

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/021/00837/2012

Date of CAV : 10-09-2018
Date of Order : 12-09-2018

Between :

M.Sudhakar S/o M.Guravaiah,
Aged 54 years, Pointsman "B",
r/o No.2-8-273/10, Waddepalli Mandal,
Warangal District.Applicant

AND

1. The Union of India, rep., by its General Manager,
South Central Railway, Rail Nilayam,
Secunderabad.
2. The Additional Divisional Railway Manager (O),
South Central Railway, Secunderabad.
3. The Senior Divisional Operating Manager,
South Central Railway, Rail Nilayam,
Secunderabad.
4. The Divisional Operating Manager (Chg),
South Central Railway, Rail Nilayam,
Secunderabad.
5. The Divisional Operating Manager (G),
South Central Railway, Rail Nilayam,
Secunderabad.Respondents

Counsel for the Applicant: Mr. P. Venkata Rama Sarma
Counsel for the Respondents : Ms. Vijaya Sagi, SC for Rlys

CORAM :

THE HON'BLE MR.B.V.SUDHAKAR, ADMINISTRATIVE MEMBER
THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed by one Mr. M. Sudhakar, Pointsman "B", under section 19 of the Administrative Tribunals Act, 1985 , to declare the proceedings No. C/T/Sfy-Insp/Sr.DMM/SC/2009-10, dt. 25-11-2009 of the 5th Respondent, proceedings No. C/T/Sfy-Insp/Sr.DMM/SC/2009, dated 23-07-2010 of the 2nd Respondent illegal, arbitrary, unlawful, unauthorised, without jurisdiction, bias, contrary to the procedural rules and quite repugnant to the principles of natural justice besides violative of Art. 14 and 21 of the Constitution of India and consequently by setting aside the same, direct the Respondents to restore the pay of the applicant with all attendant and consequential benefits and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The brief facts of the case are that, the applicant who was serving as Pointsmen "B" was issued with charge sheet for minor penalty vide proceedings No. C/T/Sfy-Insp/Sr.DMM/SC/2008-09, dated 20-05-2009 of the 4th Respondent who is his disciplinary authority, alleging that he was found sleeping on duty on passengers seating and not in possession of competency certificate and called on to submit his representation. The 4th Respondent by proceedings No.C/T/Sfy-Insp/DSTE/SC/2008-09, dated 11-06-2009 imposed the punishment of withholding of annual increment 36 months (NR). Subsequently, the 4th Respondent, without assigning any reasons, has withdrawn the above proceedings by letter dated 12-06-2009

only with a malafide intention to issue major penalty chargesheet. The 4th Respondent is the Disciplinary Authority since the applicant is working under his control and the incident took place while the applicant was discharging his duty under his control.

3. The applicant has further averred that he was forced to face the major penalty chargesheet as per the proceedings No. C/T/Sfy-Insp/Sr.DMM/SC, dated 12-06-2009 of the 4th Respondent alleging the very same statement and imputation f found sleeping on duty on passengers seating and not in possession of competency certificate, basing the inspection said to have been made by Sr.DMM/SC on 29/30-04-2009. While issuing the chargesheet, the listed document, basing on which the chargesheet was issued, i e the inspection report of the Sr.DMM/SC was not enclosed nor furnished to the applicant along with the chargesheet. It is boundan duty of the disciplinary authority to supply the listed documents which they rely on in support of the imputations to the delinquent so as to put up his defence in support of his plea. This basic mandatory provision was not followed by the Respondents while issuing the charge sheet, he was handicapped to know the contents of the inspection said to have been made and prepare his defence. As such, the entire proceedings initiated against the applicant basing on the above chargesheet is vitiated for not following the mandatory requirement under principles of natural justice. It is his further case that he had to submit his explanation to the imputations in the chargesheet and for this purpose, the disciplinary authority, who issued the chargesheet, should have caused the supply of the listed

document, without which he cannot able to put his defence to disprove the allegations levelled against him. The applicant had submitted his representation dt.6-7-2009 by denying the allegations that he had become seriously ill.

4. The applicant further submits that the enquiry officer was appointed to enquire into the allegations against him as per the chargesheet issued by the 4th Respondent. There is no prosecution officer to lead the case on behalf of the department and the enquiry officer assumed the role of prosecution officer and conducted the illegal enquiry by calling the witness i.e K.Veera Babu, Dy.SS/GNP and marked the document. The enquiry officer has exceeded his powers as he cannot act both as prosecution officer and enquiry officer, which amounts to bias, illegal and contrary to the principles of natural justice. The witness, who was examined and through whom the document was sought to be proved is neither the author of the said document nor related to his office where he was working. The inspection was conducted by the Sr.DMM, Secunderabad and he was not called to the enquiry and examined, but a person who is not connected to the said inspection was called and examined as witness and marked the document. A disciplinary enquiry has to be a quasi-judicial enquiry and the Enquiry Officer has a duty to act judicially and fairly.

5. The applicant submits that, in the present case, the enquiry officer has acted both as Presenting Officer and also as Enquiry Officer which is illegal and arbitrary. Thereby serious flaw has been done by the enquiry officer, who is supposed to act in an unbiased manner and this amounts to

overstepping his jurisdiction as Enquiry Officer. Thereafter the Disciplinary Authority imposed the punishment of reduction to lower post / pay band minimum of the pay band / grade for a period of three years with cumulative effect vide proceedings dated 25-11-2009, which will have recurring loss on his pay and allowances and also pension, without considering the explanation submitted to the report of the enquiry officer. As against this, the applicant preferred appeal to the 3rd Respondent on 29-12-2009 stating that as per the Board proceedings, which states that "the disciplinary action should be initiated and finalised by the authority under whose control the delinquent employee may be working". The applicant submits that, without considering his legal submissions, the 3rd Respondent rejected his appeal in his proceedings No.12-1-2010 and confirmed the punishment. The applicant further submitted his revision to the 2nd Respondent ventilating his grievance with regard to jurisdiction also in his revision petition dated 15-02-2010 and the same was also rejected by the 2nd Respondent vide order dated 23-07-2010. Hence this application.

6. Reply statement has been filed by the Respondents stating that the 4th Respondent issued with memorandum dated 20.05.2009 for minor penalty with statement of imputation that the applicant was found sleeping on duty and was not in possession of competency certificate and was directed to submit representation, if any. However, the said Memorandum was withdrawn by the said authority by proceedings dated 12.06.2009 to issue major penalty charge sheet under Standard Form No.5 as the applicant is repeatedly committing the misconduct and on the same day

revised memorandum was issued in Standard Form No. 5 with article of charge at Annexure I, statement of imputations in support of the charge, list of documents and list of witnesses by which said article of charge to be sustained. The allegation against the applicant is that he was 'sleeping while on duty at Ghanapur Railway station on 29/30.04.2009' as noticed during the inspection thereby violating the conduct rules. The applicant submitted his statement of defence by his letter dated 06.07.2012 intimating the authority that, 'he felt drowsiness due to medicine on that night and he may be pardoned and assured that he will be careful in his duties'. The disciplinary authority considering the same, directed to conduct an enquiry by appointing an enquiry officer by proceedings dated 10.07.2009. The Enquiry Officer submitted report proving the charge against the applicant and the same was also served on the applicant for his representation by proceedings dated 11.08.2009. The Disciplinary Authority, after considering the applicant's representation, imposed the penalty of reduction to the lower grade of Pointsman B for a period of three years with cumulative effect.

7. Applicant also submitted appeal dated 29.12.2009 and the same was also rejected by order dated 12.01.2010. Further, applicant filed a revision petition dated 15.02.2010 which was also rejected by order dated 23.07.2010. Challenging the orders of the Disciplinary Authority, Appellate Authority and the Revision Authority, the applicant has filed this petition.

8. It is also stated in the reply that, the applicant never objected for

conducting the enquiry without presenting officer. The appointment of presenting officer as per the Railway Servants (D&A) Rule is discretionary and not mandatory as per the Railway Board letter dated 20.10.1971, in such cases inquiry authority can examine and cross examine the witnesses. The Disciplinary Authority referred to repeated misconduct of the applicant and penalty imposed on the applicant for the very same charge by proceeding dated 11.06.2009. The Respondents submit that there is no violation of any of the provisions of constitution as alleged by the applicant. The enquiry was held as per the rules and applicant participated in it and has not cited any irregularity. In view of the forgoing contentions, the Respondents pray for dismissal of the OA.

8. We have heard Mr.P.VenkataRama Sarma, learned counsel for the applicant and Ms. Vijaya Sagi, learned Standing Counsel for Respondents, perused the records and material placed before us.

9. After perusal of the materials on record, this Tribunal finds that Presenting Officer was not appointed and the Inquiry Officer has acted also as Presenting Officer and has virtually acted as prosecutor. The submission of the only witness examined on behalf of the Department ie PW-1 is that, "he did not physically see the charged employee sleeping". Further, nowhere it is stated by Prosecution Witness that he had, 'either seen or heard that the applicant was sleeping at the relevant time while on duty'. In fact, on the contrary, PW 1 has stated in answer to question No.15 that

“I did not physically see the charged employee sleeping”. But I agree that he got up from the passenger’s seating on platform 2 when I called him for second time”. Thus, this is a case of no evidence and there is no material on record to prove that the delinquent was sleeping or was in drowsy condition while on duty. Hence we are of the view that the applicant has been illegally and without application of mind have been imposed with the impugned penalty. The statement of PW has been misquoted and misconstrued to come to a conclusion that there is no evidence to show that the delinquent was sleeping at the relevant time besides that the applicant has nowhere admitted that he was either sleeping or was in drowsy condition at the relevant time.

10. Accordingly the impugned orders vide proceedings No. C/T/Sfy-Insp/Sr.DMM/SC/2009-10, dt. 25-11-2009 of the 5th Respondent, proceedings No.C/T/Sfy-Insp/Sr.DMM/SC/2009, dated 12-1-2010 of the 3rd Respondent (Annexure A-II) and proceedings No. C/T/Sfy-Insp/Sr.DMM/SC/2009, dated 23-7-2010 vide Annexure A-III are set aside. The pay of the applicant be restored retrospectively with effect from 23-07-2010 and he is entitled to attendant and consequential service benefits. The Respondents are to comply with this order within three months from the date of receipt of a copy of this order.

11. The Original Application is accordingly allowed. No order as to costs.

Dated : 12th September, 2018.

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