applicant that in the preliminary enquiry he was held only secondary responsible, the Appellate Authority came to the conclusion that the removal from service is disproportionately harsh, as such, the penalty of removal from service was modified to that of reduction by three stages in the scale of pay with loss of seniority, which according to the appellate authority, was minimum punishment prescribed by the Railway Board letter dated 23.4.1999 in the cases of derailment of goods train on the main line in mid section or within station limits. However, the intervening period from the date of removal from service to the date of re-instatement was treated as dies-non. The applicant filed revision petition against the ^{in order of} appellate authority and vide order dated 28.6.2006 (Ann.A/1), the Revising Authority further modified the penalty to reduction by three stages in the same time scale of pay for a period of two years with cumulative effect. By way of this OA, the applicant has prayed for quashing the orders Ann.A/1 to A/3 with further prayer that the applicant may be given regular salary for the period from 1.7.2005 to 24.7.2005 when the Appellate Authority passed the order of reinstatement to the date when the applicant was allowed joining. It is on the basis of these facts, the applicant has filed this OA thereby praying for the aforesaid reliefs.

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3. Notice of this application was given to the respondents. The respondents have justified their action on the basis of finding given by the statutory authorities.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

5. The learned counsel for the applicant while drawing our attention to the preliminary enquiry report Ann.A/5 has argued that since the applicant was given slots by Shri C.P.Sharma, ASM at 9.25 hrs on 16.2.2004 whereas the accident involving train No. UP Raj NSICT (KING) Goods took place at 9.37 hours, as such, it was Shri C.P.Sharma, who was mainly responsible for the incident as per the finding given in the preliminary enquiry report and the applicant cannot be held responsible.

6. We have given due consideration to the submissions made by the learned counsel for the applicant. No doubt as per the preliminary report primary responsibility has been fixed to that of Shri C.P.Sharma, ASM who allowed the goods train on run through signals causing excessive damage during the accident despite having given concurrence of the engineer full block for replacing cross of point No.128 BTE yard but at the same time it is not disputed that responsibility of placing detonators and banner flag etc. was that of the applicant and even in the preliminary enquiry report secondary responsibility of the applicant has been fixed. Further, it cannot be disputed that the derailment took place on the relevant date and the applicant was also responsible for the said act being incharge of the work. Thus, it cannot be said that the charge

against the applicant has not been proved. In the matter the applicant was imposed a punishment of removal from service by the Disciplinary Authority, however, the said punishment has been held to be disproportionate of the gravity of offence committed by the applicant and the Appellate Authority has categorically observed that even in the preliminary enquiry, the applicant has been held secondary responsible, as such, the order of the removal from service was modified to that of reduction by three stages in the scale of pay with loss of seniority which order has further been modified by the Revising Authority to that of reduction by three stage in the same time scale of pay for a period of two years with cumulative effect. There cannot be any dispute that derailment of the train has been seriously viewed by the Railway Board as safety of citizen and goods is involved and has been considered as a serious offence warranting major penalty proceedings. Thus, in view of what has been stated above and the fact that the statutory authority after applying its mind has awarded the punishment, It is not permissible for this Tribunal to interfere with the administrative decision so arrived at especially when the applicant has not made out any case for violation of any statutory provisions and also that the principles of natural justice has not been violated in the enquiry proceedings or the enquiry proceedings initiated against the applicant were without jurisdiction. As such, we see no reason to interfere with the penalty so imposed by the Revising Authority as orders of Disciplinary and Appellate authorities have been merged into the order of Revising Authority.

7. The next question raised by the learned counsel for the applicant is that while modifying the penalty and setting-aside the order of removal from service, it was incumbent upon the Revising Authority to pass the order as to how the period intervening from the date of removal from service till reinstatement has to be treated and whether the applicant is entitled to the pay and allowances for the aforesaid period. The learned counsel for the applicant has further drawn our attention to the order dated 19.9.2006 (Ann.A/10) which is based upon the order passed by the Appellate Authority whereby the period from 19.8.2004 to 24.9.2005 (removal from service till the applicant was reinstated on 1.7.2005 and further period from 1.7.2005 to 24.9.2005) was treated as unauthorized for the purpose of imposing penal rent upon the applicant on the premise that the period has been treated as dies-non.

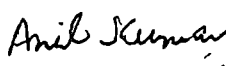
8. We have given due consideration to the submissions made by the learned counsel for the applicant. Although the Appellate Authority has treated the aforesaid period as dies-non and the order passed by the Revising Authority is in continuation of the appellate order passed by the Appellate Authority, however, in the peculiar facts and circumstances of the case, we are of the view that ends of justice will be met if further opportunity is given to the applicant to file representation before the Revising Authority regarding, a) pay and allowances for the aforesaid period and also b) regarding treating the said period as spent on duty, and in case such representation is made by the applicant within a period of four weeks from today, the Revising Authority shall consider the


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representation of the applicant and make specific order regarding pay and allowances to be paid to the applicant for the period of his absence from duty preceding his removal from service. The Revising Authority shall also decide whether such period shall be treated as period spent on duty. The aforesaid representation shall be decided within a period of three months from the date of receipt of representation.

9. The Revising Authority shall also look into the aspect regarding imposition of penal rent on the applicant for the aforesaid period as after modifying penalty of removal and reinstating the applicant, it cannot be said that the applicant has ceased to be a railway servant and as such his retention of the railway quarter for the aforesaid period was unauthorized. Be that as it may, it is a matter to be considered by the appropriate authority on its own merit and in accordance with rules. The above observations made by this Tribunal in the aforesaid terms have been noticed on the basis of the contention raised by the learned counsel for the applicant.

10. With these observations, the OA stands disposed of with no order as to costs.


(ANIL KUMAR)
Admv. Member


(M.L. CHAUHAN)
Judl. Member

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