

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 594/2013

ORDER RESERVED ON 08.08.2016

DATE OF ORDER: 31.08.2016

CORAM

HON'BLE MS. MEENAKSHI HOOJA, ADMINISTRATIVE MEMBER

S.K. Nagarwal, aged 42 years, R/o Sh. R.D. Nagarwal, R/o B-90, Siddharth Nagar, Jaipur – 302017, presently working as Dy. CE/Construction/Design/Jaipur, HQ Office, North Western Railway.

....Applicant

Mr. S. Shrivastava, counsel for applicant.

VERSUS

1. Union of India through Secretary, Railway Board, Rail Bhawan, Raisina Road, New Delhi – 110001.
2. General Manager, North Western Railway, HQ Office, Near Jawahar Circle, Jaipur – 302017.
3. Sh. Anil Kumar, the then Dy. CVO/E/NWR, at present, Chief Planning & Design Engineer/N.F. Railway C/o General Manager, N.F. Railway, Maligaon, Guwahati.

....Respondents

Mr. Anupam Agarwal, counsel for respondents.

ORDER

This Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, aggrieved with the decision of rejection of his appeal vide order dated 09.08.2012 (communicated vide letter dated 22.08.2012) (Annexure P/1), imposition of penalty vide order dated 07.06.2010 (Annexure P/2) and charge memorandum dated 10.08.2009 (Annexure P/3) thereby seeking the following reliefs:



"(1) Set aside the impugned order dated 09.08.2012 (Annexure P/1), impugned order of penalty dated 07.06.2010 (Annexure P/2), and impugned charge memorandum dated 10.08.2009 (Annexure P/3).

(2) Any other relief as deemed fit by this Hon'ble Court under the facts and circumstances of the case.

(3) Award costs in favour of the Applicant."

2. When the matter came up for consideration and hearing, learned counsel for the applicant Shri S. Shrivastava, submitted that in the present Original Application the orders issued in the disciplinary proceedings have been challenged. The respondent No. 3, Shri Anil Kumar has been made a party by name because of his malice towards the applicant but he has not filed any reply and, therefore, a logical inference can be drawn that the action taken by him was on mala fide basis as specific mala fides have been alleged against him in the Original Application.

3. As a background to this case, counsel for applicant submitted that the entire disciplinary proceedings were initiated against the applicant on the basis of bias and mala fides of respondent no. 3 (as referred in para 4.4 to 4.11 of the OA) who had a grudge against the applicant with regard to some earlier work and payments to a Contractor and when respondent no. 3 became Dy. Chief Vigilance Officer, he got such disciplinary proceedings recommended and initiated against the applicant. In this regard, he referred to para 4.12 of the O.A. and his initial complaint dated 22.09.2008 (Annexure P/9) against the bias of the respondent no. 3 and to shift the investigation of the matter to some other authority. However, no action was taken on his complaint and Annexure P/3 charge memorandum dated

QW

10.08.2009 was issued. Counsel for applicant further submitted that the charge sheet is related to a bridge regarding which, when the applicant discovered that the foundation is shallow, he recommended for stone flooring but later on stopped the same because of certain objections. Counsel for applicant then submitted that the applicant filed the reply to the charge-sheet carefully denying all the charges and though both the charges were not found proved, the disciplinary authority noted a procedural lapse as at para (viii) regarding the first charge and awarded a penalty of Censure vide order dated 07.06.2010 (Annexure P/2). Counsel for applicant vehemently contended that the disciplinary authority travelled beyond the charges because as very evident from a perusal of the charge sheet that there was no reference to this procedural lapse and therefore he was punished on a ground which was not alleged in the charge memorandum. Thereafter, keeping in view the provisions of Section 20 of the Administrative Tribunals Act, 1985, the applicant chose to file an OA before this Bench of the Tribunal, which was registered as OA No. 207/2011 and was decided vide order dated 26th May, 2011, with the following directions: -

"The present OA has been filed by the applicant against the impugned charge memorandum dated 10.8.2009 & to set aside the penalty order passed by the disciplinary authority on 7.6.2010 (Annexure P/1).

2. The applicant has failed to appeal against the aforesaid order and without availing the alternative remedy and directly preferred the present OA. Learned counsel for the applicant submits that he wants to avail the remedy of appeal alongwith the application seeking condition of delay. In that eventuality the applicant makes appeal before the appellate authority alongwith the application for condonation of delay within a period of two weeks from the date of passing of this order. It is for the appellate authority to consider the said appeal as well as the application for condonation of delay sympathetically.

With these observations, the OA stands disposed of."

4. Thereafter, the applicant filed an appeal along with an application for condonation of delay, as may be seen from Annexure P/15 dated 07.06.2011 (page 79 onwards) giving detailed reasons but the appellate authority vide Annexure P/1 dated 09.08.2012 did not consider the reasons and simply passed a bald order and concluded that the condonation of delay in preferring the appeal is not warranted. Counsel for the applicant contended that in the first place the charge-sheet was issued out of bias and mala fide of respondent no. 3, further that in the penalty order of the disciplinary authority, extraneous factors were considered which were not there in the charge-sheet and by travelling beyond the charge-sheet and referring to certain procedural lapse, penalty of Censure was imposed. He further submitted that the appeal has been rejected on limitation without giving any reasons and therefore, is not a reasoned and speaking order and accordingly all the three aforesaid orders at Annexures P/1, P/2 and P/3 are required to be set aside and O.A. be allowed.

5. Per contra, learned counsel for the respondents Shri Anupam Agarwal contended that a mere look at the application for condonation of delay submitted by the applicant before the appellate authority makes it abundantly clear that the applicant did not give any cogent reasons for the delay in appeal rather as may be seen in paras 1 & 4 of the appeal for condonation of delay it has been inter alia stated that "Member Engineering who exercise power of President for disposal of appeal, as a matter of practice, do not read beyond the self contained note/remarks prepared by vigilance officers therefore he cannot do justice



because Railway Board vigilance officers would manipulate the facts in their self contained note to anyhow justify the charge sheet earlier managed by them". The applicant has also made allegations against the Railway Boards' Vigilance Officers and he has even gone to the extent of saying that "it will be miracle if the M.E. reads beyond the fraudulent remarks prepared by the vigilance officers, applies mind on the facts and contentions raised in my reply and passes a speaking order covering all aspects raised in the appeal and accompanying application for condonation of delay leading to exoneration of the CO". Thus, one of the main reasons of the applicant for not filing the appeal or application for condoning delay in the appeal is regarding his lack of faith in Vigilance set up, which cannot be said to be a justifiable reason and the applicant did not give any sound reasons for not filing the appeal on time and appeal is a statutory remedy. Counsel for the respondents also contended that in order Annexure P/1 dated 09.08.2012 of the appellate authority, all the facts and circumstances have been taken into account and condonation of delay has not been found warranted. Therefore, there is no shortcoming or infirmity in the appellate order and contended that the question of setting it aside does not arise.

6. Coming to the merits of the case, counsel for the respondents submitted that though the applicant has alleged bias and mala fides against the respondent no. 3 but he has not shown any documentary or concrete basis by which it can be established that respondent no. 3 was biased, as bias and mala fide has to be established and not simply alleged. The charge sheet was



issued on the basis of details regarding the work done by the applicant and all details are given in the charge memo. Referring to the order of the disciplinary authority, counsel for the respondents submitted that in charge no. 2, the applicant has been fully exonerated and with regard to charge no. 1, it has been observed in para (viii) that "CC flooring in the river bed was included in the scope of work through supplementary work order dated 13.11.2006 as proposed by Shri S.K. Nagarwal and approved by CE/C/III/JP. However, non execution / deferring of flooring work was decided by Shri S.K. Nagarwal himself without approval of CE/C/III/JP", and therefore, for this procedural lapse, the disciplinary authority has taken a very lenient view and only imposed penalty of Censure, and therefore the order of Disciplinary Authority as at Annexure P/2 dated 07.06.2010 suffers from no infirmities and, there is no justification for it being set aside and on all these grounds prayed for the dismissal of the Original Application.

7. In rebuttal, counsel for applicant contended that in Annexure P/1 order dated 09.08.2012, no reasons for not accepting application for condonation of delay have been given and contended that it is a bald order and the appellate authority has not disclosed the grounds on which his prayer for condonation of delay has been rejected. He reiterated that the disciplinary authority has travelled beyond the charge sheet while imposing the penalty, a point which he also mentioned and highlighted in the appeal which the applicant filed in pursuance of the directions of the Tribunal in OA No. 207/2011. On these grounds, counsel for applicant prayed for the O.A. to be allowed.



8. Considered the aforesaid contentions and perused the record. It is noted that in the disciplinary proceedings against the applicant after the order of the disciplinary authority dated 07.06.2010 (Annexure P/2) was passed, the applicant instead of filing an appeal against the said order, chose to file an OA before this Bench of the Tribunal, which was registered as OA No. 207/2011 and decided on 26th May, 2011, in which counsel for the applicant himself submitted that he wants to avail the remedy of appeal alongwith the application seeking condonation of delay. It was also observed by the Tribunal in order dated 26th May, 2011 that the applicant has failed to appeal against the aforesaid order and without availing the alternative remedy and directly preferred that OA. Therefore, the arguments of the counsel for the applicant that, as per Section 20 of the Administrative Tribunals Act, 1985, applicant can even come to the Tribunal directly without filing the appeal has already been decided upon by the Tribunal in OA No. 207/2011.

9. It is also noted that though the applicant has contended that while passing the order of penalty dated 07.06.2010 (Annexure P/2), the disciplinary authority travelled beyond the charge-sheet and passed the order regarding procedural lapse, which was not a charge mentioned in the charge-sheet itself but this point has also been included in the appeal filed by the applicant subsequently before the appellate authority as seen from his appeal dated 07.06.2011 (Annexure P/15). The applicant has also referred to the bias of the Vigilance Officers in general as well as respondent no. 3 in particular. The appellate authority



however in order dated 09.08.2012 (Annexure P/1) has rejected the appeal by rejecting the application for condonation of delay. The operative part of the order dated 09.08.2012 passed by the Appellate Authority is as under: -

"Now, therefore, Hon'ble MR, on behalf of the President of India, the Appellate Authority, after careful consideration of Sh. S.K. Nagarwal's request and the facts and circumstances, is not satisfied that the appellant had sufficient cause for not preferring the appeal in time and that while the penalty of "Censure" was imposed on the CO on 07.06.2010, he was required to file an appeal, if any, within 45 days of receipt of the penalty order, i.e., by 2nd of August, 2010 and that he had filed the OA in 2011, by which time, the period by which he was required to prefer the appeal had elapsed and has accordingly come to the conclusion that condonation of delay in preferring the appeal is not warranted."

10. In the above order, it is noted that though the application for condonation of delay has been rejected (and thereby the appeal rejected on the ground of limitation) but as brought out by the counsel for the applicant that the reasons have not been given in a detailed and speaking manner. At the same time the counsel for respondents has referred to application for condonation of delay dated 07.06.2011 as at Annexure P/15 and specifically pointed out various paras which are not cogent reasons for delay. However, the position remains that though appeal for condonation of delay has been rejected vide order dated 09.08.2012 (Annexure P/1), but the detailed reasons / grounds have not been spelt out for rejecting the various issues / points raised in his appeal by the applicant.

11. In view of the above analysis, it is deemed appropriate to dispose of this O.A. with the certain directions. Accordingly, the Original Application is disposed of with the direction to the Appellate Authority to reconsider the Appeal including

Application for condonation of delay, which is at Annexure P/15 dated 07.06.2011 and pass a fresh detailed, reasoned and speaking order on the same (in place of Annexure P/1), at the earliest and preferably within a period of four months from the date of receipt of a copy of this order. In view of the above directions, there appears no requirement to pass any orders on the charge memo (Annexure P/3) or the order of disciplinary authority (Annexure P/2) as of now.

The Original Application is disposed of as above, with no order as to costs.


(MS. MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER

kumawat