

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

Order reserved on 03.01.2018

(Order pronounced on : 19.03.2018)

Hon'ble Mr. Justice Dinesh Gupta, Member (Judicial)

Original Application No.330/912/2011
(U/S 19, Administrative Tribunal Act, 1985)

Raghubir Sharan, aged about 52 years, Son of Late Rajole,
R/o 798-A, Isai Tola Khati Baba, Jhansi-284003.

..... **Applicant**

By Advocate: Shri A.K.Sinha

Versus

1. Union of India through General Manager, North Central Railway, Allahabad – 211001.
2. Additional Divisional Railway Manager, North Central Railway, Jhansi (Revising Authority) – 248001.
3. Senior Divisional Electrical Engineer (RS) North Central Railway, Jhansi (Appellate Authority) – 248001.
4. Divisional Electrical Engineer (RS) North Central Railway, Jhansi (Disciplinary Authority) - 248001.

..... **Respondents**

By Advocate: Shri K.P. Singh

ORDER

By Hon'ble Mr. Justice Dinesh Gupta, Member (J)

Present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- (i) *Quash the charge sheet dated 28.01.2010 (Annexure A-1), order of punishment dated 23.02.2010 passed by respondent No.4 (Annexure A-3), Appellate order dated 12.06.2010 passed by respondent No.3 (Annexure A-5) and the revising order dated 15.09.2010 passed by the respondent No.2 (Annexure A-7) as illegal, perverse and bad in law with all the consequential benefits*

through out with penal interest to the applicant.

- (ii) Pass such other or further order as this Hon'ble court may deem fit and proper in the circumstances of the case."

2. The brief facts emerging from the O.A. are that the applicant was initially engaged as Trainee Apprentice under Respondent Nos. 2-4.

2.1 He was appointed on 2.7.1981 as Turner/ Mechanist Gr. III in the pay scale of Rs. 260-400 (RS) at Jhansi. He was promoted as Master Craftsman in the year 2000.

2.2 A charge sheet dated 28.1.2010 (**Annexure No. A-1 to the O.A.**) was issued to the applicant and reply was called from the applicant. The charges levelled against the applicant are as under:-

^vkjki
vki fnukd 27-01-2017 dks yf/k; kuk ds ykdk I f; k 28149
ds ifg; s dh VfuZgkuh FkhA ; g ifg; k fnukd 27-01-2010 ds 14%
cts s 16%0 cts fcuk dkbZ iz kl djs VfuZ e"thu ij j [kk jgk
ml ds ckn v/kqLrk{kjdrkZ }kjk funZk fn; s tkus o Lo; DS iz kl
djus ds ckn ; g dk; Z "kq gks I dka ml ds fdz kko; u ds nkjku Hkh
vki foJke dh epk ea [kM+ jgs o dk; Z dks Rofjr ijk fd; s tkus ds
fy, vki us dkbZ iz kl ugha fd; kA pDds ea cjZ gkus dh otg I s, d
Vrk Hkh Vrk x; kj fdUrquk rks vki us VuZ dks ; g funZk fn; k f dog
cjZ dks xkUM dj ya ; g pDds dks /kkeh xfr I s pykdj ml s I kQ
djA

mijkDr ; g n"kkZk gSfd vki vius dk; Z ds ifr xj ftEnk
o yki jogk gA

vr% vki us jy I dk vkpj.k fu; ekoyh 1966 ds fu; e 3
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2.3 Applicant submitted his reply on 9.2.2010 (**Annexure No. A-2 to the O.A.**) and denied the charges levelled against him and requested for cancellation of charge sheet.

2.4 Respondent No. 4 without considering the reply carefully with prejudice passed punishment order dated 23.2.2010 (**Annexure No. A-3 to the O.A.**) of withholding of increments for three years without cumulative effect from 1.7.2010.

2.5 Applicant filed an appeal dated 9.4.2010 (**Annexure No. A-4 to the O.A.**) against the punishment order to the appellate authority (Respondent No.3) which was rejected vide order dated 12.6.2010 (**Annexure No. A-5 to the O.A.**) by which Appellate Authority reduced the punishment from three years to two years.

2.6 Applicant filed a revision petition dated 29.7.2010 (**Annexure No. A-6 to the O.A.**) before the Revising Authority (Respondent No.2) and the same was rejected by a non-speaking order dated 15.9.2010 (**Annexure No. A-7 to the O.A.**).

2.7 The applicant had already made a complaint on 18.1.2010 (**Annexure No. A-8 to the O.A.**). vide charge man diary regarding trouble of turning machine but no step has been taken by the authorities to get the machine repaired.

2.8 The impugned punishment order dated 23.2.2010 was passed by respondent No. 4 without considering the reply dated 9.2.2010 to SF-11.

2.9 Applicant has made allegation against Sri Manish Kumar, Divisional Electrical Engineer (RS), Jhansi.

3. Notices were issued to the respondents who in turn filed the counter reply through which it is stated that

applicant has never submitted any representation to the higher official with regard to allegation as made by the applicant in O.A. It is further submitted that applicant has not raised the issue in his appeal or in revision regarding the incident which is the root cause of the displeasure of Sri Manish Kumar, Divisional Electrical Engineer (RS) as alleged by the applicant.

3.1 It is stated that applicant himself admitted that he was assigned the job of turning of one axle. The applicant instructed Sri R.K. Rai to complete the task in spite of attending the assigned job himself and left the place at 14.00 hrs. without ascertaining the requirement i.e. non-availability of Micrometer. While there was no necessity to attend another work instead of doing the assigned job by his superior. It is further stated that non-availability of micrometer was brought into the knowledge of the higher official too late. The micrometer was arranged from nearby Diesel Loco shed and not from the market and the work was done on the same machine with a lot of delay because of the applicant only.

3.2 It is further submitted that applicant claims himself to be more expert and experience person than his superior authority, as such the work which was assigned to the applicant.

3.3 The applicant has failed to take effective efforts for completing the assigned job and there was negligence in the

supervision of the applicant. Thus, the charge sheet dated 28.1.2010 has correctly been issued to the applicant.

3.4 Appeal filed by the applicant has sympathetically been considered by the appellate authority vide order dated 12.6.2010 whereby the period of punishment has been reduced from three years to two years.

3.5 Revisionary authority has also gone through the complete case file and also asked comments from the In-charge of the Section in which the applicant was working and after considering the same, rejected the revision vide order dated 15.9.2010

4. Counsel for applicant filed rejoinder reply through which he has reiterated the facts as stated in the O.A. and denied the contents of counter reply.

5. Heard learned counsel for applicant Sri A.K. Sinha and learned counsel for respondents Sri K.P. Singh and perused the material available on record.

6. Counsel for the applicant reiterated the facts as stated by him in the OA and further submitted that orders passed by the disciplinary authority dated 23.2.2010, appellate authority dated 12.6.2010 as well as revisionary authority dated 15.9.2010 are not sustainable in the eyes of law as the same have been passed without taking into consideration the defence taken by the applicant.

6.1 Counsel also submitted that the disciplinary inquiry was initiated against the applicant on the complaint of the disciplinary authority Shri Manish Kumar itself and the said

disciplinary authority himself passed the aforesaid impugned order of punishment against the applicant which is against the principles of natural justice. Further the orders passed by the appellate and revisionary authorities are liable to be set aside as they are non-speaking and unreasoned order as the same have been passed without application of mind and without considering the grounds taken by the applicant in his appeal and revision.

6.2 Counsel also submitted that disciplinary authority was already prejudiced against the applicant even before initiation of inquiry as such the decision taken by the disciplinary authority on the said inquiry is vitiated and against the law.

6.3 Counsel further tried to explain the Court that only charge against the applicant was that the applicant was directed to look after the turning of wheel. However, the said wheel was not put on the turning machine and it was only after the instructions given by Shri Manish Kumar, who is also the disciplinary authority, himself tried to get that job done and there was further allegation that applicant remained standing ideal and has not taken any efforts to complete the task. Thus, it is clear from the said chargesheet that the disciplinary authority was himself a party to the complaint and as such in such a situation, the disciplinary authority should not have passed the impugned punishment order upon conclusion of the inquiry, being the disciplinary authority.

6.4 Counsel further submitted that orders passed by the disciplinary, appellate and revisionary authorities are liable to be quashed by this Tribunal.

7. Counsel for the respondents submitted that the applicant was served with chargesheet issued by the disciplinary authority and after considering the reply and the inquiry report, the applicant was found guilty of the charges levelled against him and consequently, the disciplinary authority issued the order vide which punishment of stoppage of increment for a period of three years without cumulative effect was imposed upon the applicant. The applicant filed his appeal against the said order of the disciplinary authority and the appellate authority modified the order of disciplinary authority to the extent that period of stoppage of increment was reduced to two years from three years. The applicant also preferred his revision and the revisionary authority also maintained the order passed by the appellate authority.

7.1 Counsel for respondents further submitted that the applicant was given full opportunity to defend his case and there is no illegality or irregularity in passing the orders impugned by the applicant in this OA.

8. After giving the thoughtful considerations to the rival contentions of the parties, this Court is unable to accept the contentions raised by the counsel for the respondents, as so far as the impugned orders passed by the appellate and revisionary authorities are concerned, the same cannot be

said to be the orders, which stand on the test of scrutiny of court of law, as both these orders neither speaking nor reasoned because both the appellate as well as revisionary authorities have failed to take into consideration the grounds taken by the applicant in grounds of appeal and grounds of revision. As such both these orders being cryptic cannot sustain in the eyes of law and are, therefore, liable to be quashed.

9. So far as the impugned punishment order passed by the disciplinary authority is concerned, this Court is afraid that the disciplinary authority should have passed the said order, as the said disciplinary authority was also a complainant in the case, also issued the said chargesheet as well as passed the impugned punishment order against the applicant. As such the same also cannot stand to the legal test of scrutiny of court of law, as the disciplinary authority, who himself was a party to the complaint and also a witness to the said incident, cannot be a judge in this case. The principles of natural justice as enumerated by the various Hon'ble High Courts and Hon'ble Supreme Court in catena of judgments is that a person cannot be a judge of his own cause and secondly, justice should not only be done but should manifestly be seem to be done. In the present case, from the perusal of the chargesheet issued to the applicant, which is reproduced in para 2.2 above, it is clear that said Manish Kumar was himself a complainant as he deprecated the conduct of the applicant at the time of incident. The said

chargesheet clearly reflects that the said Manish Kumar was also a party to the incident and it appears that no efforts were taken by the applicant to execute the task assigned to him as the applicant was remained in standing position whereas the disciplinary authority was himself taking efforts to do the job assigned to the applicant. This clearly shows that the disciplinary authority was himself a party to that incident and in such type of cases, the disciplinary authority should not have passed the order on the inquiry initiated by him against the applicant. As by passing the impugned punishment order, the disciplinary authority has violated the sound principle of natural justice that no person should be a judge of his own cause. The Hon'ble Apex Court in the case of ***J.Mohapatra and Co. and Another v. State of Orissa and another***, reported in 1984 (4) SCC 103, observed as follows:-

"Justice should not only be done but should manifestly be seen to be done, Justice can never be seen to be done if a man acts as a judge in his own cause or is himself interested in its outcome. The principle *nemo judex in causa sua*, that is, no man shall be a judge in his own cause, is firmly established and is applicable not only to judicial proceedings but also to quasi-judicial and administrative proceedings."

10. In view of the above discussion, without commenting upon the merits of this case, the impugned orders dated 23.2.2010 passed by the disciplinary authority, dated 12.6.2010 passed by the appellate authority as well as dated 15.9.2010 passed by the revisionary authority are quashed

and the matter is remitted back to the disciplinary authority to conduct *de novo* inquiry and as the disciplinary authority himself initiated the inquiry, the matter should be referred to another authority, who is equivalent or higher in rank than the disciplinary authority, to take appropriate action in the matter. Since this matter is quite old, the aforesaid exercise should be completed within four months from the date of receipt of certified copy of this Order.

11. In the result, the present OA is allowed in terms of directions as given in preceding paragraph. There shall be no order as to costs.

(Justice Dinesh Gupta)
Member (J)

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