

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 181/2012

Order dated: 20/04/2015

Coram:

Hon'ble Mr. Justice Harun Ul Rashid, Judicial Member
Hon'ble Mr. R. Ramanujam, Administrative Member

Babu Lal Dholpuria S/o Shri Parsa Ram Dholpuria, Aged about 47 years, working as T.C.M. Grade-I, under S.S.E/Tele (M), West Central Railway Kota (Raj.), Resident of 10/4, P.W.D. Colony, Vigyan Nagar, Kota.

....Applicant

Mr. Nand Kishore, Counsel for the applicant.

Versus

1. Union of India, through General Manager, West Central Railway, Jabalpur.
2. Divisional Railway Manager, West Central Railway, Kota.
3. Senior Divisional Signal & Telecommunication Engineer (Co.), West Central Railway, DRM Office, Kota.
4. Division Signal & Telecommunication Engineer (Sig. Branch Line), West Central Railway, DRM Office, Kota.
5. Assistant Signal Telecommunication Engineer (Tele), West Central Railway, DRM Office, Kota.

.....Respondents

Mr. Anupam Agarwal counsel for the respondents.

ORDER (ORAL)

Per : Hon'ble Mr. R. Ramanujam, Administrative Member.

This case has been filed by the applicant against the rejection of his revision petition vide impugned order dated 27/01/2012 (Annexure A/1). The revision petition was filed by him against the rejection of his appeal by the appellate authority against the minor penalty awarded to him vide order dated 15/10/2010. The appellate authority had rejected the appeal on 25/02/2011. The applicant alleges that while disposing of the revision petition, respondents did not follow the ratio of judgement of the Hon'ble Supreme Court reported in the case of Man Singh V/s State of Hariyana & Ors 2008 (3) SCT 364 in terms of the provisions of article 14 & 16 of the constitution of India. He pointed out that in a similar case involving Shri R.N. Pathak, only a warning had been issued whereas in his case one increment had been withheld. This amounted to hostile discrimination against the applicant by the respondents.

2. The respondents have stated that the competent authority had, after considering the reply by the applicant, held him guilty of misconduct. The appellate authority had considered and decided the appeal by a speaking order

maintaining the penalty awarded. The applicant's claim of parity with Shri R.N. Pathak is misconceived as the two occupied different levels in the hierarchy. In the case of Shri R.N. Pathak, the then APO, the disciplinary authority was General Manager while in case of applicant, it was the Assistant Officer. Both of them acted as per their own judgement. The gravity of lapse alleged against the applicant was more as compared to that against Shri R.N. Pathak. It is the applicant who was mainly responsible for the alleged misconduct while Shri Pathak was only acting in a supervisory capacity. As per duty list of gazetted officers of personnel branch of CLA, it was applicant who was to propose the name of the counsel from the panel of advocates approved by the authorities while the APO was required to grant approval to the proposal. When the initiation itself was not just and legal, the approving authority cannot be said to be wholly responsible. Hence, there is no hostile discrimination in awarding them different penalties.

3. We have heard at length the learned counsels for the applicant and the respondents and also perused the records. The applicant is challenging the order at Annexure A/1 mainly on the ground that there is hostile discrimination against him vis-à-vis Shri Pathak who

according to him was similarly placed. The learned counsel for the applicant drew our attention to Judgement of the Hon'ble Supreme Court in Civil Appeal No. 3186 of 2008 [arising out of SLP (C) No. 19917 of 2006] d/d. 1.5.2008 Man Singh Versus State of Haryana & Ors. Photo copy of the judgement has been annexed as Annexure-A/8. After carefully going through the judgement, we find that it has little applicability in the instant case. The Hon'ble Supreme Court in the said case had allowed the plea of the appellant therein, one Man Singh who was working as a Sub Inspector. The allegation against him was one of lack of supervisory control over Head Constable Shri Vijay Pal. The said Man Singh had been awarded a punishment for failing to exercise proper control over Head Constable Vijay Pal who had been accused of carrying liquor bottles in the staff car and booked by the Excise staff of the Government of Andhra Pradesh. In the departmental proceedings both Man Singh and Vijay Pal were held guilty of misconduct, indiscipline and dereliction of duties. Subsequently on acquittal of Vijay Pal in the criminal case, the punishment awarded in the departmental proceedings was also set aside by the appellate authority concerned. However, the appeal against the stoppage of increment filed by Man Singh had been rejected. As no punishment was awarded

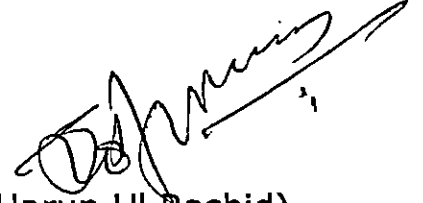
to the subordinate officer on the basis that there was no misconduct, the charge of a lapse in supervisory control could not survive. It was in this context that the Hon'ble Supreme Court had observed that the appellant could not be subjected to hostile discrimination. However, in the instant case the facts can be clearly distinguished. It is the contention of the respondents that the main responsibility to correctly initiate the proposal was on the applicant. During the arguments, it was stated that the applicant did not submit the relevant information with regard to the proposal that the name of the advocate being proposed did not figure in the approved panel. Concealment of relevant information from the superior while seeking orders and failure by a superior authority to ask a relevant question in a supervisory capacity could not stand on the same footing. As the charges are different in their gravity and the levels as well as the nature of responsibility are also different, there is no hostile discrimination in awarding different penalties.

4. In the light of the aforesaid observations, we are of the view that the punishment awarded to the appellant is fair and just in the facts and circumstances of the case. There is no hostile discrimination against the applicant by the respondents. The applicant's attempt to draw a

parallel with the case of Man Singh cited at para 3 above is totally misconceived. The application therefore fails and is accordingly dismissed. No order as to costs.



(R. Ramanujam)
Member (A)



(Justice Harun Ul Rashid)
Member (J)

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