

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.203/00359/2015

Jabalpur, this Wednesday, the 11th day of April, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

P.Prasad Rao, S/o Sanyasi Rao, aged about 40 years,
Presently working as Head Clerk/WRS SECR RPR,
R/o Door No. 10/125, In front of
Sahu Masal Udyog, Santoshi Nagar, Khamtari
Raipur, Chhattisgarh-492008
(By Advocate –Shri A.V.Shridhar)

-Applicant

V e r s u s

1. Union of India, through the Secretary,
Railway Board, Rail Bhawan, New Delhi-110001
2. General Manager, South East Central Railway,
New GM Building, Bilaspur, Chhattisgarh-495004
3. Chief Mechanical Engineer, South East Central Railway,
Head Quarter Office, Bilaspur, Chhattisgarh-495004
4. Chief Work Shop Manager, South East Central Railway,
Raipur, Chhattisgarh-492008
5. Deputy Chief Mechanical Engineer,
Wagon Repair Shop, South East Central Railway,
Raipur, Chhattisgarh-492008
(By Advocate –Shri Vijay Tripathi)

- Respondents

(Date of reserving the order:-26.10.2017)

O R D E R

By Navin Tandon, AM

The applicant is aggrieved by imposition of penalty of reduction to lower grade of senior clerk fixing his pay at the initial stage for a period of three years with loss of seniority.

2. The facts of the case are that the applicant while working a Senior Clerk on 08.12.2006 drew 25 Nos. of cutting nozzles from Raipur Workshops Store on forged signature of the Material Checker Smt. Hira Bai, who was authorized for drawing materials from the Raipur Workshop. For the above misconduct a major penalty charge-sheet was issued to the applicant on 16.06.2009 (Annexure A-2). After conducting full-fledged departmental enquiry, the enquiry officer held the charges proved vide his report submitted on 30.07.2009 (Annexure A-4). A copy of the enquiry report was duly served upon the applicant however the applicant did not submit his defence. The disciplinary authority vide his order dated 30.10.2009 (part of Annexure A-4) imposed the penalty of reversion permanently to the post of Sr. Clerk at initial pay w.e.f. 01.11.2009 and his seniority was directed to be fixed at the bottom of all the existing Sr.Clerks existing as on 30.10.2009. On appeal, the appellate authority vide its order dated 29.01.2010 (part of Annexure A-5) diluted the said punishment to reversion for a period of three years instead of with permanent effect. Thereafter, the applicant submitted a revision-petition, and the revisionary authority, after issuing show cause notice dated 08.06.2010 (Annexure A-6) & considering applicant's reply, imposed the penalty of removal from service vide order dated 26.09.2011 (part

of Annexure A-6). On appeal, against the said order, the General Manager, South East Central Railway vide his order dated 06.12.2012 (part of Annexure A-1), modified the penalty of removal to that of reduction to the lower grade of Senior Clerk duly fixing his pay at the initial stage of Rs.5200-20000 in the pay band with Grade Pay of R.2800 for a period of three (03) years with loss of seniority and pay. The intervening period from the date of removal to the date of reinstatement was directed to be treated as 'Dies non'.

3. The applicant has prayed for the following reliefs in this Original Application:-

"8(8.1) That, the learned Tribunal may kindly be pleased to quash the order no order no P/SECR/HQ/WRS STAFF/D&A/PPR dated 06.12.2012 Annexure A-1.

(8.2) That, the Hon'ble Tribunal may kindly be pleased to direct the respondents to grant all consequential benefits flowing from the quashment of the order of imposition of penalty.

(8.3) Cost of the Original Application.

(8.4) Any other relief which the learned Tribunal deems fit and proper may be awarded."

4. The applicant has submitted that his suspension was revoked in a short span of 5 days and later on vide order dated 29.12.2007 the period of suspension was also regularized, showing that the suspension was wholly unjustified and there was no contemplated

disciplinary proceedings against him as on that date. However, after a query was made by a member of the Union, the charge sheet dated 16.06.2009 was issued with inordinate delay.

4.1 The applicant has further contended that the enquiry officer was holding the rank of SSE, who could not have acted as enquiry officer to conduct enquiry against the applicant, as the applicant was holding the post of Head Clerk. The applicant was not given the assistance of defence assistant and even the presenting officer was also not appointed. The prosecution witnesses were examined behind the back of the applicant. The applicant has placed reliance on the decision of the Hon'ble High Court of Madhya Pradesh in the matter of **Union of India Vs. Mohd.Naseem Siddiqui**, decided on 5th August, 2004 (copy placed on record) wherein it has been held that in the absence of presenting officer the entire enquiry proceedings stood vitiated and, therefore the order of imposition of punishment on the applicant deserves to be quashed. In this context, he has also relied on the decision of Hon'ble High Court of Karnataka in the matters of **B.Viswanatha Rao Vs. Management of Canara Bank**, 2005(1) Kar.LJ 562 (copy placed on record)

4.2 The applicant has also contended that the respondent No.2 while deciding the mercy appeal of the applicant concluded that the

findings of the enquiry proceedings suffered from deficiencies and the charge of forgery was not established against the applicant, the applicant should have been exonerated of the charges levelled against him.

5. On the other hand, the respondents have submitted that the present Original Application is hopelessly barred by limitation.

5.1 The respondents have further submitted that being dissatisfied with the order of removal dated 26.06.2011 the applicant had filed Original Application No.388 of 2012. During the pendency of the said Original Application, the General Manager vide order dated 06.12.2012 reduced the penalty of removal from service to reduction into lower grade as Senior Clerk. After the order of the General Manager dated 06.12.2012 the applicant was fully satisfied and he did not raise any objection. The said Original Application No.388 of 2012 was dismissed as withdrawn vide order dated 15.01.2013. The applicant did not raise any grounds which he has now raised in the present Original Application. The General Manager while deciding the mercy appeal of the applicant has taken a very lenient view. There is no illegality in the order passed by General Manager which warrants interference of this Tribunal.

6. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties.

7. As regards the contention of the applicant that since no presenting officer was appointed, the entire proceedings stood vitiated, we may observe that the Hon'ble High Court of Delhi in the matters of **DTC Vs. Hanumant Kumar in W.P.(C) 717/2011 & C.M. No. 1512/201**, decided on **17 January, 2013** by relying various decisions of several High Courts and the Hon'ble Supreme Court has held that so long as the delinquent has had opportunity to fairly deal with the evidence/materials produced by the management and to put forward his own evidence on record, there can be no valid grievance to the Inquiry Officer functioning without a Presenting Officer. We may reproduce the relevant paragraphs of the said order as under:-

“(7). Learned counsel for the petitioner further submits that the reason that no welfare officer was asked to participate in the proceedings is not good because the respondent had himself refused, when offered to avail of any defence representative. He further submits that the admission made by the respondent was clear, and there is no basis to conclude that there is no clear cut admission of guilt made and recorded in the evidence led by the respondent, or in his cross examination. He further submits that it is not necessary that a presenting officer should have been appointed for the conduct of the inquiry. The same is merely a rule of prudence and not a mandatory direction, non-compliance of which would invalidate an inquiry. In

this regard, reliance is placed on the judgment of this Court in **Mahavir Singh Vs. DTC**, 2007 (139) DLT 569. In this case, the workmen impugned the conduct of the departmental inquiry, inter alia, on the ground that no presenting officer had been appointed by the department, which vitiated the entire inquiry. Rejecting the submission, this Court observed **that there is no rule that an inquiry cannot proceed without a Presenting Officer**. The Court further observed:

*"The witness can depose before an inquiry officer of their own, without the help of a presenting officer. **There is no violation of principles of natural justice, if no presenting officer is appointed or present.** If a request of allowing presenting officer or defence assistance is declined by the inquiry officer without just cause, a grievance can be made. The party who alleges violation of principles of natural justice has to show how his/her case got prejudiced by alleged violation. Petitioner has failed to show how non appointment of presenting officer prejudiced his case."*

(8). I may at this stage take note of the judgment of the Supreme Court in **The Workmen Employed in B & C Mills, Madras vs. The Management of B & C Mills, Madras**, (1970) ILLJ 26 SC : 1969 (1) UJ 494, wherein the workmen impugned the award of the Labour Court, whereby it had held that the Inquiry proceedings leading to dismissal against the delinquent employee were valid. In this case, a Senior Labour officer had been authorised to record the evidence and collect necessary materials. Also, no presenting officer had been appointed by the Management. The workmen, inter-alia, raised an objection that the Senior Labour Officer had acted as a Prosecutor in as much, as, he had very severely cross-examined the workman. Dismissing the said objection, the Supreme Court observed that, no doubt, there was no officer separately appointed for conducting the prosecution on the side of the Management, but what the Labour Officer had done was to put questions to the witness and elicit answers and allow the worker to cross-examine those witnesses. Similarly, he had also taken the statements of the worker and asked for clarification from him wherever necessary. Therefore, the inquiry

proceedings, as held by the labour Court, were completely fair and impartial.

(9). The aforesaid view was followed by the Supreme Court again in [Mulchandani Electrical and Radio Industries Ltd. vs. The Workmen](#), (1975) ILLJ 391.

(10). Similarly, the Karnataka High Court in [Bharat Electronics Ltd. vs. K. Kasi](#), (1987) ILR NULL 366: (1987) IILLJ 203 Kant, took the view that there is no legal compulsion that the Presenting Officer should be appointed. It was observed that the mere fact that the presenting officer was not appointed is no ground to set aside the Inquiry. Commenting upon the role of the Inquiry Officer, it observed that it is common ground that if the Inquiring Authority plays the role of a Prosecutor and cross-examines the defence witnesses or puts leading questions to the prosecution witnesses clearly exposing a biased state of mind, the inquiry would be opposed to principles of natural justice. However, it is also well settled that an Inquiring Authority is entitled to put questions to the witnesses for clarification wherever it becomes necessary and so long as the delinquent employee is permitted to cross examine the witnesses after the Inquiry Authority questions the witnesses, the inquiry proceedings cannot be impeached as unfair.

(11). The High Court of Kerala in [M. Rama Warriar & Ors. Vs. Coir Board](#), ILR 1989 (1) Kerala 596, and the Bombay High Court in [Sukhadeo Vishwanath Garaje v. Food Corporation of India](#), (1989) 2 LLJ 277 Bom., have also taken a similar view. In [Sukhadeo Vishwanath Garaje](#) (supra), the Bombay High Court held as under:

"13. Very often there is no separate management representative to conduct inquiry proceedings on behalf of the management and only the witnesses are sent to the Inquiry Officer to depose regarding the incident. In such cases, the questions to such witnesses are put by the Inquiry Officer. This procedure does not violate the principles of natural justice. If the Inquiry Officer examines the witnesses without the assistance of the management's representative, then it does not show that he himself was a Prosecutor when

the record shows that a bona fide inquiry was held. When the Inquiry Officer himself examined and questioned the witnesses, it is not objectionable so long as due opportunity is given to the delinquent to cross examine them. It is competent for the Inquiry Officer to put questions to the witnesses to ascertain the real incident."

(12). *Before a Division Bench of the High Court of Bombay in Municipal Corporation of Greater Bombay v. Vishnu Sakharam Pingle, W.P.(C) No. 2554 of 1993 decided on June 27, 1996, one of the submissions was that the Inquiry Officer had acted more as a Prosecutor because he had cross examined the undertaking's witnesses. The Division Bench relying on the Judgment of the Supreme Court in Workmen in Buckingham and Carnatic Mills, Madras (supra) and Mulchandani Electrical and Radio Industries Ltd. (supra) held as follows:*

"It may also be pointed out that there is no bar on an Inquiry Officer seeking clarification from witnesses as long as he permits the cross examination of witnesses from whom clarification has been sought. This proposition finds support in the Judgment of Mulchandani Electrical and Radio Industries Ltd. (supra). Similarly, the Supreme Court in the case of Workmen in Buckingham and Carnatic Mills, Madras (supra) has laid down that merely because in a domestic inquiry the management was not represented by any Officer separately did not prevent the Inquiry Officer from putting questions to the delinquent worker and the witnesses and such a conduct on the part of the Inquiry Officer would not vitiate the domestic inquiry."

(13). *In view of the aforementioned observations of the Supreme Court as also the consistent view taken by the Various High Courts thereafter, the observations made in the case of DTC vs. Maha Singh, W.P.(C) No. 2228/2004 (wrongly written as W.P. (C) 2228/94 in the impugned award) decided on 28.04.2005, appear to be per incurium. The position that emerges from the aforesaid discussion is that the mere absence of a presenting officer representing the management does not vitiate the departmental proceedings. The Inquiry Officer is appointed by the Disciplinary Authority only to hold a fact finding inquiry in*

compliance of principles of natural justice, and to make a report on the basis of the said inquiry. He is not the Disciplinary Authority or the Punishing Authority.

(14). The Inquiry Officer does not act as a judge. He merely conducts a fact finding inquiry at the instance of the Disciplinary Authority. It is for the Disciplinary Authority to accept, or not to accept, the Inquiry Report made by the Inquiry Officer. It is the Disciplinary Authority who judges the conduct of the delinquent on the basis of the Inquiry Report - if he accepts the same.

15. So long as the delinquent has had opportunity to fairly deal with the evidence/materials produced by the management and to put forward his own evidence on record, there can be no valid grievance to the Inquiry Officer functioning without a Presenting Officer. The aforesaid position would obviously be different if the Disciplinary Authority also functions as the Inquiry Officer”.

(emphasis supplied by us)

8. In the instant case on perusal of the pleadings available on record we have failed to find that the applicant has produced any documents to show that the enquiry was not held in full compliance of the principles of natural justice except by saying the no presenting officer was appointed. The applicant has also failed to produced a copy of the enquiry report in support of his contention that he has been prejudiced by non-appointment of the presenting officer. Thus, the reliance placed by the applicant on the decisions of Hon’ble High Courts of Madhya Pradesh and Karnataka are misplaced, referred to in para 4.1 above.

9. As regards the contention of the applicant that when the respondent No.2 in the impugned order concluded that the findings of the enquiry proceedings suffered from deficiencies and the charge of forgery was not established against the applicant, the applicant should have been exonerated of the charges, we may reproduce the relevant extract of the order dated 06.12.2012 (filed along with Annexure A-1) as under:

“During the inquiry, Smt.Heera Bai, Material Checker had deposed that she had not signed the Issue Note. However, from the report of the Inquiry Officer, it is not established as to how the Inquiry Officer came to the conclusion that the signature of Smt.Heera Bai was forged only by you. In case you had forged the signature it is not clear as to why SSE and AWM had countersigned the Issue Note, without verifying the facts. The inquiry also suffered with deficiencies like not providing the opportunity to ascertain as to whether the applicant wanted to take assistance of defence helper, not recording the statement of witnesses in your presence etc.

From the available records, the reasons recorded by the Revising Authority i.e. CME are not convincing enough for a foolproof charge of forgery by you for drawing 25 Nos. cutting nozzles. Hence the penalty of Removal from service imposed by the Revising Authority is too harsh. **By giving the benefit of doubt to you,** the enhanced penalty of removal from service imposed by CME i.e. Revising Authority is modified to that of reduction to the lower grade of Senior Clerk duly fixing his pay at the initial stage of Rs.5200-20000 in the pay band with Grade Pay of Rs.2800 for a period of three (03) years with loss of seniority and pay. The intervening period from the date of removal to the date of reinstatement was directed to be treated as ‘dies non’.

10. On perusal of the above extract of the order we find that the General Manager in his order has simply stated that “the reasons recorded by the Revising Authority i.e. CME are not convincing enough for a foolproof charge of forgery by you for drawing 25 Nos. cutting nozzles. Hence the penalty of Removal from service imposed by the Revising Authority is too harsh”, and by giving the benefit of doubt to the applicant, the penalty of removal from service imposed by CME i.e. Revising Authority was modified to that of reduction to the lower grade of Senior Clerk duly fixing his pay at the initial stage of Rs.5200-20000 in the pay band with Grade Pay of Rs.2800 for a period of three (03) years with loss of seniority and pay, and further that the intervening period from the date of removal to the date of reinstatement was directed to be treated as ‘dies non’. Since the General Manager, by giving the benefit of doubt has reduced the penalty by stating some reason, it does not mean that he had completely exonerated the applicant from the guilt committed by him as proved during the course of enquiry, as contended by the applicant.

11. On perusal of the order dated 08.06.2010 (Annexure A-6) we also find that the revisionary authority in his order has specifically stated that “the charge of drawing of 25 numbers of cutting nozzles

from RWS Stores on forged signature is very serious matter” and further that the charge has been proved by the enquiry officer by examining the applicant and the witnesses. He has further stated that “there was no urgency of this material for day to day activities of the shop. Hence your (applicant’s) action of drawing the material on forged signature is a gross negligence on your (applicant’s) duty”. We also find that the disciplinary authority in his order dated 30.10.2009 has clearly stated that a copy of the inquiry report was sent to the applicant for submission of his final defence statement, however, the applicant had not submitted his final defence.

12. Thus, having considered all pros and cons of the matter we are of the considered opinion that the applicant has totally failed to point out any illegality or irregularity in the course of enquiry. He had not submitted his defence after receiving the enquiry report. He has also failed here to show that as to how he has been prejudiced by non-appointment of presenting officer/defence assistant during the course of enquiry. Thus, in view of the decision of the Hon’ble High Court of Delhi in the matters of **Hanumant Kumar** (supra) as well as other decisions of the Hon’ble Supreme Court and other High Courts referred there under, we are of the considered opinion

that since the applicant has failed to prove that any prejudice has been caused to him by non-appointment of presenting officer/defence assistant, we do not find any ground to interfere with the impugned orders.

13. We also find force in the contention of the respondents that the present Original Application is barred by limitation. In the instant Original Application, which was filed on 27.04.2015, the applicant has challenged the order dated 06.12.2012. In the application for condonation of delay (M.A.No.203/00399/2015) he has also not given sufficient reasons for condoning the delay.

14. Accordingly, the Original Application is dismissed on merits as well as on the ground of limitation. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

rkv