

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No.290/00126/2016

Reserved on : 21.08.2018

Pronounced on : 06.09.2018

CORAM:

HON'BLE MRS. HINA P.SHAH, MEMBER (J)

Sudama Prasad s/o Late Shri Sugreev Prasad, aged about 58 years, resident of Rly Qtr. No. 144-C, Medical Colony, North West Railway Colony, Hanumangarh Jn., at present employed on the post of TCM under SSE (Tele) Hanumangarh Jn. NWR

...Applicant

(By Advocate: Shri J.K.Mishra)

Versus

1. Union of India through General Manager, North Western Railway, HQrs., Jaipur Zone, Near Jawahar Circle, Jaipur Pin: 302017
2. Sr. Divisional Signal and Excommunication Engineer, NWR, Bikaner Division, Bikaner
3. Divisional Signal and Excommunication Engineer, NWR, Bikaner Division, Bikaner.
4. Senior Section Engineer (Telecommunication), NWR, Hanumangarh Jn.

...Respondents

(By Advocate: Shri Salil Trivedi)

ORDER

The applicant has filed the present OA u/s 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- (i) That impugned chargesheet dated 22.4.2014, Annexure A/1, penalty order dated 6.5.2014, Annexure A/2, passed by 4th respondent, appellate order dated 13.10.2014, Annexure A/3, and communicated by 4th respondents and any adverse order if passed on the pending revision petition, may be declared illegal and the same may be quashed. The applicant may be allowed all the consequential benefits as if none of the impugned orders were ever in existence.
- (ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iii) That the costs of this application may be awarded."

2. Brief fact of the case, as stated by the applicant, are under:-

The applicant was initially appointed to the post of Points Man-B on 22.7.1978. Thereafter, he was promoted as Cabin Man. On 21.6.2008 he was de-categorised from the post of Cabin Man and re-employed on the post of TCM on 10.11.2010. At present, he is employed under SSE (Tele) Hanumangarh Jn. It is the plea of the applicant that he was issued a warning letter dated 17.4.2014 asking for his explanation regarding alleged misbehaviour with one Shri Prabhu Dayal, TCM. The applicant had denied the said allegation levelled against him. He had requested for supply of certain documents vide his letter dated 21.4.2014. The

applicant further states that for the said alleged misbehaviour with staff, he was issued a chargesheet under Rule 11 of the Railway Servants (Discipline and Appeal) Rules, 1968 vide memo dated 22.4.2014 alleging misbehaviour and causing obstruction in railway work and breaking discipline of the office. Vide his letter dated 25.4.2015 (Ann.A/6) he has requested for holding detailed inquiry so that the actual culprit could be found out as the allegations levelled against him were completely wrong. He also submitted a statement in response to the chargesheet vide letter dated 25.4.2014 (Ann.A/7). The applicant further states that respondent No.4 was admittedly a witness to the alleged incident who did not consider the request of the applicant to conduct a detailed inquiry and straightway imposed the penalty of withholding increment for one year from 1.7.2014 without cumulative effect (Ann.A/2). It is his plea that penalty order has been passed in a mechanical way by the Disciplinary Authority on the basis of his own testimony. He, thus acted as a prosecutor, judge and witness in his own case. The applicant had submitted a detailed and exhaustive appeal dated 10.7.2014 to respondent No.2. The respondent No.4 informed the applicant vide letter dated 19.8.2014 that the punishment

imposed on him by the Disciplinary Authority was kept as it is by the Appellate Authority and that he may prefer revision petition to the competent authority. The applicant had requested for supply of copy of the order passed by the Appellate Authority but he was supplied with noting dated 14.7.2014 vide letter dated 13.10.2014. Thereafter, he had submitted a revision petition vide letter dated 2.12.2014 but the same has remained unanswered (Ann.A/11).

The applicant has also referred to the Govt. of India instruction below Rule 12 of CCS (CCA) Rules, 1965 to the following effect:-

“(4) When the Competent Authority is unable to function Authority.- Where the officer who is the prescribed Disciplinary Authority will be the complainant and/or the witness in a disciplinary proceeding, another officer should be specified as Disciplinary Authority by a special order of President under Rule 14 (2) of the CCS (CCA) Rules, 1957 (corresponding Rule 12(2) of 1965 Rules)”

It is the plea of the applicant that respondent No.4 acted as prosecution, judge and witness in the matter and, therefore, the whole proceedings are vitiated and the impugned orders deserve to be quashed and set-aside being violative of Article 14, 21 and 311 of the Constitution of India. Since the applicant had request for a detailed

inquiry as per Rule 9 of the said rules, but the same was not considered by the respondents. Therefore, there has been denial of reasonable opportunity to the applicant to defend his case. Also the appellate order passed by the respondents rejecting the appeal of the applicant without specific findings as per Rule 22(ii) of the said rules is ex-facie illegal and, therefore, the punishment imposed on the applicant is disproportionate to the alleged misconduct, which cannot be sustained in the eyes of law. Therefore, the present OA may be allowed with consequential benefits.

3. The respondents have filed reply dated 25.1.2017 denying the contentions of the applicant. The respondents have raised preliminary objection to the effect that the applicant is having statutory remedy available to him for filing a revision petition under the Railway Servants (D&A) Rules and since the said remedy was not availed by him, therefore, the present OA deserves to be dismissed on the said ground.

The respondents have also raised plea of limitation stating that the present OA is grossly belated since the orders passed by the respondents are dated 24.2.2014 and 6.5.2014 and the decision on appeal vide order dated

13.10.2014 was communicated to the applicant by respondent No.4. The revision petition dated 2.12.2014 (Ann.A/11) clearly reveals that the same is a review petition and not a revision petition. The applicant has himself stated that the review application be considered by the respondents which is preferred against the appellate order passed by the Appellate Authority. The wordings of the review petition is very clear and from its contents it is clear that the applicant is well aware of the fact that it is a review petition and not a revision petition. Therefore, as the appellate order was conveyed on 13.10.2014, the present OA filed on 22nd January, 2016 deserves to be dismissed on the ground of delay and laches. Merely filing a review application dated 2.11.2014 and treating the same as revision petition will not help the applicant for approaching this Tribunal within time as delay in filing the present OA after the requisite period is unexplained and, therefore, the present OA deserves to be dismissed on the ground of limitation. No Misc. Application has been filed by the applicant to explain the delay in approaching the Tribunal and he has presumed that the review petition/revision petition filed by him is within time. There are catena of Apex Court judgments which state that the

petition filed beyond the requisite period cannot be entertained as the applicant was required to approach the Tribunal within time as per Section 21 of the AT Act, 1985.

The applicant was served with a chargesheet dated 22.4.2014 under Rule 11 of Railway Servants (D&A) Rules, 1968 wherein three charges were levelled against him. As the applicant made a request to the respondents for supply of certain documents, the same were handed over to him and thereafter after receipt of his explanation, the Disciplinary Authority had passed the order. It is also clear that the Appellate Authority had gone through the contents of the appeal filed by the applicant sympathetically and thereafter confirmed the order passed by the Disciplinary Authority. The authorities have considered the matter sympathetically and after considering all the material as well as the explanation of the applicant, passed the necessary orders as per rules. Since the authorities have applied their mind, it is the submission of the respondents that the court cannot sit as an appellate authority and discuss all the evidence in judicial review and, therefore, the order passed by the authorities did not deserve any interference. It is the contention of the respondents that after passing of the appellate order, the applicant had

statutory remedy of filing a revision petition before the revisional authority but instead of filing the same, he filed a review petition and expected the authorities to pass appropriate orders on the same knowing it fully well that the same is not a revision petition, but it is a review petition. It is the case of the respondents that for imposition of minor penalty, it is not mandatory to hold an inquiry. Thus, the applicant was not deprived of the reasonable opportunity to defend his case and therefore, there is no violation of rules. Since the charges were proved against the applicant, a minor penalty was imposed by the Disciplinary Authority, which was not disproportionate after taking into consideration the charges levelled against the applicant in the alleged misconduct. Therefore, the orders passed by the authorities are just and proper and the same require no interference by this Tribunal.

4. Heard Mr. J.K.Mishra, counsel for the applicant and Shri Salil Trivedi, for the respondents and perused the material available on record.

5. During the course of arguments, the learned counsel for the applicant has stated that there is no delay on the part of the applicant in approaching the Tribunal as he has

preferred revision petition dated 2.12.2014 through proper channel. It is his contention that the order of the Appellate Authority was not communicated to him but only the noting was served on him. If at all the revision petition is seen, he has come to the Tribunal within time as he has waited for the outcome of the said order for six months and, therefore, the present OA cannot be dismissed on the ground of limitation. The learned counsel further stated that the applicant was not supplied with the copy of appellate order though he has asked for, but instead only noting dated 24.7.2014 was supplied to him vide letter dated 13.10.2014. He further contended that he had replied and denied the charges, but no findings are recorded in the penalty order. There is violation of the rules and there was no proper application of mind in passing the orders by the respondents. Therefore, the chargesheet, penalty order and the appellate order deserve to be quashed and set-aside. In support of his contention the learned counsel for the applicant has relied upon the judgment of the Hon'ble Supreme Court in the case of **Chairman, Disciplinary Authority, Rani Lakshmi Bai Khetriya Gramin Bank vs. Jagdish Sharan Varshney and Ors.**, (2009) 1 SCC (L&S) 806 and **Divisional Forest Officer, Kothagudem and**

Ors. vs. Madhusudhan Rao, (2008) 1 SCC (L&S) 788 and wherein it is held that the Appellate Authority should give reasons while affirming the order of the lower authority.

7. The learned counsel for the respondents submitted that whatever documents requested by the applicant were supplied to him, which can be seen from annexures attached to the OA and therefore, making such vague allegation against the respondents is not justified. Since it is a matter of minor penalty, it is the prerogative of the respondents to go for a detailed inquiry or not. Therefore, after going through the allegations about the misconduct, the Disciplinary Authority as well as the Appellate Authority has passed justified order after considering the case of the applicant sympathetically. The respondents have again submitted that the delay in approaching the Tribunal is five months which cannot be condoned without being any Misc. Application for condonation of delay filed or making any submission for the same. The learned counsel for the respondents relied upon the judgment of the Hon'ble Supreme Court in **State of U.P. vs. Harendra Arora and Anr.**, 2001 AIR SCM 2029 and **Ramesh Chand Sharma vs. Udham Singh Kamal and Ors.**, 1999 AIR SCW 3911 on the question of limitation and that delinquent employee

cannot be said to have suffered any prejudice by non-furnishing of inquiry report and therefore, the dismissal order is not liable to be quashed or set aside.

8. After considering the submissions in detail, it is clear that the minor penalty of withholding of increments for one year from 1.7.2014 has been imposed in the present case. It is undisputed that though the applicant submitted an exhaustive appeal dated 10.7.2014 (Ann.A/9) to respondent No.3, but respondent No.4 vide letter dated 13.10.2014/19.8.2014, only supplied noting of the Appellate Authority dated 24.7.2014. The copy of the appellate order should have been supplied to the applicant by which the applicant could have got an opportunity to go through the same and thereafter he could have taken appropriate measures on the said appellate order. It is seen that the Appellate Authority has not taken into consideration all the points raised in the appeal. It has gone beyond the charges levelled against the applicant and disposed of the appeal in a mechanical way, which is improper and unjust. It shows non-application of mind of the Appellate Authority. It is found that the applicant thereafter preferred a review petition dated 2.12.2014

against the appellate order conveyed vide order dated 13.10.2014, which is not responded by the respondents.

9. In these facts and circumstance, the noting of the Appellate Authority as conveyed to the applicant vide order dated 13.10.2014/19.8.2014 pertaining to appellate order is quashed and set-aside. The matter is remitted back to the Appellate Authority to go through the appeal afresh and after considering all the points raised by the applicant in the appeal dated 10.7.2014 pass a reasoned and speaking order alongwith its findings within a period of two months from the date of receipt of the copy of the order. Thereafter the order of the Appellate Authority shall be conveyed to the applicant.

10. The OA is disposed off accordingly with no order as to costs.

(HINA P.SHAH)
MEMBER (J)

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