

Reserved
(On 24.08.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the **04th** day of **September** 2018

Original Application No. 330/001162 of 2012

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

Banwari Lal, S/o Late Mangal, R/o Village – Rampur, Post – Hathras Junction, District – Hathras (Mahamaya Nagar).

By Adv: Shri Vinod Kumar . . . Applicant

V E R S U S

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager (Operating), North Eastern Railway, Izzatnagar, Bareilly.
3. Sri C.L. Shah, I.R.T.S. the then Sr. Divisional Operating Manager, N.E. Railway, Izzatnagar, Bareilly, presently posted as Sr. Divisional Commercial Manager, North Eastern Railway, Varanasi.
4. Shri S.S. Dwivedi, the then Divisional Operations Manager, North Eastern Railway, Izzatnagar, Bareilly, through Divisional Railway Manager, North Eastern Railway, Izzatnagar, Bareilly.

By Adv: Shri M.K. Yadav . . . Respondents

O R D E R

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

The applicant seeks the following relief in the OA:-

- a.** *To issue an order or direction in the suitable nature quashing Impugned memorandum dated:- 14.12.2009 and the Punishment order dated:- 17.06.2010 to Annexure A1 and A2 respectively to the present Original Application.*
- b.** *To issue an order or direction in the suitable nature commanding the respondents to produce order if any passed on Appeal filed by the applicant or any other consequential order passed by them against the applicant in present controversy, and Hon'ble Tribunal further be pleased to quash the same.*

- c. *To issue an order or direction in the suitable nature of mandamus commanding the respondents to pay the applicant his regular monthly salary along with arrears of salary treating the impugned memorandum, punishment order and all the departmental proceedings null and void ab initio with all consequential benefits along with market rate of compound interest.*
- d. *To issue an order or direction in the suitable nature of punishing suitably the private respondents and any other authority who has arbitrarily harassed the applicant without any rhyme or reason.*
- e. *To issue any order or direction, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*
- f. *To award the cost of the Application to the applicant."*

2. The facts of this OA in brief are that the applicant was initially appointed on the post of Porter at Sonai Railway Station, of North Eastern Railway on compassionate ground and he joined his services on 16.08.1989. The applicant was harassed by Shri Mahabir Singh, the then Chief Traffic Inspector in getting leave for which the applicant filed several representations before his superior authorities. The applicant also filed written complaint against Shri Mahabir Singh before the General Manager (Vigilance) North Eastern Railway, Gorakhpur enclosing number of documentary evidence related with financial embezzlement on the part of Shri Mahabir Singh, for which he was put under departmental proceedings under the Railway Servants (Discipline and Appeal) Rules, 1968 (in short DAR, 1968) and he was awarded three months stoppage of increment by Respondent No. 3. Thereafter, the applicant was transferred to Dudhiya Khrud Station which is about 300 Kms. Away from this place of posting.

3. The applicant filed OA No. 809 of 2009 before this Tribunal against his transfer order and this Tribunal passed the order dated 24.07.2009 which was as under:-

"Heard the counsel for both the parties. This is decided at this stage itself by issuing a direction to respondent no. 2 to consider the representation dated 22.06.09 (A3) and to pass appropriate speaking order on the same. Till then status quo as for as the applicant is concerned, be maintained."

4. The aforesaid representation of the applicant dated 22.06.2009 was rejected vide order dated 12.11.2009 passed by Sr. D.P.O., North Eastern Railway, Izzatnagar. Thereafter, the applicant filed another OA No. 1381 of 2009 against the order dated 12.11.2009 before this

Tribunal. The aforesaid OA No. 1381 of 2009 was dismissed by this Tribunal vide order dated 06.03.2012 (Annexure A-3). Thereafter, the applicant filed Writ Petition No. 16924 of 2012 before Hon'ble High Court. In the meantime the respondents issued a major penalty Charge-sheet dated 14.12.2009 (Annexure A-1) and then an order dated 17.06.2010 (Annexure A-2) removing the applicant from service, when the OA No. 1381/09 was pending. The order of major penalty memorandum dated 14.12.2009 and removal order dated 17.06.2010 disclose that only issue of both the order was non compliance of relieving order dated 14.11.2009, which was under challenge before this Tribunal and till date the dispute is pending due to pending Writ Petition before Hon'ble High Court. Immediately after coming to know about the impugned order, the applicant filed appeal dated 06.02.2012 against the removal order and after lapse of more than 6 months of filing of the appeal, the applicant has not received any order from appellate authority. The applicant has personally approached Sr. Divisional Operating Manager, Izzatnagar (in short DOM) and requested him for disposal of the appeal. It was stated that DOM refused to do so informing that he was advised by his predecessor not to dispose the appeal. It is further stated that the respondents also ignored the order dated 02.12.2011 passed by this Tribunal to produce the copy of the letter by which option from the surplus employee was taken before passing the transfer order and that the impugned orders are against Article 14, 16 and 21 of the Constitution of India and as such, these deserve to be quashed by this Tribunal.

5. The respondents No. 1 and 2 have filed counter reply on 13.02.2013 (in short CA) in which, it was submitted that the applicant was transferred from Mursan to Dhuhiya Khurd vide order dated 17.06.2009 (Annexure CA-1). Due to change of operation, at Mursan Station situated at Kashganj – Mathura Section the cabin operation came to an end and the train operation was started according to panel system and as a result, there was no work as cabin man and accordingly the absorption of the surplus employees was made on the recommendation of standing committee with approval of the then Divisional Railway Manager (in short DRM). In administrative exigency, 09 employees

including the applicant were transferred in the interest of the administration with a view to absorb the surplus employees at the place where their services were needed. In complaisance of the order of this Tribunal dated 24.07.2009 passed in OA No. 809/09, the DRM (Personnel) Izzatnagar passed a speaking order dated 12.11.2009 (Annexure CA-3), by which the transfer order of the applicant was not found to be fit for cancellation, since like the applicant, 08 other employees were also transferred on administrative ground. Vide order dated 14.11.2009, the applicant was relieved to join at the transferred place i.e. Dudhiya Khurd station. However, the applicant did not comply with the aforesaid order and did not report at Dudhiya Khurd station till 14.12.2009. Then major penalty charge-sheet after inquiry, was issued to the applicant on 14.12.2009. The inquiry report was submitted by the Inquiry Officer in which the applicant was found guilty of the charges levelled against him and the Disciplinary Authority vide order dated 17.06.2010 (Annexure CA-5) imposed the penalty of removal from services upon the applicant and copy of the said order dated 17.06.2010 was sent to the applicant through the registered post at the address of the applicant and the same was returned undelivered by the postal department. Thereafter, it was pasted at the notice board of Mursan station as well as Dudhiya Khurd station, where the applicant was transferred, in presence of two witnesses. The applicant against the transfer order dated 17.06.2009 and the relieving order dated 14.11.2009 as well as the speaking order dated 12.11.2009 filed another OA No. 1381/09, which was dismissed by this Tribunal vide order dated 06.03.2012. The applicant has challenged the order dated 06.03.2012 passed by this Tribunal in OA No. 1381/09 has filed Writ Petition No. 16924 of 2012 before Hon'ble High Court, which is pending.

6. The applicant has filed rejoinder affidavit in which he reiterated the averments as in the OA. It was further submitted that similarly situated employees were transferred on their own request and they were transferred to convenient stations at short distance. Only the applicant was discriminated due to personal animosity. He further submitted that the transfer of the applicant was not in the interest of railways as only the applicant was selected for transfer to a distant station, although there

was scope to accommodate him at a nearer place. The representation of the applicant was not decided by the DRM as it was passed and signed by Shri Gun Sagar Singh who was never posted as DRM. He further submitted that the removal order dated 17.06.2010 was never served upon the applicant. After directions of this Tribunal the respondents did not consider the request of the applicant. However, the applicant has managed his transfer by approaching the authorities.

7. The respondents have filed a supplementary counter reply dated 16.01.2012 reiterating the stand taken in the counter reply. It was also submitted that there is no procedure for asking the willingness from the concerned surplus employees for their absorption. However 08 employees excluding the applicant have moved their applications showing their willingness, the respondents absorbed them considering their willingness. The applicant made his application on 11.07.2009 i.e. much after passing of the posting order dated 17.06.2009. Since, all the 08 candidates excluding the applicant joined at their posting places, the applicant was given major charge sheet on 14.12.2009 and on the basis of inquiry report, the applicant was given punishment of removal from service.

8. The respondents have filed a supplementary counter reply on 12.07.2013, in which it is submitted that pursuant to the transfer order dated 12.11.2009, the representation of the applicant was disposed of in compliance of the order dated 24.07.2009 of this Tribunal, the applicant was relieved but he did not join at transferred place till 14.12.2009 and was under unauthorized absence which caused great difficulties in operation of trains. For such, the applicant was issued a major penalty charge sheet on 14.12.2009 in inquiry, the applicant was found guilty of charges levelled against him. Then the Disciplinary Authority passed the order dated 17.06.2010 removing the applicant from service for the charges proved against him.

9. The applicant has filed supplementary counter reply on 31.07.2013, in which he reiterated the same stands as taken in the OA and the rejoinder reply.

10. Main grounds on which the OA has been filed by the applicant are as under:-

- The charge-sheet dated 14.12.2009 is malafide.
- After more than 6 months of filing the appeal, the respondents have not disposed of the same, which shows malafide intentions.
- The order dated 2.12.2011 of the Tribunal to produce copy of the letter by which option of surplus employee was taken, was ignored by the respondents.
- Copy of the inquiry report was not made available to the applicant. The assertion that the applicant refused to accept the same was incorrect. The punishment of removal from service was imposed without serving the chargesheet and the inquiry report on the applicant.
- The disciplinary proceedings were conducted behind the back of the applicant.
- There is no evidence on record against the applicant.
- The evidence of the defence witness was rejected arbitrarily by the respondents.
- The impugned order was passed hastily in violation of the Article 14, 16 and 21 of the Constitution of India.

11. The grounds taken in the appeal dated 6.2.2012 filed by the applicant (Annexure A-4) are as under:-

- The applicant was not served with the punishment order dated 17.6.2010. He received a copy of the order through his counsel in OA No. 1381/2009.
- The punishment was imposed for non-compliance of transfer order which was under challenge in OA No. 1381/2009 at the time when the order was passed.

- The disciplinary proceedings were arbitrary and illegal and not in accordance with the Railway Servants (Discipline and Appeal) Rules, 1968, the principles of natural justice and it violated the Article 14 and 311 of the Constitution of India.

12. The respondents in their counter reply (para 25) have replied to the averment in para 4.16 of the OA that the appellate authority has not yet considered his appeal, by contending that the appeal dated 6.2.2012 has not been made available to the respondents in time. It is also stated in para 25 of the counter reply that the applicant in his letter dated 27.6.2012 (Annexure CA-13 to the counter reply) has stated that he was prepared to join at the transferred place as his family situation has been sorted out. Alongwith the application dated 27.6.2012, the applicant had attached a copy of the appeal dated 6.2.2012, but it was not filed within the stipulated time, hence, it is not liable to be considered. In reply to the averment in para 4.11.of the OA that the applicant was not served with a copy of the chargesheet or the inquiry report, the para 22 of the counter reply read with the para 10, stated that transfer of the applicant was done in administrative requirement and there was no malafide. After being relieved on 14.11.2009, the applicant did not join in the transferred place and remained under unauthorized absence, for which the chargesheet dated 14.12.2009 was issued against him. The chargesheet dated 14.12.2009 was sent to the applicant by registered post, but it was returned, after which it was pasted at the notice board at his place of transfer and earlier place of posting in presence of two witnesses. The inquiry officer (in short IO) sent information to the applicant by registered post, but he refused to accept the letter and it was returned undelivered. Then the inquiry was conducted ex-parte and the IO submitted his report after which the punishment was imposed.

13. In reply to para 10 of the counter reply, the applicant has denied the averments in his Rejoinder (para 12). But with reference to the contention that the registered letters of the IO were not received by the applicant, nothing specific has been stated in para 12 of the Rejoinder. It is further contended that the impugned order was prepared back date and the same was produced before the Tribunal vide affidavit dated 16.1.2012.

14. We heard the counsels for the parties. The applicant's counsel, besides reiterating the averments in the pleadings, also raised the issue of the legality of issue of the impugned punishment order when the OA No. 1381/2009 was pending since the section 19(4) of the Administrative Tribunals Act, 1985 bars passing any order with regard to the grievance of the applicant.

15. Learned counsel for the respondents mainly reiterated the averments in the pleadings of the respondents.

16. From the above discussions, the following facts are clearly established:-

- Applicant was issued the chargesheet dated 14.12.2009 after he failed to report at the place to which was transferred. The same was not delivered by post, it was pasted in the notice board of the stations to which he was posted and where he was working prior to transfer.
- The appeal dated 6.2.2012 was received beyond the time stipulated under the rules, hence, it was not considered.
- The inquiry was conducted ex-parte after the letters issued by the IO to participate in the inquiry, were returned undelivered.
- There is no specific averment by the respondents and no evidence has been furnished to show that the inquiry report was sent and the applicant was given an opportunity to represent against the inquiry report before the disciplinary authority passed the punishment order as required under the rule 10 (2) of the DAR, 1968.

17. The service of the chargesheet by pasting the same on the notice board cannot be considered to be adequate, since the applicant was absent from the place of work as asserted by the respondents in the chargesheet. When the allegation against an employee is unauthorized absence, the service of the chargesheet or penalty order by pasting the

order on the notice board in the station is no service at all. If the registered posts were being returned undelivered, the respondents could have considered issue of a notice or publishing a notice to the applicant about the chargesheet or the inquiry in the local newspaper, which was not done. Hence, the chargesheet was not properly served on the applicant.

18. The appeal dated 6.2.2012 was not considered due to delayed receipt of the same as averred by the respondents. We are not able to accept the contention since there was no proper service of the chargesheet or the punishment order from which the limitation period can be counted.

19. It is the contention of the respondents that the inquiry was conducted ex-parte. For ex-parte inquiry, the guidelines in para 15(k) of the Master Circular No. 67 states as under:-

"k) If the charged official does not appear before the Inquiry Officer, the inquiry may be held ex-parte. However, a copy of the record of the day-to-day proceedings of the inquiry and notices for the hearings should be sent to the charged official regularly so that he is aware of what has transpired during the proceedings and this also enables him to join the proceedings at any stage, if he so desires. This procedure should be complied with invariably and Inquiry Officer should ensure that full opportunity is provided to the charged official to defend himself
(Board's letter No. E(D&A) 90 RG 6-34 dt. 18.4.90)."

Nowhere in the pleadings of the respondents it is claimed that the procedure as specified by the Railway Board has been adhered to while conducting the ex-parte inquiry against the applicant. A copy of the inquiry report was also not attached, which could have revealed the procedure adopted by the inquiry officer while conducting the ex-parte inquiry.

20. Apart from non-service of the chargesheet, another major lacuna in the departmental proceedings against the applicant is absence of any pleadings by the respondent about communication of the copy of the inquiry report to the applicant to ask for his representation for consideration of the disciplinary authority before taking decision about the penalty. No evidence or document has been furnished by the respondents to show that the statutory requirement under the rule 10(2) of the DAR, 1968 has been fulfilled.

21. In view of the discussions above, the disciplinary proceedings against the applicant as well as the inquiry were not in accordance with the provisions of the DAR, 1968 and hence, it cannot be sustained. In a catena of cases, Hon'ble Supreme Court has held that the power of the Tribunal to judicially review a departmental proceeding is limited and violation of the statutory rules in the proceedings is one of the valid ground for judicial review of the disciplinary proceedings. In this case, there are enough material on record to show that the disciplinary proceedings initiated against the applicant is not in accordance with the rules, for which the impugned order dated 17.6.2010 (Annexure A-2) cannot be sustained in law.

22. In view of above, we set aside and quash the impugned punishment order dated 17.6.2010 (Annexure A-2) and remit the matter to the disciplinary authority (respondent no. 2) to proceed de-novo under the Railway Servants (Discipline and Appeal) Rules, 1968 from the stage as specified under the sub-rule 7 of the rule 9 of the said Rules and complete the disciplinary proceedings expeditiously. Pending completion of the proceedings as above, the applicant shall be deemed to be under suspension as per the rule 5 (4) of the Railway Servants (Discipline and Appeal) Rules, 1968 with consequential benefits. The respondents will also have the liberty to reinstate the applicant in service pending completion of the disciplinary proceedings as per the rules.

23. The OA is allowed as above. No costs.

(Rakesh Sagar Jain)
Member – J

/pc/

(Gokul Chandra Pati)
Member – A