

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.2971/2013
MA 2271/2013

Reserved on 14.08.2018
Pronounced on 24.08.2018

**Hon'ble Mr. K.N.Shrivastava, Member (A)
Hon'ble Mr.S.N.Terdal, Member (J)**

Karnail Singh S/o Sh. Kishan Singh,
r/o F 65, Vishkarma Colony,
M.B.Road, Lal Kaun, New Delhi-44. Applicant

(By Advocate: Mr.Yogesh Sharma)

VERSUS

1. Union of India through the
General Manager, Northern Railway,
Baroda House, New Delhi.
2. The Chief Operating Manager,
Northern Railway, Baroda House,
New Delhi.
3. The Additional Divisional Railway Manager,
Northern Railway, Ambala Division,
Ambala Cantt.
4. Sr.Divnl. Mechanical Engineer (O&F),
Divisional Railway Manager's Office,
Northern Railway, Ambala Division,
Ambala Cantt. Respondents

(By Advocate: Mr. Satpal Singh)

O R D E R

Hon'ble Mr. S.N.Terdal, Member (J):

Heard Shri Yogesh Sharma, counsel for applicant and Mr Satpal Singh, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In the OA, the applicant has prayed for the following reliefs:
 - (i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned penalty order dated 28.02.2010 (A/1), Appellate Authority order dated

01.11.2010, Charge Sheet dated 19.04.2007; order dated 19.07.2011 with covering letter dated 23.08.2011 and order dated 12.12.2012 (A/4) declaring to the effect that the same are illegal, arbitrary against the rules, against the principle of natural justice and consequently pass an order of reinstatement of the applicant in service with all consequential benefits including he arrears of pay and allowances during the intervening period deeming no charge sheet was issued to the applicant.

- (ii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation."

3. The relevant facts of the case are that a charge sheet was issued for the following article of charge against the applicant.

"On 03.10.2006 you entered into the Chamber of ADME(O) Ambala at 12.30 hours and while abusively asked him to get his penalty waived of which had been given to him under the Discipline and Appeal Rules, otherwise he will finish you and your family and in the same you told the Inquiry Officer. Upon noticing your aforesaid violent behaviour, you were advised to remain cool and made him understand that he should prefer an appeal before the competent authority and after this you leave from Chamber.

On 05.10.2006 at about 01:10 pm you again came into Chamber and while misbehaving abused him and threatened him as well as that issued get his punishment reduced by asking CDME otherwise he will kill his family. The above officer told him to go out of his office peacefully and you expressed your violent dissent and went away. After this you have threatened him on mobile by which you are hereby guilty for misbehaving, threatening, using unparliament language on the senior officers.

You are hereby violated the Rule 3.1 Para (i), (ii) & (iii) of the Railways Servant (Conduct) Rules, 1966."

Along with the article of charge, statement of imputation of misconduct, list of documents and list of witnesses were furnished to the applicant. As recorded in the penalty order of the disciplinary authority dated 28.02.2010 though sufficient opportunity was afforded to the applicant as a charged officer, he did not avail any opportunity. He did not defend his case. Neither, he appeared in any of hearing

before the enquiry officer, nor he received copy of the enquiry report, nor submitted any defence, nor he submitted any representation against the enquiry report, though the same was sent to him through registered post. The said position is clear from the penalty order of removal from railway service with immediate effect passed by the disciplinary authority.

4. While passing the aforesaid penalty order and while considering the entire material before him, the disciplinary authority also considering the entire service records during the entire period of service rendered by the applicant. The said penalty order is extracted below:-

"I have carefully considered the enquiry report, other documents & complete case file in reply to the Memorandum of Show Cause Notice of even no. dated 27.01.2009. I do not find your plea to be satisfactory due to the following reasons.

1.0) Discussion & findings

1.1) Despite sufficient opportunities afforded to the CO, namely, Sh. Karnail Singh, Asstt. Loco Pilot/BTI, he did not come forward to defend his case, as he neither appeared in any of the hearing before the Enquiry Officer, nor he received copy of enquiry report, nor submitted Defence note, though the same was sent to him through registered post.

1.2.) The enquiry report as well as documents on the file clearly prove that Sh. Karnail Singh, Asstt. Loco Pilot /BTI, on 3.10.2006 forcibly entered into the chamber of Sh.R.K.Saini, the then ADME(OP), hurled abuses and also threatened for eliminating him as well as his family members, if he (Asstt. Mech. Engineer) does not reduce his punishment, besides other allegations in the complaint. The service record entries as well as charge sheets & punishment imposed upon this employee during the entire period of service are enumerated below:

Service Record Entries:

S.No.	Dated	Punishment imposed
1.	25.03.1991	WIT for one year vide letter 577-M/61/SRE/90/M-1 dated 25-3-1991
2.	17.07.1992	Removed from service vide L.No.577-M/5/SRE/92/M-1 dated 17.07.1992
3.	24.3.1994	"Censured" vide L.No.577-M/5/SRE/98/M-1 dated 24.03.1998
4.	16.07.2002	Debit of Two set of passes vide L.No.595-M/27/UMB/02 dated 16.07.2002

5.	12.05.2004	Suspension order vide SF-1 were issued vide L.No.595-M/04/Genl/Comp/M/01/04 dated 12.05.2004
6.	17.05.2004	Major Penalty charge sheet was served vide No.595-M/04/Genl/Comp/M-1 dated 17.05.2004
7.	17.09.2004	WIT for two years vide L.No.577/M/18/UMB/01/M-1 dated 17.09.2004
8.	15.06.2005	Rs.640 were deducted from salary vide L.No. 221/S/1/Theft/UMB/04/M-1 dated 27.04.04
9.	21.09.2006	Pay reduction one step lower for three years vide L.No.595-M/04/Genl Comp/M-1(595-M/12 / UMB/04/M-1 dated 21.09.2006)
10.	06.10.2006	Suspended vide SF-1 No.577-M/3/UMB/07/M-1 dated 25.02.2007
11.	25.05.2007	Censured vide L.No. 577-M/3/UMB/07/M-1 dated 25.02.2007
12.	11.06.2008	Suspended vide SF-1 No.577-M/14/UMB/08/M-1 dated 11.06.2008
13.	16.06.2008	Minor penalty charge sheet No.577/M/14/UMB/08/M-1 dated 16.06.2008
14.	18.06.2003	Minor penalty charge sheet vide No.595/M/8/08/M-1 dated 17.07.08 for unauthorized absence

Brief history of charges levelled against him from time to time.

S.No.	No.& Dated	Charges	Punishment
1	No.595-M/04/Genl. Comm/M-1 Dt.17.5.04	He remained confined in Jail from 09.06.99 to 23.06.99 & shown himself on duty	Reduction of pay by one step in pay scale of
2.	No.577-M/18.UMB/04/M-1 dated 28.07.04	On 06.07.04 while working T.No.309 he misbehaved with an officer	He was imposed punishment of WIT for two years
3.	No.221-S/1/Theft/Loss/UMB/04/M-1 dated 01.03.04	On 15.12.03 he caused loss to the railway property in Running Room, Nangaldam.	Cost of damages were deducted from his salary
4.	577-M/3/UMB/07/M-1 dated 26.02.07	He did not report for attending course at Kanpur on 10.03.07	He was censured
5.	No.577/24/UMB/06/M-1 dated 06.10.06	On 03.10.2006 he misbehaved with Asstt. Mech.Engineer & also threatened the officer with dire consequences	Case
6.	595-M/8/BTI/08/M-1 dated 17.07.08	Charge sheet was issued for his unauthorized absence from duty w.e.f. 18.06.08 to till date.	Case is under process

Besides this, on 31.01.2004 a complaint, duly signed by 27 nos of drivers, for creating of nuisance and disobeying the lawful order of driver, was received in this office.

2.0) CONCLUSION

From the perusal of service record of employee-Karnail Singh, as well as charge sheets served upon the employee and a number of complaints made against him, it is clear that CO Karnail Singh is in the habit of act of misbehaviour, creating nuisance and use of unparliamentary language with his senior officers as well as his colleagues, for which departmental action was taken against him from time to time and punishments were imposed, the details have been given above.

3.0) I, therefore, hold you guilty of the charges levelled against you and have decided to impose upon you the penalty of "Removal from railway services: with immediate effect. You are, hereby, removed from service with immediate effect.

Under Rule-18 of the Railway Servants (Discipline & Appeal) Rules-1968 an appeal against these orders lies to ADRM/Ambala Provided:-

- (i) The appeal is submitted within 45 days from the date you receive the orders; and
- (ii) The appeal does not contain improper or disrespectful language.

5.0) Please acknowledge receipt of this letter."

5. The applicant preferred an appeal. The appellate authority after considering the entire material carefully, including the enquiry report and giving the applicant personal hearing upheld the punishment order passed by the disciplinary authority. The non-cooperation of the applicant is recorded by the appellate authority also, namely, that the punishment order was sent to the residential address of the applicant by registered post, but the same was returned back without the applicant receiving the same. As such, the penalty order had to be served upon him through shed notice as well as through publication in the Newspaper 'Dainik Baskar. The appellate authority had also recorded that in the past also the applicant was removed from service for serious misconduct. Thereafter the applicant preferred further appeal/representation dated 8.11.2010 and 5.12.2010. At this juncture the applicant had filed OA no.1316/2012 before this Tribunal challenging the enquiry report, the order passed by the disciplinary authority and the appellate authority. When the case came up for hearing on 07.05.2012, the said OA was withdrawn with liberty to file afresh, in view of the submission of the counsel for the applicant that his appeal was decided in the meantime. Subsequently, the applicant

filed another OA bearing no 3436/2012, once again challenging the enquiry report, order passed by the disciplinary authority and the appellate authority. In the said order, it was specifically recorded that in view of the letter dated 23.08.2011, the applicant was informed that he could file further appeal as informed by the respondents only to the President of India. However, at the time of hearing, the counsel for the applicant specifically submitted that at that stage the applicant would be satisfied if a time bound direction is given to the disciplinary authority to consider his representations dated 08.11.2012 and 5.12.2010 and pass a speaking order. Accordingly, the said OA was disposed of vide order dated 10.10.2012 with direction to respondents to consider the aforesaid representations, and pass a speaking and reasoned order. The relevant portion of the said order is extracted below:

"Through this OA, the applicant, an Ex.Assistant Loco under the Northern Railway is challenging the penalty of removal vide order dated 28.2.2010. The order of the Appellate Authority dated 01.11.2010 rejecting the appeal as time barred is also under challenge. Besides, as per the impugned order dated 23.8.2011, the applicant has been informed that the second appeal can only be submitted to the President of India.

It would be submitted by Shri Yogesh Sharma, learned counsel for applicant that in the criminal case on a charge arising out of same set of allegation, the applicant has been acquitted vide the Trial Court's order dated 10.8.2010. Further, it would be submitted that in terms of the Railway Board's Circular No.E(D&A) 25RG 6-4 dated 7.6.1995, in such cases, there is a provision for review of the departmental case itself on a representation by the concerned employee. The learned counsel Sh. Sharma would submit at this stage, the applicant would be satisfied if a time bound direction is given to the Disciplinary Authority to consider the representations of the applicant dated 08.11.2012 (Ann. A4) and 5.12.2010 (Ann.A5) respectively.

Considering the averments before us, we find it appropriate to dispose this OA at the admission stage itself by directing the Disciplinary Authority i.e. the Respondent No.4 to consider the aforesaid representations of the applicant and pass a speaking and reasoned order. This is to be done within a period of two months from the date of receipt of a certified copy of this order. It is certified that we are not expressing any view as to the merit of the case."

Thereafter, as per the direction of the Tribunal dated 10.10.2012, the respondents passed an order dated 12.12.2012. The applicant has challenged in this OA once again all the orders, namely, the penalty order passed by the disciplinary authority dated 28.02.2010, the order passed by the appellate authority dated 01.11.2010, the charge sheet dated 19.04.2007, the order dated 19.07.2011 with a covering letter dated 23.08.2011 and the order dated 12.12.2012.

6. In support of his case, the counsel for the applicant vehemently submitted that the complainant is the officer who had conducted preliminary enquiry and on the basis of the said preliminary enquiry/report, the entire disciplinary proceeding was started. As such, the said disciplinary proceeding should be held to be vitiated. But, however, in our opinion simply because preliminary report/enquiry is made by the complainant himself, could not be a ground for holding the departmental proceedings bad in law. The regular departmental enquiry has been held as stated by the applicant himself in his OA by different enquiry officer and indeed at the request of the applicant earlier enquiry officer Sh.B.B.Suri was replaced by another enquiry officer, namely, Shri Narain Singh and subsequently the second enquiry officer was replaced by Shri Prabhu Dayal who held the departmental enquiry as enquiry officer and submitted the enquiry report. In view of these facts the complainant has not acted as an enquiry officer as such the above said submission of the counsel for the applicant is that the complainant has acted as a judge is not sustainable.

7. The counsel for the applicant further submitted that though the applicant did not appear in the disciplinary proceeding, yet as per the

provisions of the Railway Servants (Discipline & Appeal) Rules, 1968, at every stage the applicant as a charged officer should have been served the day-to-day proceedings of the enquiry proceeding regularly and that the enquiry officer should have recorded reasons for proceeding ex-parte. He has further submitted that in case past bad records of service of a delinquent employee are to be taken into account while determining the penalty than the said past record should be made subject matter of a specific charge in the charge sheet itself and that the said procedure having not been followed as per the R.B.E.No.14/97, the entire disciplinary proceedings require to be set aside, as the disciplinary authority while imposing the penalty has taken past records into consideration.

8. In support of his contentions, the counsel for the applicant relied upon the judgment of the Central Administrative Tribunal, Jaipur passed on 30.10.1995 in the case of **Sujender Singh Vs. Union of India & Ors** (1996(1) CAT 623) to submit that before proceeding with the enquiry ex-parte the applicant as a charged officer should have been intimated the date fixed by the inquiry officer for holding the enquiry. He has also relied upon the judgments of the CAT, Principal Bench dated 24.03.2014 in the case of **Smt. Naseem Nawab Vs. UOI & Others** (OA No.1249/2013) and dated 16.03.2016 in the case of **Smt. Laxmi Devi Vs. Union of India through the Principal Chief Controller of Accounts, CBDT and Others** (OA 102/2014). The counsel for the applicant further relied on the law laid down by the Hon'ble Supreme Court in the case of **Union of India and Others Vs. Dinanath Shantaram Karekar and Others** (1998) 7 SCC 569).

9. But, however, on closure scrutiny of all the above said judgments relied upon by the counsel for the applicant, it is clear that those judgments were given or orders were passed in the facts and circumstances available in those cases and the Hon'ble Supreme Court did not approve publication in the newspaper as proper service, as in that case the newspaper was not shown to have wide circulation or sufficient popularity. But in the present case neither it is pleaded nor is it established by the applicant that the newspaper in which the penalty order was published was not having wide circulation or sufficient popularity.

10. On closure scrutiny, it is also noticed that the applicant in view of the order dated 10.10.2012 passed in OA 3426/2012 specifically submitted and thereby gave up his challenge with respect to the penalty order passed by the disciplinary authority dated 28.02.2010 and the order passed by the appellate authority dated 1.11.2010. He had specifically submitted that he was satisfied if his representations dated 8.11.2010 and 5.12.2010 were directed to be decided by the disciplinary authority. Though the respondents had specifically stated in their order dated 23.08.2011 that the further appeal had to be submitted to the President of India, nevertheless, the applicant specifically submitted that the said representation of him be directed to be considered by the disciplinary authority. Accordingly, the disciplinary authority considered both his representations and pass an order dated 12.12.2012. Though the applicant had challenged the said order dated 12.12.2012 also, but, however, in his OA at para 5 (0) he has submitted the grounds for challenging the said order dated 12.12.2012. He had not raised any specific grounds against the said

order dated 12.12.2012. The said ground 5(0) is extracted below:-

"0) Because, the impugned order dated 12.12.2012 (A/4) has been passed only mere formality to avoid the contempt proceedings otherwise the disciplinary authority neither considered the judgment passed by the Ld. Criminal Court nor considered the facts and grounds raised by the applicant in his representation whereas, the disciplinary authority considered the past record of the applicant which was not the part of the charge sheet and, therefore, the impugned order dated 12.12.2012 (A/4) is totally illegal and arbitrary in the eyes of law."

In view of the peculiar facts of this case, in this OA only the order dated 12.12.2012 is under challenge and said order dated 12.12.2012 is a well considered and detailed order which has been produced as Annexure A/4 at pages 21 to 30 of the paper book. As the said order is well considered order, we do not find any merit in the submission of the counsel for the applicant in challenging the said order. In the facts and circumstances narrated above, the OA is devoid of merit.

11. Accordingly, OA is dismissed. No order as to costs.

(S.N.Terdal)
Member (J)

(K.N.Shrivastava)
Member (A)

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