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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

12.5.2011

OA 552/2009

Mr.N.K.Gautam, counsel for applicant.
None present for respondents.

Put up on 12.7.2011, as prayed for by learned
counsel for the applicant.

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

vk

12.7.2011

Mr.N.K. Gautam, Counsel for applicant
Mr. Anupam Agarwal, Counsel for respondents
Heard. The OA is disposed of by a
separate order.

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

[Signature]

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 12th day of July, 2011

ORIGINAL APPLICATION NO. 552/2009

CORAM

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

L.N. Siddha son of Shri Mool Chand Siddha aged 54 years, Accounts Assistant, Suspense Section of Sr. Divisional Financial Manager (N.W. Railway), Jaipur and resident of 114/418, Agarwal Farm, Mansarovar, Jaipur.

.....Applicant

(By Advocate: Mr. N.K. Gautam)

VERSUS

1. Union of India through General Manager, North Western Railway, Jaipur.
2. Vijay Singh Meena, Sr. Divisional Financial Manager, North Western Railway, Jaipur.
3. Girish Sharma, Divisional Financial Manager, North Western Railway, Ajmer.
4. S.L. Rathore, Assistant Divisional Financial Manager, North Western Railway, Jaipur.
5. Vishal Gupta, Dy. Chief Engineer (Planning), North West Railway, Head Quarter Office, Jaipur.

.....Respondents

(By Advocate: Mr. Anupam Agarwal)


ORDER (ORAL)

The present OA is directed against the order dated 24.06.2009 (Annexure A/1) whereby minor penalty of withholding of increment in present pay scale for a period of three years without cumulative effect has been awarded. The impugned order has been challenged on the ground that the respondents being Central Government officials have played foul play as revealed vide proceedings dated 12.8.2010 and recorded at Page 49 and 50. It is also alleged that reply filed on behalf



of respondents nos. 1 to 5 have been tempered. This aspect has not been considered by the respondents even pointed out by the applicant. It is also challenged on the ground that the impugned order has been passed without following the minimum requirement of principles of natural justice. Learned counsel for the applicant placed reliance on the judgment of the Hon'ble Supreme Court in the case of **S.L. Kapoor vs. Jag Mohan Singh & Others**, AIR 1981 SC 136 and given more emphasis on Paras No. 7, 8, 20, 21, 24 and 25.

2. Learned counsel for the applicant further challenged the inquiry proceedings as being unfair. He submitted that vide Annexure A/1, the applicant has been awarded punishing of withholding of three years increments without cumulative effect, the civil consequence in nature without following the principles of natural justice inspite of demand (Annexure A/10). He further challenged that the complainant and witnesses were not provided for cross examination. The applicant was not allowed personal hearing before disposal of the appeal, which is contrary to the ratio decided by the judgment rendered by the Bangalore Bench of the Central Administrative Tribunal in the case of **K. Prakash vs. Div. Safety Officer & Others**, 2003 (3) SLJ (CAT) 129. It is also contended that while deciding the appeal, the past record of the applicant has been considered and while considering the same, no opportunity of being heard has been provided to the applicant. The same is also contrary to the ratio decided by the Principal Bench of the Central Administrative Tribunal in the case of **Shiv Kumar vs. Govt. of National Capital Territory of Delhi**, 2003(2) SLJ (CAT) 90.



3. Per contra, learned counsel for the respondents has referred to Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968 which speaks about procedure for imposing minor penalties. As per sub Rule (1) of Rules, subject to the provisions of sub-clause (iv) of Clause (a) of sub-rule (9) of Rule 9 and 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 Railway Servant under Clause (a) and the record of inquiry, if any, held under Clause (b) into consideration.

4. After referring the aforesaid provisions of Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968, learned counsel for the respondents submitted that only opportunity which is to be given to the applicant is to file representation and no opportunity of personal hearing is required to be provided to the applicant. With regard to the fact that Disciplinary Authority had also considered the previous misconduct of the applicant while awarding him the minor penalty of withholding of increments in present pay for a period of three years without cumulative effect, learned counsel for the respondents submitted that no illegality had been committed by them.



5. Having heard the rival submissions of the respective parties and upon careful perusal of the impugned order, order passed by the disciplinary authority, material available on record and the judgments referred to by the respective parties. Learned counsel for the applicant submitted that since the respondents have not followed the principles of natural justice and in view of the ratio decided by the Hon'ble Supreme Court in the case of **S.L. Kapoor vs. Jag Mohan Singh & Others**, AIR 1981 SC 136, inquiry proceedings vitiated and deserves to be quashed and set aside. We have carefully scanned the judgment of S.L. Kapoor wherein the Hon'ble Supreme Court had observed that supersession of Municipal Committee – opportunity should be given to committee before an order is passed. Further with regard to not providing opportunity of being heard, we have carefully gone through the judgment of the Bangalore Bench of the Tribunal in the case of **K. Prakash vs. Divisional Safety Officer & Others**, 2003 (3) SLJ (CAT) 129, referred to by the applicant wherein the Bangalore Bench had considered this aspect and directed that the Appellate authority must grant personal hearing, if requested. The judgment, which has been relied upon by the learned counsel for the applicant in the case of **Shiv Kumar vs. Govt. of National Capital Territory of Delhi**, 2003(2) SLJ (CAT) 90, wherein the Disciplinary Authority had passed the order on the basis of previous bad record. The Principal Bench held that it is against the rules and hence the penalty was quashed.

6. With regard to providing of personal hearing, the respondents have referred to Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968. Learned counsel for the respondents submitted that the



judgments which has been relied upon by the applicant is with regard to major penalty and not with regard to minor penalty as stipulated in Rule 11 of Railway Servants (Discipline & Appeal) Rules, 1968, the only requirement is to provide opportunity to the applicant to submit a representation pursuant to the charge sheet issued. Learned counsel for the respondents submits that the ratio decided by the CAT Bangalore, does not apply to the facts & circumstances of the present case.

7. We have thoroughly examined the facts and circumstances and judgment of the Hon'ble Supreme Court. Hon'ble Supreme Court in Para 16 observed that the requirement of natural justice are met only if opportunity to represent is given in view of proposed action. The demand of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based, if it is furnished in a casual way or for some other purpose. The person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. If that is made known the requirements are met. The Hon'ble Supreme Court further held that principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non observations of natural is itself prejudice to any main and proof prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced.



8. It is not disputed that minor penalty has been proposed vide Memo dated 19.11.2008 (Annexure A/3) and the explanation was called for and the same has been submitted by the applicant vide Annexure A/4. Having considered Annexure A/5, standard form of Memorandum of charge for imposing minor penalties as stipulated under Rule 11 of Railway Servants (Discipline & Appeal) Rules, 1968 has been issued to the applicant as the applicant had violated Para 3(1)(iii) of Railway Service Conduct Rules, 1966. The applicant preferred appeal under Rule 18 of Railway Servants (Discipline & Appeal) Rules, 1968 but the same was dismissed.

9. The Principal Bench, New Delhi after having considered the ratio decided by the Hon'ble Supreme court has held that previous bad record so taken into account without including it in the charge sheet is against the rules. Hon'ble Supreme court in the case of **Bharat Forge Company Ltd. vs. Uttam Manohar Nakate**, 2005 SCC (L&S) 298 in Para No. 26 has observed as under:-

"26. We have noticed hereinbefore that all the courts have answered the question as regards commission of misconduct by the respondents in one voice. The Labour Court evidently had taken recourse to clause (g) of Item I of Schedule IV of the Act, which ex facie was inapplicable. The said provision clearly postulates two situations, namely, (i) the misconduct should be of minor or technical character; and (ii) the punishment is shockingly disproportionate without having any regard to the nature of the particular misconduct or the past record of service of the employee. The past record of service, therefore is a relevant factor for considering as to whether the punishment imposed upon the delinquent employee is shockingly disproportionate or not. As has been noticed hereinbefore, before the learned Single Judge an attempt on the part of the respondent to take recourse to clause (b) of Item 1 of Schedule IV failed. In the absence of any plea of factual victimization and furthermore in the absence of any foundational fact having been laid down for arriving at a conclusion of legal victimization, in our



opinion, the Division Bench committed a manifest error in invoking clause (a) thereof."

10. As the Hon'ble Supreme Court had observed that (i) the misconduct should be of minor or technical character and (ii) punishment is shockingly disproportionate without having any regard to the nature of the particular misconduct or the past record of service of the employee. The past service record of service, therefore, is a relevant factor for considering as to whether the punishment imposed upon the delinquent employee is shockingly disproportionate or not.

11. The ratio decided by the Hon'ble Supreme Court as well as the Principal Bench of the Tribunal is squarely applicable to the facts & circumstances of this case. Since the charges are minor in nature and looking to the memorandum of charge sheet of withholding of increment in present pay scale for a period of three years without cumulative effect is admittedly shockingly disproportionate. The penalty has been awarded having considered the previous bad record of the applicant. The Principal Bench of the Tribunal in its judgment held that the previous bad record, which was taken into account without including it in the charge sheet is against the rules and deserves to be quashed and set aside. The Hon'ble Supreme Court held that bare minimum opportunity of natural justice is required to be provided upon asking by the applicant. Rule 11 (1) (a) of the Railway Servants (Discipline & Appeal) Rules, 1968 also speaks about the basic requirement of giving reasonable opportunity to the delinquent employee. Apparently in the present case, the documents which have been asked for by the applicant were not provided and no opportunity



of personal hearing was provided to the applicant. Therefore, we are of the considered view that the manner in which the inquiry has been initiated against the applicant is perse illegal, contrary to the provisions of law and in violation of natural justice. Therefore, the impugned charge sheet dated 17.12.2008 (Annexure A/5) impugned order dated 24.06.2009 (Annexure A/1) and order dated 30.10.2009 (Annexure A/2) are quashed and set aside. The respondents are at liberty to conduct fresh inquiry after providing opportunity of hearing to the applicant and after following due process of law.

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


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

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