

ORDERS OF THE BENCH

Date of Order: 23.08.2012

OA No. 511/2009

Mr. C.B. Sharma, counsel for applicant.
Mr. Mukesh Agarwal, proxy counsel for
Mr. Anupam Agarwal, counsel for respondents.

At the request of learned proxy counsel for Mr.
Anupam Agarwal, counsel for respondents, put up the
matter on 05.09.2012 for hearing.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K. S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

05/09/2012

OA No. 511/2009

Mr. C. B. Sharma, Counsel for applicant.
Mr. Anupam Agarwal, Counsel for respondents.

Heard.

O. A. is disposed of by a
Separate order on the separate
sheets for the reasons recorded
therein.

Anil Kumar
[Anil Kumar]
Member (A)

K. S. Rathore
[Justice K. S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 05th day of September, 2012

ORIGINAL APPLICATION No. 511/2009

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Abdul Shakoor son of Shri Ummedi aged about 53 years,
resident of 247, Chuli Gate Gangapur City and presently holding
the post of Sennior Mail Express Loco Pilot, West Central
Railway, Gangapur City.

... Applicant

(By Advocate : Mr. C.B. Sharma)

Versus

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

... Respondents

(By Advocate : Mr. Anupam Agarwal)

ORDER (ORAL)

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

- "(i) That entire record relating to the case be called for and after perusing the same order dated 14.11.2008 (Annexure A/1) be quashed and set aside with all consequential benefits.
- (ii) That the charge memo dated 07.01.2003 (Annexure A/3) be quashed, as the same is not justified as per facts and circumstances with the enquiry proceedings with the enquiry report dated 23.06.2003 (Annexure A/10) with all consequential benefits.
- (iii) That respondents be directed to allow promotion of the applicant to the Mail Loco Pilot from the date juniors so allowed with all consequential benefits

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including difference of pay & allowances with the running allowance etc. as per seniority modified vide Annexure A/1.

- (iv) Any other order/direction or relief may be granted in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case.
- (v) That the cost of this application may be awarded."

2. Learned counsel for the applicant submitted that the applicant was served with charge memo dated 07.01.2003 (Annexure A/3) and after inquiry, the Disciplinary Authority had imposed the 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 his pay at the stage of Rs.5750/- for two years with cumulative effect with the loss of seniority (Annexure A/12). The appeal filed by the applicant against the order of punishment passed by the Disciplinary Authority was also rejected by the Appellate Authority vide order dated 11.07.2005 (Annexure A/18). The applicant being aggrieved by the action of the respondents filed an OA No. 442/2005 in Central Administrative Tribunal, Jaipur Bench, Jaipur, which was disposed of with the following directions as given in Para No. 11 of the order, which is quoted below:-

"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 & Another 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

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disciplinary authority dated 18.07.2003 (Annexure A/2) and the order of the appellate authority dated 11.07.2005 (Annexure A/1) with a direction that the disciplinary authority should review the quantum of penalty in view of judgment of the Apex Court in the case of Union of India & Another vs. S.C. Parashar (supra) and in the light of RBE No. 217/2000."

3. After considering the order passed by this Tribunal in OA No. 442/2005 decided on 17.09.2008, the Disciplinary Authority has reviewed the penalty order and has passed the 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 his pay at the stage of Rs.5750/- for two years with cumulative effect. Thus the clause of 'loss of seniority' has been deleted in the penalty order.

4. Learned counsel for the applicant argued that even this punishment is too harsh looking to the misconduct committed by the applicant. The punishment awarded by the Disciplinary Authority is against the facts & circumstances and as such, the punishment is also on the basis of no evidence. Therefore, it is liable to be quashed and set aside. This Tribunal in Para No. 8 of the order dated 17.09.2008 passed in OA No. 442/2005 had come to the conclusion that the penalty imposed by the Disciplinary Authority and confirmed by the Appellate Authority is not commensurate with the offence committed by the applicant.. Therefore, the quantum of penalty should be reduced to that of minor penalty.

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5. Learned counsel for the applicant stated that the respondents have not only reduced his pay scale from Rs.5500-9000/- to that of 5000-8000/- but also have reduced his pay from Rs.6250/- to Rs.5750/-, which he was drawing prior to punishment i.e. Rs.6250/-. His pay could not have been fixed at Rs.5750/- because it amounts to double jeopardy. To support his averments, he referred to the order of the Central Administrative Tribunal, Hyderabad Bench in TA No. 634/1986 in the case of **R. Devadanam vs. Union of India & Others**, All India Service Law Journal 1989 (2) CAT 131.

6. On the other hand, the learned counsel for the respondents argued that in compliance of the order passed by this Tribunal in OA No. 442/2005 dated 17.09.2008, the Disciplinary Authority had reviewed the matter and reduced the penalty by deleting the clause of 'loss of seniority' from the punishment order. In this regard, he referred to the order passed by the Disciplinary Authority dated 14.11.2008 (Annexure A/1). He further argued that so far as relief no. (ii) is concerned, which is with regard to the quashing of the charge memo dated 07.01.2003 (Annexure A/3) and the inquiry report dated 23.06.2003 (Annexure A/10), the same has already been adjudicated by this Tribunal vide its order dated 17.09.2008 passed in OA No. 442/2005 (Annexure A/2). As such, the same is hit by the principle of res-judicata. With regard to the relief of promotion viz.a.viz. juniors is concerned, it is under consideration of the respondents because of the passing of the

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order dated 14.11.2008 (Annexure A/1). He further argued that while passing the order dated 14.11.2008 (Annexure A/1), the Disciplinary Authority has taken into account the gravity of the charge and the directions issued by this Hon'ble Tribunal and after taking in to accounts all the facts & circumstances of the case has deleted the clause of 'loss of seniority' from the punishment order. The applicant would be entitled to all consequential benefits, which is accrued to him on the revision of the penalty order. This penalty order is according to the provisions of law & rules on the subject and as per the observations made by this Hon'ble Tribunal in OA No. 442/2005. Therefore, there is no need to interfere with that order. Consequently, the OA has no merit and it deserves to be dismissed with costs.

7. Heard the learned counsel for the parties and perused the documents on record and the case law referred to by the learned counsel for the applicant.

8. The applicant was issued a charge sheet on 07.01.2003 (Annexure A/3), a proper inquiry was conducted and the Disciplinary Authority vide order dated 18.07.2003 (Annexure A/12) had imposed the penalty of reversion to the post of Goods Driver in the scale of Rs.5000-8000/- from the post of Passenger Driver in the scale of Rs.5500-9000/- by fixing his pay at the stage of Rs.5750/- for two years with cumulative effect with the loss of seniority. This order was challenged by the applicant in

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OA No. 442/2005 in which this Tribunal had directed the Disciplinary Authority to review the quantum of penalty in view of the judgment of the Apex Court in the case of **Union of India & Another vs. S.C. Parashar**, 2006 (2) SLJ 490, and in the light of RBE No. 217/2000. In compliance of this direction, now the Disciplinary Authority had imposed the 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 his pay at the stage of Rs.5750/- for two years with cumulative effect. Thus the Disciplinary Authority has by & large upheld the penalty awarded earlier except the clause of 'loss of seniority' has been deleted.

9. We are inclined to agree with the averment made by the learned counsel for the respondents that with regard to relief no. (ii) i.e. quashing of the charge memo dated 07.01.2003 (Annexure A/3) and the inquiry report dated 23.06.2003 (Annexure A/10), the same has already been adjudicated by this Tribunal vide its order dated 17.09.2008 passed in OA No. 442/2005 (Annexure A/2). Therefore, the same relief cannot be claimed in the present OA and it is barred by the principle of res-judicata.

10. With regard to the averments made by the learned counsel for the applicant that the ratio decided by the Central Administrative Tribunal, Hyderabad Bench in TA No. 634/1986 in the case of **R. Devadanam vs. Union of India & Others**, All

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India Service Law Journal 1989 (2) CAT 131, is applicable in the facts & circumstances of the present case, we are of the view that the ratio decided in the above case is not applicable in the facts & circumstances of the present case. The rule under Clause (vi) of Rule 6 under head 'Penalties' of the Railway Servants & Discipline & Appeal Rules, 1968 provides as under:-

"(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;"

Thus, it clearly provides that the Disciplinary Authority can fix the pay of the applicant at any stage in lower time scale of pay. Thus, we do not find any infirmity/illegality in the order of the Disciplinary Authority of reducing the pay of the applicant to the stage of Rs.5750/- in the lower time scale of Rs.5000-8000/-.

11. The allegation against the applicant is that on 05.12.2002 while working at Awad Express, he crossed the Home Signal outside the danger mark. Because of negligence of the applicant, there could have been a major Rail accident, resulting in loss of human life and national property. However, the accident was averted and there was no loss of human life and national property. Thus, looking into the gravity of the misconduct, we hold that the penalty awarded by the Disciplinary Authority vide order dated 14.11.2008 is highly disproportionate to the gravity of the misconduct. We are of the opinion that ends of justice

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would be met if penalty of reversion is reduced from two years to one year in the scale of Rs.5000-8000/- from pay scale of Rs.5500-9000/-. Accordingly, the Disciplinary Authority is directed to modify the penalty order dated 14.11.2008 (Annexure A/1).

11. With these observations, the OA is disposed of with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

K. S. Rathore
(Justice K.S.Rathore)
Member (J)

AHQ