

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD**

Allahabad, this the **05th** day of **September**, 2018

Present :

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

Original Application No.815 of 2018

Shailendra Kumar Verma, aged about 53 years, S/o Late Shri Jamuna Dass, R/o M-A-121 "A" North Railway Colony, Agra Cantt. Agra.

.....Applicant.

By Advocate – Shri R.K. Dixit

V E R S U S

1. Union of India through General Manager, North Central Railway, Subedarganj, Allahabad.
2. Divisional Railway Manager, North Central Railway, Agra Division, Agra.
3. Additional Divisional Railway Manager, North Central Railway, Agra Division, Agra.
4. Senior Divisional Operating Manager, North Central Railway, Agra Division, Agra.
5. Senior Divisional Personal Officer, North Central Railway, Agra Division, Agra.
6. Chief Yard Mast, Agra Cantt., North Central Railway, Agra Division, Agra.
7. Assistant Divisional Operating Manager, North Central Railway, Agra.
8. Brijesh Kumar Mishra, Additional Divisional Railway Manager, Agra.
9. Hemansu Sekher Upandayay (Disciplinary Authority) working as Senior Divisional Operating Manager, North Central Railway, Agra Division, Agra.
10. Rajendra Singh (Complainant and Independent Witness) working as Chief Yard Mast, Agra Cantt., North Central Railway, Agra Division, Agra.

.....Respondents.

By Advocate : Shri S.M. Mishra

O R D E R

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

The OA has been filed with the prayer for following reliefs

:-

- "(i) The Hon'ble Tribunal may graciously be pleased to quash the impugned chargesheet dated 11.04.2017 (Annexure-A-1 of the O.A.) punishment order dated 29.06.2018 (Annexure-A-2 of the O.A.) and impugned appellate order dated 01.08.2018 (Annexure-3 of the O.A.) with all consequential benefits and direct the respondents to reinstate in service to the applicant with immediate effect after quashing of impugned orders.***
- (ii) The Hon'ble Tribunal may graciously be pleased to direct the respondents to treat the whole period from date of removal from service to reinstatement, as service for all purpose.***
- (iii) To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.***
- (iv) To award the cost of application in favour of applicant."***

2. Heard learned counsel for the applicant. He submitted that the applicant was chargesheeted vide order dated 11.04.2017 as Annexure-A-1 for the charge of unauthorized absence from 03.03.2017 to 30.03.2017 when he had remand on leave due to sickness and was under treatment under the Railway Doctors during the period. He had also sent information duly to the respondents and had obtained medical fitness from the Railway Doctor before reporting for duty after recovery on 01.04.2017. But ignoring all these documentary evidence, a chargesheet dated 11.04.2017 was issued, which

was defective and not as per the rules, as it did not mention the list of witnesses. It was further submitted that the inquiry was not conducted as per the rules and since no witness or documents are mentioned in the charge sheet, the charges were established without any evidence. The inquiry report dated 06.03.2018 was recovered by the applicant on 16.03.2018 and the said report was without any evidence. The punishment order dated 29.06.2018 (Annexure-A-2) for removal from service was imposed by the Disciplinary Authority illegally. Against the punishment order, the applicant filed an appeal dated 12.07.2018 (Annexure-A-24) mentioning all these deficiencies in the appeal. It was submitted that the Appellate Authority without following the rules, dismissed the appeal vide impugned order dated 01.08.2018 (Annexure-A-3).

3. Learned counsel for the respondents submitted that the OA is filed without filing the statutory remedy of revision as mentioned in the appeal order also. It is also submitted that he requires some time to file counter reply.

4. We have considered the submissions of learned counsels and the impugned orders and other documents altered to the OA. Regarding exhausting alternative remedy, it is seen that

appeal against the impugned order was filed. The impugned order dated 01.08.2018 in which Appellate Authority has dismissed the applicant's appeal shows that the order dated 01.08.2018 is not in accordance with the Rule 22 (2) of the Railway Servants (Discipline and Appeal) Rules, 1968 (referred hereinafter as DAR, 1968) which 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:***

Provided that -

- (i) the Commission shall be consulted in all cases where such consultation is necessary;***
- (iii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an inquiry under Rule 9 has not already been held in the case, the appellate authority shall, subject to the provisions of Rule 14, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry, make such orders as it may deem fit;***
- (iii) if the enhanced penalty which the appellate authority proposes to impose, is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an inquiry under Rule 9 has already been held in the case, the appellate authority shall, make such orders as it may deem fit;***
- (iv) subject to the provisions of Rule 14, the appellate authority shall –***
 - (a) where the enhanced penalty which the appellate authority proposes to impose, is the one specified in clause (iv) of Rule 6 and falls within the scope of the provisions contained in sub-rule (2) of Rule 11; and***

(b) where an inquiry in the manner laid down in Rule 9, has not already been held in the case,

itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry, pass such orders as it may deem fit; and

(v) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 11, of making a representation against such enhanced penalty.

5. It is seen from the above that the Appellate Authority has not examined the appeal with reference to the Rule 22 (2) as quoted above as the order dated 01.08.2018 is silent on these aspects mentioned in the rules. Most importantly, the applicant in his appeal dated 12.07.2018 (Annexure-A-24) has mentioned under Para-1 under grounds of appeal that the period from 03.03.2017 to 30.03.2017 has been sanctioned as leave by the Competent Authority and the period has been regularized. We are constrained to note that the appeal order dated 01.08.2018 is silent about this submission. The charge against the applicant is for unauthorized absence from 03.03.2017 to 30.03.2017 has been referred in the order dated 01.08.2018 of the Appellate Authority. If the contention of the applicant that for this period, he has been sanctioned leave by the Competent Authority as per the rules is correct, then the Appellate Authority should have discussed how the said period can be treated as unauthorized absence and whether it will attract a quantum of punishment as imposed on the applicant

as per the requirement of the Rule 22 (2) of the DAR, 1968. The order dated 01.08.2018 has discussed other issues instead of discussing the important issue which was placed before him by the applicant.

6. In view of above, we hold the impugned appeal order to be not in accordance with the DAR, 1968 and it cannot be said to be fair and unbiased. When prima facie, the order dated 01.08.2018 passed by the appellate authority is unsustainable, we ignore this fact that the applicant has filed the OA without approaching the revision authority and consider the OA to be maintainable under Section 20 of the Administrative Tribunals Act, 1985 and hence, the objection raised by learned counsel for the respondents in this regard is not acceptable.

7. In the circumstances as discussed above, we allow the OA partly at the admission stage, without waiting for the reply of the respondents and quash the order dated 01.08.2018 as it is prima facie illegal and unsustainable in law for the reasons discussed above. We remit the matter to the Appellate Authority to reconsider the appeal and pass a fresh order in accordance with the DAR, 1968 within three months to dispose of the appeal dated 12.07.2018 of the applicant taking

into account the observations in this order. The applicant is also given liberty to submit additional grounds of appeal enclosing copy of the leave sanction orders of the competent authority for the period from 03.03.2017 to 30.03.2017 with the appeal to the Appellate Authority within 15 days of receipt of a copy of this order. The said additional grounds of appeal shall also be considered by the Appellate Authority if filed within time as stated alone, while considering the appeal of the applicant.

8. It is made clear that we have not expressed our views on any of the points raised in the OA on merits, while passing this order.

9. The OA is disposed of as above at the admission stage.
No costs.

Member-J

Member-A

RKM/