

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/363/2010
with
Misc. Application No. 291/264/2016

Order Reserved on: 22.02.2018

DATE OF ORDER: 10.07.2018

CORAM

HON'BLE MS. B. BHAMATHI, ADMINISTRATIVE MEMBER
HON'BLE MR. SURESH KUMAR MONGA, JUDICIAL MEMBER

Ashok Kumar Mathur, aged about 56 years, son of Shri Brij Lal Mathur, R/o 11/49, Brahampuri Ajmer, Rajasthan, presently posted as Head Clerk in the office of the Assistant Manager, Ticket Printing Press, North-Western Railway, Mall Road, Ajmer.

....Applicant

Mr. P.P. Mathur, counsel for applicant.

VERSUS

1. The Union of India through the General Manager, North Western Railway, Jaipur.
2. The Chairman Railway Board, Rail Bhawan, New Delhi.
3. The Deputy Chief Material Manager, Store, Depot, Ajmer, North Western Railway, Ajmer.
4. Shri Manu Manish Gupta, Dy. Chief Material Manager, C/o Controller of Stores, North-Western Railway, Headquarter, Jaipur.
5. Shri Lakhpatt Singh Choudhary, Dy. Chief Material Manager, North-Western Railway, Near Railway Station, Jodhpur.
6. Shri A.M. Pandey, Chief Material Manager, C/o Controller of Stores, North-Western Railway, Headquarter, Jaipur.
7. Shri Dinesh Kumar Sharma, Chief Office Superintendent, General Store, C/o Assistant Manager, Nagra, Ajmer.
8. Shri Mahadev Prasad, Office Superintendent, C/o Senior Material Manager, Carriage Stores, Johns Ganj, Ajmer.
9. Shri Pukhraj, Office Superintendent-II, C/o Senior Material Manager, Carriage Stores, Johns Ganj, Ajmer.

....Respondents

Mr. Anupam Agarwal, counsel for respondents.

ORDER**Per: Suresh Kumar Monga, Judicial Member**

The pleaded case of the applicant herein is that while working on the post of Head Clerk, he was served with a charge-sheet dated 24.03.2006 (Annexure A/1) under Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968 (hereinafter called as 'the 1968 Rules') alleging therein that he told his officer that he may not be sent to N.A. Section otherwise he will proceed on sick leave. The further allegation contained in the said charge-sheet was that on 13.02.2006, the applicant was called by the AMM (BGC) five times but he did not report and instead of giving explanation, he himself sought explanation from the administration. The substance of the charges was that he disobeyed the officer incharge and lacked devotion towards duty rendering him unbecoming of Railway servant. It has further been averred that though the charge-sheet did not mention the name of AMM (BGC) but the relevant fact is that Shri Manu Manish Gupta, who issued the charge-sheet, himself was interested in the matter as the incident pertain to him while he was working as AMM (BGC). The applicant filed reply to aforesaid charge-sheet on 03.04.2006 (Annexure A/6) and denied the charges. It has further been averred that Shri Manu Manish Gupta and Shri Lakhpatt Singh Choudhary were harassing the applicant and the charges are nothing but the instrument to curb his voice as he had challenged the seniority list before this Tribunal in OA No. 131/2001, which was allowed on 12.07.2004. The respondents were directed to issue fresh seniority list on the post of Clerk and thereafter grant all consequential benefits to the applicant. The applicant also filed Contempt Petition in

which notices were issued to the respondents. However, the same was dismissed as the applicant's counsel was not present even though orders were not clearly complied with. A liberty was granted to file fresh O.A. Accordingly, the applicant filed O.A. No. 200/2006 in which Shri Lakhpat Singh Choudhary, the then Dy. Chief Material Manager, Ajmer and Shri Sahabuddin, Assistant Personnel Officer were impleaded as respondents. It was alleged that Shri Sahabuddin demanded bribe from him and Shri Lakhpat Singh Choudhary was pressurizing him to withdraw the case. Though Shri Shahbuddin was not competent authority yet he passed the order dated 06.05.2005 and the said fact was admitted by Shri Lakhpat Singh Choudhary during personal meeting with him. The revised seniority list on the posts of Senior Clerk, Head Clerk and Chief Clerk has not been notified malafidely at the behest of Shri Shahbuddin. It has further been averred that during the last five years, the applicant was forced to seek shelter of the higher authorities due to hostile attitude of Shri Manu Manish Gupta and Shri Lakhpat Singh Choudhary and in this regard the applicant had submitted various representations. The charge-sheet was issued by Shri Manu Manish Gupta who was not even the competent authority. By way of passing a non-speaking order dated 01.07.2006 (Annexure A/2), he imposed the penalty of reduction of pay to three stages below in the existing scale of 5000-8000 from existing pay of Rs. 6800/- per month to Rs. 6350/- per month for three years without future effect. The penalty imposed upon the applicant was illegal and beyond the competence of Shri Manu Manish Gupta as the charge-sheet was for a minor penalty and the maximum penalty which could be inflicted is reduction to lower stage in the time scale of pay by one stage for a period not

exceeding three years without cumulative effect and not adversely affecting his pension. The applicant filed an appeal on 13.08.2006 (Annexure A/12) before the Dy. Chief Material Manager. Before the decision could be taken on the said appeal by the Appellate Authority, the Disciplinary Authority revised the order of penalty and passed the order dated 17.11.2006 (Annexure A/13) altering the penalty of reduction to lower stage in the time scale of pay by one stage for a period not exceeding three years without cumulative effect and not adversely affecting his pension. The applicant alleges that even the said order was a result of non-application of mind as it did not mention the exact period for which the reduction in lower stage in the time scale of pay by one stage has been imposed. It has further been alleged that Shri Lakhpat Singh Choudhary, the then Dy. C.M.M. rejected the pending appeal holding that the order of penalty was justified and inflicted the penalty of reduction to lower stage in the time scale of pay by one stage for a period of three years without cumulative effect and not adversely affecting the applicant's pension vide order dated 19.01.2007 (Annexure A/3). Aggrieved by the said order, the applicant preferred a Revision Petition before the Chief Material Manager on 28.03.2007 (Annexure A/14). It was pointed out that Shri Lakhpat Singh Choudhary, the then Dy. C.M.M. while acting as Appellate Authority did not consider the contentions raised by him in the appeal and passed a non-speaking and arbitrary order. However, the Revision Petition preferred by the applicant was rejected on 31.12.2007 (Annexure A/4). Thereafter, the applicant contacted his Advocate to file an OA before this Tribunal challenging the orders passed by the respondents. However, it was advised to seek further information under Right

to Information Act to substantiate his stand. The applicant, accordingly, submitted applications under Right to Information Act pursuant to which, he received certain informations on 20.11.2008, 07.07.2009 and 14.09.2009. The information received by the applicant substantiates the allegations of malafide and, therefore, the applicant filed an application/appeal/representation before the General Manager on 29.01.2009 (Annexure A/5) pointing out the entire circumstances and the malicious intent of the private respondents. Unfortunately, no order has been passed on the said application / appeal / representation. However, in the meanwhile, O.A. No. 200/2006 has been decided in favour of the applicant vide order dated 24.03.2010 (Annexure A/19). It is the further assertion of the applicant that he is aggrieved by the delay in not deciding his application / appeal / representation dated 29.01.2009.

2. The respondents by way of filing a joint reply have joined the defence and opposed the claim of the applicant. A preliminary objection has been raised by the respondents that the O.A. is barred by limitation as the last order was passed on 31.12.2007. It has been averred that as per rules no representation lies against the rejection order passed by the Revisional Authority and as such the prayer to challenge the same on the ground that the applicant moved fresh application after getting information under RTI Act is without any substance. The applicant even failed to file any application for condonation of delay. It has further been pleaded that there is no provision in law to file a representation against the order of Revisional Authority. On merits, issuance of the charge-sheet dated

24.03.2006 and reply thereto filed by the applicant on 03.04.2006 are not denied. It has been pleaded that the reply dated 03.04.2006 submitted by the applicant nowhere mentions the name of Shri Lakhpat Singh Choudhary. So far as the order Annexure A/7 passed by this Tribunal is concerned, it has been pleaded that the said matter pertains to the seniority of the applicant. The applicant is in the habit of alleging malice by impleading official respondents in their personal capacity. The applicant has failed to demonstrate as to how the respondent no. 4 was not competent to issue the charge sheet. The penalty imposed by respondent no. 4 is just and legal. It has further been pleaded that it is not understandable that as to how respondent no. 5 is connected with the charge-sheet or proceedings thereof. The applicant has tried to allege the ill-will of the private respondents with reference to his O.A. No. 200/2006, which is not connected with the issue involved in the instant O.A. The applicant was punished with the reduction to lower stage in the time scale of pay by three stages (from 6800 to 6350) for a period of three years, and there being an error in the order, the same was corrected by way of subsequent order Annexure A/13 by amending the word 'three stage' to 'one stage'. The order passed by the Appellate authority on 19.01.2007 has further clarified the penalty and reduced the same to reduction to lower stage in the time scale of pay by one stage for a period of three years without cumulative effect and not adversely affecting applicant's pension. The Appellate Authority vide order Annexure A/3 did not reject the appeal rather it reduced the penalty after considering the entire record. It has further been averred that in the reply to charge-sheet, the applicant never demanded any document rather sought apology

with a further assurance to be careful in future. It has been averred that by way of moving representation after the order passed by the Revisional Authority, the applicant has tried to cover up his lapse of delay in filing the O.A. With all these pleadings, the respondents have prayed for dismissal of the O.A.

3. Reply in this case was filed by the respondents in October 2011 and thereafter several opportunities were granted to the applicant to file rejoinder but no steps were taken by him in this regard upto 27th February, 2013, on which date, the O.A. was dismissed in default as nobody had put in appearance on his behalf. Thereafter, a belated Misc. Application for restoration of Original Application was filed by the applicant along with a Misc. Application for condonation of delay. The delay in filing M.A. for restoration of O.A. was condoned and the O.A. was restored at its original number on 24.04.2015 by allowing the said M.A. Thereafter, the applicant filed rejoinder on 18.07.2016 and Misc. Application No.264/2016 seeking condonation of delay in filing the O.A.

4. In the rejoinder filed by the applicant, apart from reiterating the facts already pleaded in the O.A., it has been averred that he submitted revision/ representation before the General Manager under Rule 24 of 'the 1968 Rules' and as per the said Rule, there is no limitation for filing the Revision Petition before the General Manager. It has further been averred that in view of the facts disclosed by the respondents for the first time under RTI Act, it is necessary that the respondents should decide the representation / revision on merits.

5. In the M.A. No. 264/2016 seeking condonation of delay in filing the O.A., it has been pleaded that the applicant's appeal was rejected on 19.01.2007 and revision petition was rejected on 31.12.2007 and he received the copy of the order passed on his revision petition somewhere in February, 2008. Various documents were received by the applicant under RTI Act in the year 2008 and thereafter in the year 2009 after filing the revision / representation before the General Manager on 29.01.2009. It has further been averred that if no such Revision Petition was maintainable then the respondents should have apprised the applicant about the same and also the possible authority where he could ventilate his grievance. If the General Manager was not in a position to take the decision in the present case then the applicant could have filed a review petition before the Hon'ble President of India under Rule 25 of 'the 1968 Rules'. The applicant was involved in more than six or seven litigations during that period i.e. from the year 2006 to 2010 and he had no intention to cause delay in filing the present O.A. With all these assertions, the applicant has prayed for condonation of delay in filing the O.A.

6. Heard learned counsels for the parties.

7. Learned counsel for the applicant submitted that the delay in filing the O.A. was unintentional. The applicant filed revision/representation before the General Manager on 29.01.2009 after obtaining certain informations by invoking the provisions of RTI Act. He further contended that the delay in filing the O.A. was bonafide as the respondents did not apprise the applicant about the non-maintainability of the

revision/representation dated 29.01.2009 before the General Manager. On merits, he argued that the respondent nos. 4 & 5 were inimical towards the applicant and, therefore, the respondent no. 4 issued the charge-sheet on 24.03.2006 illegally and arbitrarily. He further submitted that the respondent no. 4 by way of passing a non-speaking order dated 01.07.2006 inflicted the penalty of reduction of pay to three stages below in the existing scale of 5000-8000 from existing pay of Rs. 6800/- per month to Rs. 6350/- per month for three years without future effect. Even the reply to the charge-sheet filed by the applicant on 03.04.2006 was not taken into consideration. He further submitted that the appeal filed by the applicant was also mechanically decided by respondent no. 5 vide order dated 19.01.2007 and the principles of natural justice have been violated while passing the order dated 19.01.2007 by the appellate authority. Learned counsel while referring the orders passed by this Tribunal in OA No. 131/2001 and OA No. 200/2006 further argued that the respondents became inimical as the applicant raked up his seniority issue before this Tribunal and got the favourable orders. He further argued that in view of the provisions of Rule 24 of 'the 1968 Rules', the revision/representation filed by the applicant on 29.01.2009 before the General Manager is maintainable and the General Manager is bound to decide the same.

8. Per contra, learned counsel for the respondents argued that the order dated 31.12.2007 passed by the Revisional Authority has attained finality, which was never challenged by the applicant within the limitation period as prescribed under Section 21 of the Administrative Tribunals Act, 1985. He further argued

that even in M.A. No. 264/2016 filed by the applicant, no plausible reason has been disclosed by him for condonation of delay in filing the instant O.A. The O.A. being barred by limitation deserves to be dismissed. On merits, he argued that while filing reply to the charge-sheet on 03.04.2006, the applicant virtually admitted his guilt and sought apology from the Disciplinary Authority. While keeping in view the representations submitted by the applicant, the Disciplinary Authority passed a revised order of penalty dated 17.11.2006. The applicant preferred an appeal under Rule 18 of 'the 1968 Rules', which was decided by the Appellate Authority vide order dated 19.01.2007. Aggrieved by the said order dated 19.01.2007 passed by the Appellate Authority, the applicant also preferred a Revision Petition before the Chief Material Manager on 28.03.2007 under Rule 25 of 'the 1968 Rules' and finding no irregularity or illegality in the order passed by the Appellate Authority, the said Revision Petition was also dismissed on 31.12.2007 by the Revisional Authority. Learned counsel further argued that the order passed by the Revisional Authority has attained finality and, therefore, no application / appeal / representation lies before the General Manager under Rule 24 of 'the 1968 Rules'.

9. Considered the rival contentions of learned counsels for the parties and perused the record.

10. The Disciplinary Authority passed the order of penalty on 01.07.2006 (Annexure A/2) imposing a penalty of reduction of pay by three stages below in the existing scale of 5000-8000 from existing pay of Rs. 6800/- per month to Rs. 6350/- per

month for three years without future effect, against which an appeal was preferred by the applicant on 13.08.2006 (Annexure /12) before the Appellate Authority under Rule 18 of 'the 1968 Rules'. Before the decision could be taken by the Appellate Authority, the Disciplinary Authority passed a revised order on 17.11.2006 (Annexure A/13) inflicting penalty of reduction to lower stage in the time scale of pay by one stage for a period not exceeding three years without cumulative effect and not adversely affecting applicant's pension. Thereafter, an order dated 19.01.2007 (Annexure A/3) was passed by the Appellate Authority and a penalty of reduction to lower stage in the time scale of pay by one stage for a period of three years without cumulative effect and not adversely affecting applicant's pension, was imposed upon him. The applicant while invoking the provisions of Rule 25 of 'the 1968 Rules' preferred a Revision Petition against the order passed by the Appellate Authority, which came to be dismissed on 31.12.2007. The said order dated 31.12.2007 had attained finality as the applicant did not opt to challenge the same before the Tribunal within the period of limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985. After about a period of six years of filing the instant O.A., the applicant filed M.A. No. 264/2016 seeking condonation of delay in filing the O.A. without even narrating therein about the number of days of delay. It has been pleaded that the copy of the order passed by the Revisional Authority was received by the applicant somewhere in the month of February, 2008 and thereafter he received certain informations from the authorities under RTI Act in the years 2008 and 2009. He preferred a revision/representation before the General Manager on 29.01.2009 (Annexure A/5) and since the

respondent-authorities did not apprise him about the non-maintainability of the said revision/representation before the General Manager, therefore, the filing of the O.A. was delayed. We do not find any substance in the plea raised by learned counsel for the applicant seeking condonation of delay in filing the O.A. as on the one hand, the applicant while filing his rejoinder has specifically pleaded that his revision/representation is maintainable under Rule 24 of 'the 1968 Rules' and on the other hand, in M.A. No. 264/2016 seeking condonation of delay in filing O.A., he has pleaded that he was not apprised about the non-maintainability of the said revision/representation before the General Manager. We do not see any bonafides in the actions of the applicant. While pursuing the instant litigation, initially the O.A. was filed in the year 2010 without any application seeking condonation of delay. The reply in this case was filed way back in the year 2011 by the respondents. Thereafter, no rejoinder was filed by the applicant upto 27.02.2013 when the O.A. was dismissed in default as nobody had been appearing on various dates of hearing i.e. 02.11.2012, 11.12.2012, 17.01.2013 and 27.02.2013. The Original Application was restored on 22.04.2015 at its original number on the applicant's Misc. Application. Thereafter in July 2016, the applicant came out with the rejoinder and M.A. No. 264/2016 seeking condonation of delay without even mentioning the number of days of delay in filing the O.A. It appears that the applicant had also been playing hide and seek with the respondent-authorities as knowing fully well that the order passed by the Revisional Authority has attained finality, he opted to file a revision/appeal/ representation dated 29.01.2009 before the General Manager to cover up the delay. The reasons narrated by him

cannot be termed to be bonafide and, therefore, we are of the view that the Misc. Application seeking condonation of delay deserves to be dismissed.

11. Even on merits, we do not find any substance in the arguments raised by the learned counsel for the applicant. A perusal of the reply dated 03.04.2006 (Annexure A/6) filed by the applicant pursuant to charge memo dated 24.03.2006 (Annexure A/1) reveals that the applicant submitted his apology before the Disciplinary Authority by saying that if because of any of his advertent or inadvertent actions, his (disciplinary authority's) sentiments are hurt then he may be pardoned. It was further submitted in the said reply that he had been discharging his duties diligently and with the absolute devotion and he assured that he shall try to be more careful and will discharge his duties to the entire satisfaction of all his superiors without giving a chance to be wanted or reprimanded. Keeping in view these kind of specific assertions made in the reply by the applicant before the Disciplinary Authority, we do not see any infirmity or illegality in the order of penalty imposed upon him. It appears that after the order of penalty passed by the Disciplinary Authority, the applicant started improving his case before the Appellate Authority by alleging malice against respondent nos. 4 & 5. After careful perusal of the entire record we find that the applicant wanted to take advantage of his earlier litigation which he was pursuing by way of O.A. No. 131/2001 and OA No. 200/2006 before this Tribunal with regard to his seniority issues and started leveling allegations of malice against respondent nos. 4 & 5 without there being any substance in the same. The Appellate Authority passed the order dated

19.01.2007 (Annexure A/3) and the order of penalty was modified to the extent of reduction to lower stage in the time scale of pay by one stage for a period of three years without cumulative effect and not adversely affecting the applicant's pension. The applicant preferred a Revision Petition under Rule 25 of 'the 1968 Rules' before the Revisional Authority, which was dismissed on 31.12.2007 (Annexure A/4). We do not see any infirmity in the orders passed by the respondents.

12. So far as the plea raised by learned counsel for the applicant that the General Manager was bound to decide the applicant's revision/representation dated 29.01.2009 filed under Rule 24 of 'the 1968 Rules', we do not find any substance in the said argument as well. Admittedly, the applicant preferred an appeal under Rule 18 of 'the 1968 Rules' before the Appellate Authority. The said appeal was decided by the Appellate Authority vide order dated 19.01.2007 (Annexure A/3). Still not satisfied, the applicant preferred a Revision Petition under Rule 25 of 'the 1968 Rules' before the Revisional Authority, which came to be dismissed on 31.12.2007 (Annexure A/4). The said order attained finality as no further appeal/ revision/ representation is maintainable against the same. So far as the provisions of Rule 24 of 'the 1968 Rules', as referred by the applicant's counsel, are concerned, those are not applicable in the present case. A perusal of Rule 24 of 'the 1968 Rules' divulges that the rule making authority has made special provisions for non-gazetted staff of the Railways, to file a revision petition before the General Manager, after his appeal to the appropriate appellate authority is disposed of, against an order of penalty of dismissal, removal or compulsory retirement.

Since the case in hand is neither of dismissal nor removal or compulsorily retirement from service, therefore, the protection of such special provisions as contained in Rule 24 of 'the 1968 Rules' is not available to the applicant. We, thus, do not find any merit in the instant Original Application and the same deserves to be dismissed.

13. In the conspectus of discussions made hereinabove, the instant Original Application is hereby dismissed on the grounds of delay and on merits as well. However, there shall be no order as to costs.

(SURESH KUMAR MONGA)
JUDICIAL MEMBER

(B. BHAMATHI)
ADMINISTRATIVE MEMBER

Kumawat