

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/559/2011

Order Reserved on: 06.08.2018

DATE OF ORDER: 23.08.2018

CORAM

HON'BLE MR. SURESH KUMAR MONGA, JUDICIAL MEMBER
HON'BLE MR. A. MUKHOPADHAYA, ADMINISTRATIVE MEMBER

Kripal Singh S/o Shri Sugar Singh, aged about 49 years, R/o Laban Rly. Station, presently working as points man at Arnetha Rly Station, PO Arnetha.

....Applicant

Mr. P.N. Jatti : counsel for applicant.

VERSUS

1. Union of India through the General Manager, North Central Railway, Jabalpur.
2. Divisional Railway Manager, North Central Railway, Kota.
3. Senior Divisional Operating Manager, North Central Railway, Kota.
4. Divisional Operating Manager, North Central Railway, Kota.
5. Assistant Operating Manager, Central Railway, Kota.

....Respondents

Mr. R.G. Khinchi : counsel for respondents.

ORDER

Per: A. MUKHOPADHAYA, ADMINISTRATIVE MEMBER

This Original Application arises out of a charge-sheet issued to the applicant under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 on 19.09.2007. As per the description of charges, the applicant was accused of using abusive language and misbehaviour with the Station Superintendent, Bundi on 16th July, 2007 through mobile phone calls. Further, it is stated that while he was given duties on 16/17.07.2007 in the midnight to 8 a.m. shift, he did not report for duty. As a result, the Cabin

Man on duty could not be relieved (i.e. given his rest). Further on 17.07.2007, on his leave application being rejected by the Station Superintendent, Bundi, he again resorted to use of abusive language and threats.

The applicant Shri Kripal Singh was also accused that prior to the above event, he was on duty in the 08.00 hours to 20.00 hours shift on 09th April, 2007 and here again he did not report for duty and left his Headquarters without permission and proceeded to Taleda. Further as per the Station Master Shyampura's report/complaint, on another occasion the applicant was supposed to be on duty between midnight and 08.00 hours in the morning. During this period, as the Station Master Shyampura informed the Station Superintendent Bundi, the applicant who was on duty during the night shift went to sleep. As a result, alternative arrangements had to be made to hand over the token which has to be handed over to running trains by the Station Master as attempts to rouse the applicant were of no avail. The applicant's misbehaviour thus resulted in adversely affecting the smooth running of the Railways. After inquiry into the above mentioned charges, the Inquiry Officer in his report, (Annexure A/9), concluded that the employee/applicant should have applied for his leave for 17.07.2007 in order to attend a court case earlier than the date of leave itself. Had he done so and S.S. had refused leave, (as alleged by the applicant), then he could have applied to the Traffic Inspector, Bundi or the AOM. The Inquiry Officer also held that the employee's/applicant's proceeding to Taleda without headquarters leave on 09th April, 2007 was a violation of rules. Similarly, the employee/applicant being asleep on duty

was also against rules. Likewise, using foul language again and again on the mobile to his supervisor was unseemly. As regards the applicant's allegation during the inquiry that it was the Station Superintendent, Bundi, who had misbehaved with him and further that he had been assaulted by the Station Superintendent, the Inquiry Officer has commented in his conclusion that the employee/applicant being a 4th class employee should treat the Station Superintendent with respect and that if he had any complaint against him, he should have made this complaint to a superior officer. Keeping in view the above findings, the Inquiry Officer concluded that the charges levelled against the applicant appear to be proved. Thereafter, the applicant was awarded with a penalty of stoppage of his annual increment with cumulative effect for a period of two years vide order dated 22.09.2008 (Annexure A/4). The applicant appealed against this penalty and this appeal was dismissed by the Senior Divisional Operating Manager, Kota vide order dated 01.09.2009 (Annexure A/2). Thereafter, the revision application of the employee/applicant dated 25.08.2010 was also rejected vide order dated 09.11.2010 (Annexure A/1) by the Additional D.R.M., Kota.

Thus, having exhausted all departmental remedies available to him, the applicant has approached this Tribunal seeking that Charge Memo dated 19.09.2007 (Annexure A/5), the penalty imposed vide order dated 22.09.2008 (Annexure A/4), rejection of his appeal against the penalty vide order dated 26.08.2009 (Annexure A/3) and order dated 01.09.2009 (Annexure A/2) and finally the revisional order upholding this penalty vide order dated 09.11.2010, (Annexure A/1), be

quashed and set aside. Further the applicant has pleaded that the increment which has not been paid to him as a consequence of order dated 22.09.2008 (Annexure A/4) be paid with all consequential benefits.

2. In their reply, denying the averments made by the applicant, the respondents have stated that the applicant had not informed the authorities in advance about his reported court date on 17.07.2007. They aver that the Station Superintendent, Bundi, Shri S.P. Kalra has clearly deposed that no such application had ever been given by the applicant in this regard (para 4.4). They have further argued that even if such an application were to be presumed as having been presented and refused then the applicant should have approached higher officials for seeking leave but did not make any such effort (para 5.14). The respondents further state that the applicant has been charged with misbehaviour, willful absence from duties and also willfully leaving headquarters without seeking prior permission. They aver that the Inquiry Officer conducted the inquiry in question by considering the entire material available on record from all angles and came to the conclusion that the charges are found proved against the applicant (para 5.9). Further they state that the orders passed by the DOM and Sr. DOM on the applicant's appeal on 26.08.2009 and 01.09.2009 and then by the Additional Divisional Railway Manager in the applicant's revision application on 09.11.2010 upholding the penalty of stoppage of one increment with cumulative effect for a period of two years are in accordance with law.

3. In his rejoinder to the reply preferred by the respondents, the applicant has drawn attention to the statements made by witness Shri K.G.S. Panwar, ASM in which Shri Panwar has stated that the applicant had given him, (Shri Panwar), an application for leave. This witness further stated, (page 3 of the inquiry report refers), that the power to sanction such leave lies with the Station Superintendent and that the Station Superintendent tore up the application. The rejoinder thus emphasises that the statement of Shri K.G.S Panwar shows clearly that the applicant submitted the application to the authorities and that Station Superintendent tore it and threw it away (para 5.14).

4. In their reply to the rejoinder, while denying the applicant's averments, the respondents have stated that if the date of hearing was on 17.7.2007 in court, the applicant should have got leave sanctioned for this purpose prior to the date so that his supervisors could arrange for other people to work during his absence and railway work could proceed smoothly. Further, they have stated that if the leave was initially rejected, (as stated by the applicant), the applicant ought to have got this sanctioned from the Traffic Inspector, Bundi, or the Assistant Operating Manager, (AOM), but he did not do so. The reply to the rejoinder also states, (para 5.12), that the decision dated 09.11.2010 by the reviewing authority, (rejecting the review application against the penalty imposed), was based on that authority's exercise of discretion after careful consideration of the inquiry report and all material facts and relevant documents. The reviewing authority also did not find anything new in the

revision application and therefore maintained the penalty imposed on the applicant.

5. The arguments presented by both the applicant's and respondents' counsel were heard.

6. Counsel for the applicant drew the Tribunal's attention to the conclusions drawn by the Inquiry Officer at page 3 of the inquiry report and stated that this does not meet the requirements of such a report as prescribed in the C.C.S. (C.C.A.) Rules and the Railway Servants (Discipline and Appeal) Rules, 1968. He stated that the findings are more prescriptive than conclusive and have ignored the statement of witness Shri K.G.S. Panwar, ASM, who testified to the misbehaviour of the Station Superintendent. He argued that this was a case in which it was the Station Superintendent who was guilty of misbehaviour and not the applicant and therefore, the relief sought vis-à-vis setting aside of the charge-sheet and the orders inflicting and confirming the penalty awarded to the applicant should be accepted and allowed by the Tribunal.

7. Respondents' counsel in his arguments stated that a perusal of the Inquiry Officer's report clearly shows that this is a well considered conclusion in substantive terms. In his view, the Inquiry Officer has not been prescriptive but has merely stated what was to be expected from the charged official, (the applicant), in terms of professional behaviour and pointed out that he had clearly come to the conclusion that the charges stood proved. The appellate and revisional authorities had also

applied their mind to the facts and circumstances of the case and the entire material available and had used their reasonable discretion in coming to the conclusion that there was nothing new in the applicant's appeal and revision petitions respectively and therefore had correctly and in accordance with the rules rejected the same.

8. We have carefully gone through the material on record and the arguments propounded both by the counsel for the applicant and for the respondents.

9. At the outset, it is clear that this is a case where completely different versions of the same events and transactions have been given by the applicant and the respondents and therefore adjudication in this matter essentially becomes a question of deciding between the credibility of the opposing versions presented. Taking up the question of alleged misbehaviour by the applicant in the context of the events of 17.07.2007, we have the applicant's own statement in the inquiry report that he could not, (i.e. did not), report for duty on that date and sought leave telephonically through his mobile phone and further that he, (the applicant) submitted his 'sick, fit' report for that date. This in itself is somewhat self-contradictory because either the applicant would have us believe that he had to attend court on that date and therefore could not attend to his duties or, on the contrary, that he was unwell on that date. His version gives rise to the impression that he did not apply for leave before 17.07.2007 and applied just before the day of leave itself, (on 16.07.2007) and that too by phone.

If indeed this was because of a court date on the day in question as the applicant has pleaded, then it is reasonable to assume that he would have been aware of such a date well in advance and therefore we see nothing wrong in the Inquiry Officer effectively coming to the conclusion that he sees no reason why the applicant should not have applied for his leave well in time and sufficiently before the date of leave. The Station Superintendent in his testimony has stated that the applicant was placed on duty in the 08.00 hours to 16.00 hours' shift on 16th July so that he could get full rest before his shift from midnight to 08.00 hours on 17th July began. He has further stated that between 08.15 to 10.15 p.m., the applicant spoke him on mobile and used abusive language. Thereafter, he did not attend his midnight shift on 17th July and turned up at the station in the morning in order to get leave for the day. Since the witness Shri K.G.S. Panwar, ASM, who also speaks of the applicant giving him, (i.e. Shri K.G.S. Panwar), the leave application in question, there seems to be no reason to doubt that the application, if given, was formally given in writing only on 17th July to the ASM, i.e. on the date of leave itself without any prior formal intimation. There also seems no reason to disbelieve the Station Superintendent when he states that the applicant used abusive language to him on phone on the night before. Thereafter, when such post facto application for leave was presumably refused, the applicant appears to have produced a medical certificate from a private (i.e. non-official) doctor for the dates between 17th July and 19th July. The Station Superintendent further states that no such memo/certificate from the Railway authorities was given by the applicant. Thus there seems to be no substantive reason to disbelieve or

disregard the Inquiry Officer's finding that the applicant did not apply for leave in time and used foul/abusive language with his superior especially where, as in departmental proceedings, such conclusions can be based on preponderance of probability. By the same token, the contention of the respondents and the conclusion of the Inquiry Officer that the applicant left headquarters without permission and submitted sick leave between 17th July and 19th July is also credible.

10. Again, based on the preponderance of probability, there is no reason to disbelieve the ASM Shyampur's report of 28th April that the applicant, who was on duty at that station in the midnight to 08.00 hours' shift, went to sleep after coming on duty and did not wake up even when attempts were made to wake him up and further, that as a consequence of this, Shri Mangi Lal, Cabin Man, could not be relieved from duty. Thus, it does appear that there is no reason to doubt the substantive truth of the respondents' version of events. The applicant is a member of the operational staff of the Railways and such infractions as going to sleep on duty and not turning up for duties without giving sufficient prior notice are indeed serious matters with not just operational but safety implications for an organisation like the Railways. When viewed in its totality, the behaviour exhibited by the applicant on the occasions referred to falls far short of the minimum standards expected from such a functionary and constitutes misconduct. Viewed in this context, the penalty meted out to the applicant does not appear to be excessive in any way. In contrast the applicant's version of events contains discrepancies and contradictions and is thus not

wholly credible. The only witness in the applicant's favour is Shri K.G.S. Panwar, ASM but when his testimony is weighed against all the other evidence on record, it does not add up to any specific or adequate defence of the applicant's actions. As regards the complaints made by the applicant against the Station Superintendent, we offer no comments on these as this is not the subject matter of this proceeding.

11. In the result, we find no merit in this Original Application and the same is hereby dismissed. There will be no order as to costs.

(A. MUKHOPADHAYA)
ADMINISTRATIVE MEMBER

(SURESH KUMAR MONGA)
JUDICIAL MEMBER

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