

Reserved
(On 05.09.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 04th day of October 2018

Original Application No. 330/00089 of 2012

Hon'ble Mr. Gokul Chandra Pati, Member – A
Hon'ble Mr. Rakesh Sagar Jain, Member – J

Budh Prakash Gautam, S/o Late Babu Lal Gautam, R/o House No. 6,
Near Khad Godam, Jalesar Road, Nai Ki Sarai, District: Allahabad.

... Applicant
By Adv: Shri Rakesh Verma

V E R S U S

1. Union of India through the General Manager, North Central Railway, Subedarganj, Allahabad.
2. Additional Divisional Railway Manager, North Central Railway, Agra.
3. Senior Divisional Electrical Engineer (General), North Central Railway, Agra.
4. Assistant Divisional Electrical Engineer (General), North Central Railway, Agra Division, Agra.

... Respondents
By Adv: Shri Kamlesh Sharma

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member – A

The applicant has filed this OA seeking the following reliefs:-

- "i. to issue a writ, order or direction in the nature of Certiorari quashing the impugned punishment order dated 28.06.2011, passed by the Respondent No. 4, imposing punishment of stoppage of increment @ 3% per annum due on 01.07.2011 for a period of period of three years with cumulative effect in the Pay Band of Rs. 5200 – 20200 with Grade Pay of Rs. 2,800/-, Appellate & Revisionary orders dated 28.09.211 and 14.11.2011(served upon the petitioner vide letter dated 17.11.2011), passed by the Respondent Nos. 3 & 3 respectively rejecting the appeal and revision petition of the petitioner and upholding the aforesaid punishment order (Annexures A-1, A-2 and A-3 respectively to Compilation No. 'I' of this petition).*
- "ii. to issue a writ, order or direction in the nature of Mandamus directing the Respondents Nos. 2, 3 & 4 to release the*

annual increment @ 3% of the Basic Pay and to calculate and fix the salary of the petitioner accordingly and to pay all consequential arrears thereof as if no such illegal punishment order would have ever been passé, within a period as may be fixed by this Hon'ble Tribunal.

- iii. to issue any other suitable writ, order or direction in the facts and circumstances of the case which this Hon'ble Tribunal may deem fit and proper.*
- iv. to award cost of petition in favour of the petitioner."*

2. The facts as per the OA, in brief, are that while working as Technician Grade-I the petitioner was issued a major penalty charge sheet vide Memorandum dated 18.08.2010 (Annexure A-4) for major punishment by respondent No. 4 with the allegation of having misbehaved and remaining absent from duty without sanction of leave. The applicant had applied for 05 days leave on average pay i.e. from 22.06.2010 to 30.06.2010 on 21.06.2010 (Annexure-A-5) for engagement of his daughter, which was rejected by the Senior Section Engineer (Power) without disclosing any reasons. The applicant obeyed the said order and postponed his leave for one week. It was further submitted that without disclosing any reason, the leave was rejected vide letter dated 21.06.2010.

3. It is stated in the OA that the applicant again applied for 05 days leave on 24.06.2010 w.e.f. 26.06.2010 to 30.06.2010. The leave application preferred on 24.06.2010 was not rejected till 25.06.2010 and accordingly the applicant proceeded on leave w.e.f. 26.06.2010 to 30.06.2010 and joined his duties on 01.07.2010. However, when the applicant received his pay slip for the month of June, 2010, he found that he was considered to be absent from duty from 26.06.2010 to 30.06.2010 by deducting the salary for five days on the ground of absence from duty. The applicant contacted the Senior Section

Engineer (Power) Agra Fort and requested to regularize the aforesaid period as on duty by granting leave as per rules. This was not done and chargesheet dated 18.08.2010 was issued. The applicant submitted a representation dated 20.10.2010 (Annexure A-6) against the charge sheet, explaining the circumstances and denying the charges levelled against him.

4. It is stated in the OA that the respondent No. 4 without appointing any Inquiry Officer (in short IO) conducted the disciplinary proceedings under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 (in short DAR) and then passed the impugned order of punishment dated 28.06.2011 (Annexure A-1) by imposing the punishment of stoppage of increment @ 3% for a period of three years w.e.f. 01.07.2010 with cumulative effect. The applicant filed an appeal dated 01.08.2011 (Annexure-A-7) which was rejected by respondent No. 3 vide impugned appellate order dated 28.09.2011 (Annexure A-2). Thereafter, the applicant filed revision petition before respondent No. 2 on 29.10.2011, which was also rejected vide order dated 14.11.2011 (Annexure A-3), confirming the appellate as well as punishment order.

5. It is further stated in the OA that the disciplinary authority did not intimate the applicant about the proceedings and the IO submitted his report ex-parte, holding the charge as proved. The factum of inquiry report came into the knowledge of the applicant for the first time when the revisionary authority commented thereupon and justified the punishment imposed by the disciplinary authority. The revisionary authority upheld the punishment order for a period of three years with

non cumulative effect. The defence of the applicant furnished by him in his representation dated 20.10.2010, appeal dated 01.08.2011 and revision petition dated 29.10.2011 were not taken into consideration by the authorities while passing the impugned orders.

6. The respondents have filed Counter Reply in which it is stated that the impugned order dated 28.06.2011 was passed by respondent No. 4 and the order dated 28.09.2011 passed by respondent No. 3 (Appellate Authority) and order dated 14.11.2011 passed by respondent No. 2 are as per rules and regulations applicable for Railway Administration. It was submitted that the work of the applicant is essential in nature, for which leave of the employee is sanctioned as per requirement of work. It is again submitted that Shri H.S. Sharma SSE/P/IDH was nominated as IO. The IO had granted full opportunity to the applicant to attend the inquiry on 22.12.2010. The inquiry was conducted by the IO as per rules and he submitted the inquiry report to the disciplinary authority, who imposed the penalty of stoppage of increment for a period of three years with cumulative effect. The authority concerned has considered all the facts raised by the applicant in his appeal dated 01.08.2011 and passed the order dated 28.09.2011. It is stated in para 21 of the counter reply that the revisionary authority has considered the revision petition of the applicant and reduced the penalty withholding of increment for a period of three years with non-cumulative effect vide order dated 14.11.2011.

7. The applicant has filed his rejoinder reply in which he has reiterated the same grounds as stated in the OA. He further submitted that the respondents be directed to produce the original file of the

disciplinary proceedings to establish the contentions of the applicant. The letter dated 15.12.2010 addressed to the Senior Section Engineer/P/AF issued by the IO fixing the date of inquiry on 27.12.2010 has not been served upon nor any information has been given to the applicant.

8. We have heard learned counsels for both the parties who reiterated the stand taken in their respective pleadings. It is noticed that in this case, there is confusion among the respondents about the punishment imposed on the applicant. The disciplinary authority has imposed the penalty of stoppage of three increments with cumulative effect, which has been upheld by the appellate authority vide order dated 28.9.2011 (Annexure A-2) and by the revisionary authority vide order dated 14.11.2011 (Annexure A-3). But the order dated 14.11.2011 of the revisionary authority mentioned the punishment to be stoppage of three increments (NC) which is interpreted by the respondents that the revisionary authority has reduced the penalty to stoppage of three increments non-cumulative (vide para 21 of the counter reply. But as stated by the applicant in para 17 of his Rejoinder, the Accounts section has implemented the penalty to be with cumulative effect. Further, the applicant had earlier submitted the leave application from 22.6.2010 to 30.6.2010 which was rejected by the authority vide order dated 21.6.2010. But when he applied again for leave from 26.6.2010 to 30.6.2010, no rejection order was issued to the applicant till 25.6.2010. Thereafter, the applicant proceeded with leave presuming that since the leave was not rejected, it was approved by the authority. No reason has been furnished by the respondents for not rejecting the leave application of the applicant by 25.6.2010.

9. The applicant in para 4.18 of the OA has averred that he was not informed by the disciplinary authority about appointment of the inquiry officer (IO) and he was informed about the inquiry only from the order dated 14.11.2011 of the revisionary authority. In reply to the averment in para 4.18, the respondents in their counter reply para 23 have mechanically denied the averments in para 4.18 of the OA. No document or evidence has been furnished to counter the averments in para 4.18 of the OA regarding non-communication about the inquiry to the applicant. Further, the inquiry in this case was mandatory since the punishment of withholding of three increments with cumulative effect has been imposed. The rule 11(2) of the DAR in this regard states as under:-

"11. Procedure for imposing minor penalties -

(1).....

(2) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case, it is proposed, after considering the representation, if any, made by the Railway servant under clause (a) of that sub-rule to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension or special contribution to Provident Fund payable to the Railway servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (6) to (25) of Rule 9, before making any order imposing on the Railway servant any such penalty."

10. The provisions of the rule 11(2) of the DAR as mentioned above, clearly make holding of inquiry under the rule 9(6) to 9(25) of the DAR

mandatory for imposing penalty for withholding increments for any period with cumulative effect. On the face of the contentions in para 4.18 of the OA which has force since it has not been effectively rebutted by the respondents, no document has been furnished by the respondents in their pleadings to show that the inquiry by the IO has been done in accordance with the rule 11(2) and the rule 9(6) to 9(25) of the DAR. It is also noticed that the disciplinary authority in his order of penalty dated 28.6.2011 (Annexure A-1) has not referred to the inquiry or the inquiry report.

11. The appellate authority in his order dated 28.9.2011 (Annexure A-2) has not at all considered whether the procedure as specified in the DAR has been followed in this case and he has passed one sentence order which is clearly non-speaking. The rule 22 of the DAR clearly specifies the manner in which the appeal is required to be considered. The said rule 22(2) of the DAR states as under:-

“(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:

.....”

Perusal of the order of the appellate authority at Annexure-A-2 of the OA shows that the provisions in the rules/DAR have not been followed by the appellate authority while passing the non-speaking order.

12. From above discussions it is clear that there has been serious violation of the Railway Servants (Discipline & Appeal) Rules, 1968 by the respondent authorities in this case. As per the settled law as laid down by Hon'ble Apex Court, this Tribunal has a limited power for judicial review of the disciplinary proceedings and the Tribunal can interfere in cases where there is violation of statutory rules. In the case of **B.C. Chaturvedi vs. Union of India & Ors. 1995 (6) SCC 749**, Hon'ble Supreme Court has held as under:-

“Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

13. Applying the ratio of the judgment of Hon'ble Apex Court in the case of B.C. Chaturvedi (supra) to the present case, it is seen that the

inquiry in this case has been conducted behind the back of the applicant. The inquiry report was not referred to by disciplinary authority while passing the impugned penalty order. Hence, there is violation of the principles of natural justice as well as violation of the statutory rules i.e. DAR, for which, the Tribunal can interfere and mould the relief in this case.

14. In the circumstances, taking into consideration the fact that the disciplinary proceeding in this case was initiated in 2010 and it is pending since then, quashing of the impugned orders, which are not in accordance with the rules as discussed above will result in further delay. Hence, we will mould the order dated 14.11.2011 (Annexure A-3) of the revisionary authority to imply that the punishment imposed on the applicant by the disciplinary authority shall be deemed to be modified to mean stoppage of three increments without cumulative effect, which is in accordance with the averments in para 21 of the counter reply filed by the respondents. The applicant will be entitled for all consequential benefits as per the rules, like restoration of the increments after the punishment period and arrear salary etc. Further, the respondent no. 1 shall examine if suitable disciplinary action will be taken under law against the officers found responsible for gross violation of the Railway Servants (Discipline & Appeal) Rules, 1968 in this case as discussed in para 8, 9, 10 and 11 of this order. This order shall be complied by the respondents within three months from the date of receipt of a copy of this order.

15. The OA is allowed accordingly. No costs.

(Rakesh Sagar Jain)
Member – J

/pc/

(Gokul Chandra Pati)
Member – A