

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

OA No. 060/00588/2014

Date of decision: 27.07.2015.

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)**

Parvesh Kumar Bhandari, Ex. Deputy Chief Inspector of Ticket, Northern Railway Station, Pathankot (Punjab), Resident of Indira Colony, Gali No.2, Pathankot (Punjab).

.....Applicant

(By Advocate Shri N.P. Mital)

Versus

1. Union of India through General Manager (P), Northern Railway, Baroda House, Headquarters Office, New Delhi.
2. Chief Commercial Manager, Northern Railway, Baroda House, Headquarters Office, New Delhi-110001.
3. Divisional Railway Manager, Northern Railway, Ferozepur Division, Ferozepur Cantt.
4. Additional Divisional Railway Manager, Northern Railway, Ferozepur Division, Ferozepur Cantt.
5. Senior Divisional Commercial Manager, Northern Railway, Ferozepur Division, Ferozepur Cantt.

.....Respondents

(By Advocate Shri Lakhinder Bir Singh)

ORDER

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-

Applicant assails order dated 29.05.2014 (Annexure A-1) passed by the disciplinary authority, maintaining the penalty of dismissal imposed upon him vide earlier order dated 22.06.2011 (Annexure A-3) and order in revision dated 17.01.2013 (Annexure A-5).

2. This is the second round of litigation. Earlier the applicant approached this Tribunal impugning the order of dismissal passed by the disciplinary authority dated 22.06.2011, order of the appellate authority dated 18.08.2011 and order in revision dated 17.01.2013 by filing OA no.1069/PB/2012 where the matter was remitted back to the disciplinary authority to pass fresh order only on quantum of punishment. It is in furtherance of that the respondents have now passed the impugned order dated 29.05.2014, maintaining the earlier punishment of dismissal.

3. Shorn of unnecessary facts, which are not relevant, few facts which will help to understand and decide the issue are that the applicant was charge-sheeted on 20.06.2008 for a major penalty with the allegations that he misused passes inasmuch as he succeeded in booking berth in favour of his son aged 23 years namely U. Kumar for journey to be performed on 23.03.2008 to 25.03.2008 and 13.03.2008 and 14.03.2008.

4. An enquiry came to be conducted against the applicant in which he did not participate and on conclusion of the ex-parte enquiry he was

awarded a punishment of dismissal from service on the premise that the corruption and fraudulent practices by senior ticket checking staff involved in public interface is serious issue and staff have been involved in series of other frauds, therefore, it is believed that his amenability to the discipline, honest working is remote possibility.

5. In appeal the appellate authority dismissed the same vide order dated 18.08.2011 and revision thereto was also dismissed vide order dated 17.01.2013, maintaining the punishment, as awarded by the disciplinary authority. All these three orders were subject matter of challenge before this Tribunal in OA-1069/PB/2012 filed by the applicant and after passing a detailed order the findings were not disturbed by this Tribunal by considering 34 years of past service and only on quantum of punishment the matter was remitted back to the respondents. The respondents have passed the impugned order, which is subject matter before this Court now.

6. Upon notice, the respondents resisted the claim of the applicant by filing written statement wherein they have taken a preliminary objection with regard to maintainability of the Original Application in its original form on the ground that the applicant has not availed of alternative remedies available to him of appeal and revision, as provided under the Railway Servants (Discipline & Appeal) Rules, 1968 (for short, 1968 Rules). On merit it is submitted that after remand the disciplinary

authority re-examined his case and after considering his past record decided to maintain the same punishment of dismissal.

7. We have heard Shri N.P. Mittal, learned counsel for the applicant and Shri Lakhinder Bir Singh, learned counsel for the respondents.

8. Shri Mittal vehemently argued that there is no need to file the appeal against the impugned order dated 29.05.2014 because in the earlier round of litigation the applicant had already availed of those remedies of appeal and revision. Therefore, it will be a futile exercise for him to avail the statutory remedy. He submitted that once this Court had remitted the matter back to the disciplinary authority to look into the matter afresh, after considering his 34 years of service and to pass a lesser punishment, then by not obeying the order of this Court the respondents have committed a contempt of this Court and they have not given any reasons for not substituting the lesser punishment than that of dismissal.

9. Per contra Shri Lakhinder Bir Singh strongly opposed the Original Application by submitting that the applicant cannot be allowed to raise arguments on merit of the case because once this Court had already affirmed the order of the disciplinary authority, affirmed by the appellate authority by not finding any irregularity in the procedure and had only remanded the matter on the limited ground of quantum of punishment,

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then the applicant cannot be allowed to reopen the entire case, as it amounts to res judicata.

10. On the ground of non-exhausting of alternate remedies he submitted that in view of the order passed by the Principal Bench in the case of **G.D. Sharma v. Union of India & Anr.**, OA No.87/2010, decided on 28th March, 2011, those remedies cannot be allowed to be bypassed.

11. We have given our thoughtful consideration to the entire matter and perused the pleadings available on record with the able assistance of the learned counsel appearing for the parties.

12. We are in agreement with the submission made on behalf of the respondents that the applicant cannot re-agitate the matter on merit, as the same had already been settled by this Court in the earlier round of litigation vide order dated 26.03.2014 passed in OA-1069/PB/2012.

Perusal of para-9 thereof makes it very clear that while upholding the legality of the conduct of the disciplinary proceedings against the applicant on the aspect discussed above, only on the ground of quantum of punishment the matter was remitted back to the disciplinary authority to give fresh look to the matter after considering his service record of last 34 years and to pass order.. Once this Court did not find any cause to interfere with the enquiry proceedings, then the applicant cannot be allowed to reopen the entire issue, which had already been settled qua

the procedure adopted by the enquiry officer while conducting enquiry. What is to be examined in the present case is the intention of the respondents in considering the case of the applicant on remand only quantum of punishment. Since the disciplinary authority has passed a fresh order, which is subject matter before this Court, therefore the applicant has alternative efficacious remedies of appeal and revision thereto under the 1968 Rules, which he, admittedly has not availed. Therefore, for want alternative remedies we are not inclined to interfere with the impugned orders at this stage. Moreover, the Principal Bench of this Tribunal in the case of **G.D. Sharma** (supra) have considered a similar argument of non-availing of alternative remedy and after deep deliberations on the issue have come to the conclusion that the employee cannot be allowed to bypass the appellate as well as revisional authorities by filing a direct petition before the court of law. The relevant para reads as under:

"29. On examination of the matter in the light of various pronouncements made on the subject including Full Bench judgment in Bhagwan Din (supra) we are of the considered view that the remedies provided under the provisions of Rules 24 and 25 ibid have wider import not we would be doing violence to the mandate and language of the statute if its scope is whittled down in taking a view that the remedy of 'revision' as optional and not mandatory as projected. It is implicit that for Group 'C' and 'D' Railway servants, against whom major penalties enumerated therein is imposed, they are entitled to seek remedy under the rules from the authorities enumerated therein. Moreover, as the language of Rule 24 ibid itself reveals that said provision has been inserted as a special provision for non-gazetted staff, the remedy provided therein is not only statutory but equally efficacious and effective in nature. This is a special concession given to non-gazetted staff and to take any other view would be a retrograde

19

step, totally unjustified and unwarranted in law. Similarly it would tantamount to doing violence to the clear provision and import of the special provisions of the rules. At the same time the object of Rule 25 is pari-materia to that of Rule 24. It is a common practice noticed in the appellate order passed by the Railway Authorities that it usually contain a recital that said order could be taken in revision before the prescribed authority within the time limit stipulated therein which is also noticed in appellate order passed in present case.

30. We further hold that the remedy of revision as prescribed under rules 24 and 25 of RS (D&A) Rules, 1968 for Group 'C' and 'D' is a mandatory requirement and not an optional remedy and non-exhausting of said remedy would sand in the way in approaching this Tribunal."

13. In view of the above, without going into the merits of the present case OA is dismissed for want of alternative remedies available to applicant.

14. No order as to costs.


(SANJEEV KAUSHIK)
MEMBER (J)


(UDAY KUMAR VARMA)
MEMBER(A)

Place: Chandigarh

Dated: 27.7.2015

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