

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 8.12.2014

OA No.185/2011 with MA No.291/00261/2014

Mr. Sunil Samdaria, Counsel for the Applicant.

Mr. Anupam Agarwal, Counsel for the Respondents.

Heard the learned counsel for parties.

Order Reserved.



(ANIL KUMAR)
ADMINISTRATIVE MEMBER



(B.V.RAO)
JUDICIAL MEMBER

Adm/

12/12/14

order

pronounced
today in
the aforesaid

Bench.


12/12/14

c-o.

CENTRAL ADMINISTRATIVE TRIBUNAL,
 JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 185/2011
 with
 MISC. APPLICATION NO. 291/00261/2014
 And
 ORIGINAL APPLICATION NO. 190/2011
 With
 MISC. APPLICATION NO. 291/00262/2014

ORDER RESERVED ON: 08.12.2014

DATE OF ORDER: 12.12.2014

CORAM

HON'BLE MR. B.V. RAO, JUDICIAL MEMBER

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

1. OA No. 185/2011 with MA No. 291/00261/2014

Anil Kumar Singhal S/o Shri Ram Ji Lal Singhal, aged 52 years, R/o 65 Krishna Colony, Kundan Nagar Ajmer, presently working as Senior Section Officer (Accounts) in Divisional Accounts Office, DRM Building / Annexe, Ajmer.

...Applicant

Mr. Sunil Samdaria, counsel for applicant.

VERSUS

1. Union of India through its General Manager North-Western Railway, Zonal Office, Opp. Ganpati Nagar, Jaipur (Raj.).
2. Senior Divisional Finance Manager, NWR, Ajmer.
3. Appellate Authority, Financial Advisor and Chief Accounts Officer (General), NWR, Ajmer.
4. Review/Revisional Authority, Financial Advisor and Chief Accounts Officer, NWR, Ajmer.

...Respondents

Mr. Anupam Agarwal, counsel for respondents.

2. OA No. 190/2011 with MA No. 291/00262/2014

Anil Kumar Singhal S/o Shri Ram Ji Lal Singhal, aged 52 years, R/o 65 Krishna Colony, Kundan Nagar Ajmer, presently working as Senior Section Officer (Accounts) in Divisional Accounts Office, DRM Building / Annexe, Ajmer.

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VERSUS

1. Union of India through its General Manager North-Western Railway, Zonal Office, Opp. Ganpati Nagar, Jaipur (Raj.).
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4. Review/Revisional Authority, Financial Advisor and Chief Accounts Officer, NWR, Ajmer.

...Respondents

Mr. Anupam Agarwal, counsel for respondents.

ORDER

(Per Mr. B.V. Rao, Judicial Member)

With the consent of learned counsel for the parties, O.A. No. 185/2011 with M.A. No. 291/00261/2014 & O.A. No. 190/2011 with M.A. No. 291/00262/2014 have been heard together and are being disposed of by this common order since both the Original Applications have similar controversy and common question of law and facts:

2. Having considered the submissions made on behalf of the respective parties on the M.A. No. 291/00261/2014 (O.A. No. 185/2011) & M.A. No. 291/00262/2014 (O.A. No. 190/2011) filed on behalf of the applicants praying for incorporation of legal submission in the grounds of the respective OAs are allowed. The incorporation as sought in the respective MAs are treated as part of the respective OAs. Accordingly, both the MAs are disposed of.

3. The applicants have filed the present Original Applications under Section 19 of the Administrative



Tribunals Act, 1985, praying for calling the record of the case and pass appropriate order quashing and setting aside the order dated 22.12.2009 (Annexure A/1), 24.12.2010 (Annexure A/2) and the order dated 5/7.5.2010 (Annexure A/3) (in OA No. 185/2011) & order dated 22.12.2009 (Annexure A/1), 24.12.2010 (Annexure A/2) and the order dated 5/7.5.2010 (Annexure A/3) (in OA No. 190/2011) and also for interest @ 18% per annum arising out of quashing of the aforesaid orders. The facts of O.A. No. 185/2011 are being taken as a lead case.


4. The brief facts of the case, as stated by the applicant, are that the applicant was appointed as Junior Accounts Assistant in the year 1982. Later on, he was promoted as Accounts Assistant w.e.f. 01.04.1987. Further, he was promoted as Section Officer w.e.f. 30.11.1987 and thereafter he was promoted as Senior Section Officer w.e.f. 30.11.1990 and got financial up-gradation in the year 2008. The applicant further submitted that right from the beginning when he was appointed as Junior Accounts Officer up to the level of Senior Section Officer, he remained on the accounts side whose duty is to check the arithmetical accuracy of all the accounts received from the supervisors and the bills and other claims presented by the contractors and other and to compile the divisional accounts and other returns with accuracy in accordance with several



forms and generally assist the Divisional Engineer and all matter relating to expenditure of cash and stores in the Division.

5. The applicant also submitted that ignoring his accounts background, Memorandum dated 23.09.2009 (Annexure A/5) was issued to him under Rule 11 of the Railway Servants (Discipline and Appeal) Rules, 1968. He submitted reply to the said Memorandum on 01.10.2009 (Annexure A/6) denying therein the allegations leveled against him. Without considering the reply to the said Memorandum, the Disciplinary Authority (the Respondent No. 2) passed a non-speaking order on 22.12.2009 (Annexure A/1) holding the applicant guilty of the charges leveled against him and consequently saddled a penalty of withholding of increment for a period of 6 months without cumulative effect.

6. The applicant further submitted that challenging the legality and validity of the order dated 22.12.2009, he preferred a statutory appeal before the Appellate Authority on 03.02.2010 (Annexure A/7). The Appellate Authority rejected the appeal of the applicant vide order dated 24.02.2010 (Annexure A/2), which was forwarded to the applicant along with the forwarding letter dated 05.03.2010.



7. The applicant also submitted that challenging the legality of the rejection of the appeal, he preferred Review/Revision dated 22.04.2010 (Annexure A/8) before the Respondent No. 4 through proper channel. The applicant further stated that the Review/ Revision filed by him has been interjected by the Disciplinary Authority at the threshold and the same has been returned back to him vide letter dated 05/07.05.2010 (Annexure A/3) without its transmission to the competent authority for its appropriate decision.

8. Being aggrieved by the order dated 22.12.2009 (Annexure A/1), order dated 24.12.2010 (Annexure A/2), and order dated 05/07.05.2010 (Annexure A/3), the applicant has filed the present Original Application.


9. The applicant has challenged the aforesaid orders on the ground that the impugned orders are patently illegal and invalid. The charges are founded upon technical knowledge relating to construction of roads of which applicant cannot be said to be connected as he belongs to the Accounts sides. The applicant has throughout his service career remained on the accounting side, he, not being a technical hand, cannot be expected to have the technical knowledge of the construction of roads and on the premise of alleged technical flaws, no charge sheet could



have been issued to him. Thus, no penalty could have been imposed upon him.

10. Further the statements relating to Previous Accepted Rates on similar items are required to be prepared by Engineering Graduates or Diploma Holder Technical Staff. Applicant who is a non-technical hand has no role to play when it comes to preparation of the statement of similar / non-similar items. Thus, the very foundation of the alleged misconduct is non-existent. The similarity and dissimilarity in works can be adjudged only by the technical hand and not by the person like the applicant. The charges leveled against the applicant qua his duties become wholly unfounded and baseless, thus, the same could not have been made the basis for initiating the departmental proceedings against him and consequently, no penalty could have been imposed upon him.

11. For an order of penalty to be a speaking, it must discuss the charges, it must discuss the evidence / defence taken by the delinquent and then should pass an order either exonerating or holding the delinquent guilty of charges. The impugned order of punishment does not satisfy the aforesaid parameters of speaking orders.



12. Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968 provides the provisions as to how the appeals preferred against the order of the penalties are to be considered. Aforesaid rule is mandatory. Appellate Authority is under an obligation to decide the appeal in consonance with Rule 22. Appellate Authority while deciding the appeal has gone beyond the charges leveled against the applicant.

13. The applicant preferred a Review/Revision before the Respondent No. 4 through proper channel. It is submitted that Chapter VI of the Railway Servants (Discipline and Appeal) Rules, 1968 provides for statutory remedy of review/revision. Any order in relation to Review/Revision could have been passed only by reviewing/revisional authority. No other authority other than reviewing/revisional authority has got any jurisdiction to comment upon the review/revision. The Disciplinary Authority has exceeded in his jurisdiction in returning the review/revision petition to the applicant, thus, depriving the applicant of his statutory right of review/revision. Thus, returning of the review/revision petition suffers from malice in law.

14. Further ground taken by the applicant is that the impugned departmental proceeding is contrary to Rule 11 of the Railway Servants (Discipline and Appeal) Rules,



1968. According to Rule 11(1)(d) of the said Rules, even a minor penalty cannot be imposed upon the Railway Servant unless finding is recorded on each imputation of misconduct or misbehavior. Perusal of the order passed by the Disciplinary Authority would indicate that no specific finding stood arrived at by the Disciplinary Authority on any of the charge. Thus, in absence of specific finding on each charge, no penalty could have been inflicted upon the applicant. Therefore, the applicant has prayed for quashing and setting aside the aforesaid impugned orders.


15. On the contrary, the respondents have filed their written reply. In the reply, they have taken preliminary objection that the present O.A. filed against the respondent nos. 3 and 4 is wholly misconceived. As per law any authority functioning as appellate authority or revisional authority soon after passing of the order becomes functus-officio. No such post/authority exists with the answering respondents. As such, any challenge by impleading them as party respondents is misjoinder of parties. Thus, the O.A. deserves to be dismissed on this ground alone.

16. The respondents submitted that the alleged impugned orders had been issued after following due process of law affording sufficient opportunity as per rules. The scope of judicial review is very limited. The learned Tribunal cannot



enter into factual aspects of the matter nor can it appreciate any challenge on such basis. Applicant failed to challenge the charge sheet rather submitted himself before the disciplinary authority without any protest. As such he cannot challenge the outcome thereof. So far as the submission with regard to order Annexure A/3 dated 5/7.5.2010 is concerned, it is submitted that the competent authority after consideration of review petition, returned the same without forwarding to the revisional authority with the remark to re-submit the same so as to be forwarded for necessary action by bringing new or other facts as it did not contain any new fact rather has unwarranted aspersions. Yet the applicant for the reasons best known to him instead of following the directions choose to file this Original Application.

17. In the reply, the respondents have stated that the applicant is working as Sr. Section Officer. The duties of Sr. Section Engineer are to check several forms and assist the Divisional Engineer in all matters relating to the cash and store. He is also responsible to bring to the notice of Divisional Engineer any irregularities to reduce the expenditure because Section Officer (Accounts) functions under professional control of Accounts Officer and administrative control of Divisional Engineer. The applicant has failed to follow his duties as per duty chart. He



committed serious irregularities in dealing with the tender case No. 07/2007 for the work of AII-COR Section providing RUB and roads etc. He failed to detect the previous accepted rates of similar items as per work order and letter of acceptance required to be mentioned in the briefing note rather the briefing note for tender No. 07/2007 signed by him on 13.03.2007.


18. It is wrong to say that the disciplinary authority passed a non-speaking order. Annexure A/1 is a speaking order wherein the disciplinary authority has dealt with the contention of the applicant. The applicant was supposed to check the LAR which is not a technical matter. He was under obligation as per his duty chart to ensure that the LAR description is same as of the items in tender schedule. LAR has impact of finalization of tender. Applicant has been held guilty of failing to compare / check the same with work order and LOA. Thus, the submission to the effect that he was saddled with the penalty by non-speaking order is without any substance. The appellate authority after consideration of the appeal by speaking and reasoned order rejected the same maintaining the penalty.

19. The Disciplinary Authority on finding nothing new except unwarranted aspersions returned the Review / Revision filed by the applicant with a further direction to




resubmit it with new facts or grounds so as to be forwarded and considered as per rules. However, the applicant instead of filing revision petition approached the learned Tribunal. The scope of revision is quite limited. Annexure A/3 would clarify that the applicant was not stopped rather advised to resubmit the same by bringing new facts or grounds. As such, no illegality can be found in the order Annexure A/3.

20. In the reply, it is further submitted that in absence of any challenge to the charge-sheet (Annexure A/5), it is wholly misconceived. Applicant submitted himself in pursuance thereof by submitting reply without challenging the charges. As such in view of the principles of estoppels, he cannot have any grouse against the charges at this stage. Further checking of LAR with similar type of work is not a technical matter. The applicant was under obligation to compare/check of acceptance before appending his signature in concurrence thereof. Applicant failed to check the previous accepted rates on similar / non-similar items with work order and letter of acceptance before appending his signature. His writing about the reasonableness of the rate is of no relevance inasmuch as reasonableness is to be determined by the tender committee only after looking to the previous accepted rates of similar / non-similar items written in briefing note. The applicant was under obligation



not only to check the arithmetical accuracy of all the accounts, bills and other claims but also to seek that the rules and orders in force are observed in respect of all transactions of the division. He is also responsible for bringing notice of any irregularity affecting expenditure or receipt. He was working on accounts side and thus doing the work relating to tenders since long knew such work. Thus, any plea that similarity can be adjudged by a technical hand and not a person belonging to accounts side is wholly misconceived. As found by the disciplinary authority, the applicant was found to be guilty of not doing his duties in accordance with the duty charge and rules in this regard. Consequently, imposition of penalty cannot be said to be without jurisdiction.

21. It is further submitted by the respondents that it is wrong to say that appellate authority while passing the order has gone beyond the charge. Applicant has though alleged violation of Rule 22 of the Rules of 1968, however, he has failed to specify as to what and how the same has been violated. In fact as held by the Hon'ble Apex Court any violation of procedure is not fatal unless prejudice is proved by the applicant. Applicant has failed to demonstrate any such violation. Appellate authority if in agreement with the disciplinary authority need not pass detailed reasoned order. Therefore, any allegation of



violation did not render the outcome of enquiry has illegal or unlawful.

22. It is also submitted by the respondents that it is wrong to say that no other authority other than revisional authority has got the jurisdiction to comment upon it. In fact as per rules all the correspondence including appeal, review or revision can be preferred through proper channel only. Admittedly the appeal preferred by the applicant was decided by the appellate authority. Yet the applicant by the review / revision again raised the same issue by making unwarranted aspersions. Accordingly the competent authority returned the same with the direction to re-submit by raising new facts / grounds so as to be forwarded for necessary action. Yet the applicant instead of following the directions filed this Original Application. Any submission of malice in law is wholly misconceived. Applicant has failed to allege any such malice by pleading so and impleading him in his personal capacity. Therefore, the respondents submitted that the Original Application is devoid of merit and deserves to be dismissed with costs.

23. Heard the learned counsel for the parties and perused the documents available on record and we have also carefully gone through the judgment of the Hon'ble



Supreme Court in the case of Union of India & Ors. vs. Alok Kumar & batch cases reported in (2010) 2 SCC (L&S) 22.

24. After giving a careful consideration to the submissions of the learned counsel for the applicants, we think that it is more useful to decide the case, to reproduce Rule 11(1)(d) and Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968, which are 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 -

xxxxxx

(d) recording a finding on each imputations of misconduct or mis-behaviour; and

xxxxxx

22. Consideration of appeal

(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 5 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

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



- (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders –
 - (i) confirming, enhancing, reducing or setting aside the penalty; or
 - (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case.

Provided that –

- (i) the Commission shall be consulted in all cases where such consultation is necessary;
- (ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) or Rule 6 and an inquiry under Rule 9 has not already been held in the case, the appellate authority shall, subject to the provisions of Rule 14, 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 make such orders as it may deem fit;
- (iii) if the enhanced penalty which the appellate authority proposes to impose, is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an inquiry under Rule 9 has already been held in the case, the appellate authority shall, make such orders as it may deem fit;
- (iv) subject to the provisions of Rule 14, the appellate authority shall –
 - (a) where the enhanced penalty which the appellate authority proposes to impose, is the one specified in clause (iv) of Rule 6 and falls within the scope of the provisions contained in sub-rule (2) of Rule 11; and
 - (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; and

- (v) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 11, of making a representation against such enhanced penalty.

(3) In an appeal against any other order specified in Rule 18, the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable.

25. Having gone through the impugned orders dated 22.12.2009 (Annexure A/1 in both the OAs), we are of the considered view that the Disciplinary Authority has not followed the provisions of the above said Rules. As per Rule 11(1)(d) of the said Rules even a minor penalty cannot be imposed upon the railway servants unless finding is recorded on each imputations of misconduct or misbehaviour. A perusal of the Annexure A/1 dated 22.12.2009 would clearly shows that the Disciplinary Authority has not given any finding with regard to the each imputations of misconduct or misbehaviour. Similarly, the Appellate Authority also without following the provisions of Rule 22 of the said Rules, rejected the appeal preferred by the applicants by affirming the penalty imposed by the Disciplinary Authority.


26. In view of the facts and circumstances of the case and after perusal of the material on record, we have no

hesitation to quash and set aside the impugned orders dated 22.12.2009 (Annexure A/1), 24.12.2010 (Annexure A/2) and the order dated 5/7.5.2010 (Annexure A/3) (in OA No. 185/2011) & orders dated 22.12.2009 (Annexure A/1), 24.12.2010 (Annexure A/2) and the order dated 5/7.5.2010 (Annexure A/3) (in OA No. 190/2011), and accordingly the same are quashed and set aside, and the applicants are entitled for the consequential benefits.

27. In the result, both the Original Applications are allowed. No order as to costs.


(ANIL KUMAR)
ADMINISTRATIVE MEMBER


(B. V. RAO)
JUDICIAL MEMBER


Kumawat