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**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

No. O.A. 607 OF 2012

Date of order: 10th January 2018

Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Balaram Majhi,
Son of S. Majhi,
Working for gain as Sr. Clerk (since dismissed),
Office of the General Manager (G)/CLW/Chittaranjan,
At present residing at Rupnarayanpur (Rupnagar),
P.O. - Rupnarayanpur Bazar,
District - Burdwan,
Pin - 713384.

.. Applicants

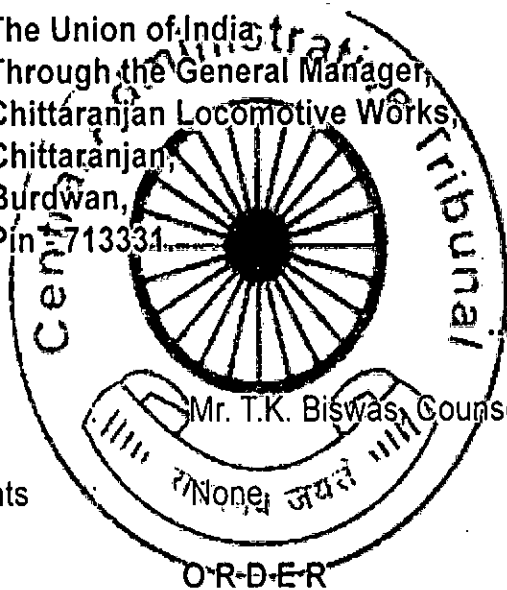
Vs.

1. The Union of India,
Through the General Manager,
Chittaranjan Locomotive Works,
Chittaranjan,
Burdwan,
Pin - 713331.

.. Respondents

For the Applicant

For the Respondents



Mr. T.K. Biswas, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

This Original Application has been filed under Section 19 of the
Administrative Tribunal, 1985 seeking the following reliefs:-

- "a. An order directing the respondents to set aside the order dated 4.4.2012 (Annexure A-10) and quash all the proceeding and further directing the respondents to reinstate the applicant in the post of Office Superintendent Gr. I of GM Office, CLW with all consequential benefits.
 - b. An order directing the respondents to produce the all records which was relating to this case;
 - c. And pass such order or further orders or order as to this Hon'ble Tribunal may deem fit and proper."
2. Ld. Counsel for the applicant is present and heard. None appears

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on behalf of the respondents. Being a long pending application since 2012 the matter is proceeded upon as per Rule 16(1) of the CAT (Procedure) Rules, 1987.

3. The case of the applicant as submitted by his Ld. Counsel is as follows:-

The applicant was appointed on 14.8.1980 in CLW, Chittaranjan and was subsequently promoted to the post of Office Superintendent, Gr. I of GM, CLW; thereafter, a major penalty charge sheet was issued against the applicant who was found guilty and was dismissed from his service on 20.7.1999. That, against the said dismissal order dated 20.7.99, the applicant preferred an appeal dated 28.7.99 before the competent authority i.e. before the General Manager, CLW, within the statutory time. That, being aggrieved by the illegal order of dismissal, the applicant filed an application being O.A. No. 983 of 1999 before the Central Administrative Tribunal, Calcutta Bench. The said application was disposed of by the Tribunal on 12.8.99 by passing the order that:-

"Considering the material on record and hearing the submission of the Ld. Counsels for both the parties the operation of the order dated 20.7.99/26.7.99 as per Clause (b) contained therein as communication to the petitioner is stayed till the disposal of the appeal by the competent authority."

That, the applicant submitted an appeal dated 28.7.99 against the said dismissal order to the General Manager, who is the appellate authority. That, during hearing of the said O.A. No. 983 of 1999 by the Tribunal, the Ld. Counsel of the respondents did not ever mention that it is not the General Manager but the CPO who is the competent appellate authority. On the basis of this, the Tribunal was pleased to observe as follows:-

"..... An appeal has been preferred before the competent authority on

28.7.99."

That the appeal preferred by the applicant dated 28.7.99 was addressed to the General Manager.

That, said appeal dated 28.7.99 submitted to the General Manager against the imposition of penalty order was disposed of by the Chief Personnel Officer (CPO) vide letter dated 12.10.99 (received by the applicant on 13.11.99) though the CPO was not the competent authority and hence had no authority and/or jurisdiction in the matter.

That, such order passed unauthorisedly was infructuous and was liable to be set aside.

That, the General Manager is the competent authority to dispose of the said appeal dated 28.7.99 because the petitioner was working in the Department as the Office Superintendent and as per Railway Rules, General Manager is the competent authority of the petitioner.

That, the appeal dated 28.7.99 was addressed to the General Manager and no other authority has the power to dispose of the applicant's appeal as per rules. Therefore, the respondents did not follow any Departmental rules since Chief Personnel Officer is not the competent appellate authority, that he has no authority and/or jurisdiction in the matter and hence the said order passed on appeal was liable to be set aside.

Thereafter, the applicant filed an O.A. before the Tribunal being O.A. No. 402 of 2006 which was disposed of on 8.2.2008 by directing the applicant to file a Review Application in accordance with law in the field.

That, in terms of the said order the applicant filed a fresh appeal on 24.7.2008 before the General Manager stating the errors of the department and highlighting that statutory rules have not been followed in this regard.

The General Manager's order dated 16.9.2008 had stated as follows:-

"After careful consideration of every aspect of the case, I do not find any

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reason to modify the order of the Disciplinary Authority, as upheld by the appellant authority. The order given by the Disciplinary Authority stands good."

In the meanwhile, the applicant filed a Contempt Application but the same was disposed of as withdrawn on 2.7.2008. Thereafter, the applicant filed an application before the Tribunal bearing No. 1031 of 2008 which was dismissed on 4.1.2011. Being aggrieved, the applicant filed a Writ Petition before the Hon'ble High Court being WPCT No. 97 of 2012 and the same was disposed of on 13.2.2012 with the following directions:-

"since, admittedly the appeal was not considered by the General Manager, but by an authority who was not the appellate authority, the Tribunal ought to have directed i.e. consideration of the appeal by the proper authority. Therefore, the order in appeal in review and the order of the Tribunal are all set aside. The appeal filed by the writ petitioner before the General Manager is restored to its original file. The General Manager is directed to consider the appeal and upon proper application of mind uninfluenced by any of the observation made by the Chief Personnel Officer or by the Tribunal. We expect that the General Manager shall pass a reasoned and speaking order within one month from the date of communication of this order to him. He shall communicate his order to the writ petitioner immediately after taking his decision."

4. Although no Counsel for respondents is present to argue the matter, the contention of the respondents, as inferred from their reply, is that the allegations made in the instant application is not relevant in view of subsequent order passed by the Hon'ble High Court of Calcutta dated 13.2.2012 (Annexure "A-9" to the O.A.).

That, as per directions of the Hon'ble High Court, Calcutta the General Manager had passed the order as appellate authority considering all material issues in a fair and impartial manner.

That, the disciplinary proceedings have not been challenged by the applicant and the allegation of delay of 13 years to hear a statutory appeal cannot be a ground to set aside the order as affirmed by the appellate authority.

ISSUES

The issues which require to be resolved in this case are whether:

(i) The General Manager i.e. respondent No. 1, had abided by the directions of the Hon'ble High Court in WPCT No. 97 of 2011 as passed on 13.2.2012.

(ii) Whether the speaking order of the General Manager issued in compliance of the Hon'ble High Court's directions dated 4.4.2012 (Annexure "A-10" to the O.A.) is bad in law.

At the outset, we refer to the orders of the Hon'ble High Court in WPCT No. 97 of 2011 which had directed as follows:-

" The General Manager is directed to consider the appeal independently and upon proper application of mind uninfluenced by any of the observations made by the Chief Personnel Officer or by the Tribunal.

We expect that the General Manager shall pass a reasoned and speaking order within one month from the date of communication of this order to him. He shall communicate his order to the writ petitioner immediately after taking his decision."

Thus the directions of the Hon'ble High Court had two specific directions on the General Manager,

(a) The General Manager was directed to consider the appeal independently and upon proper application of mind uninfluenced by any of the observations made by the Chief Personnel Officer or by the Tribunal.

(b) That the General Manager should pass a reasoned and speaking order within one month from the date of the communication of this order to him and should communicate his order to the writ petitioner immediately after taking a decision."

5. It has been alleged in the instant O.A. that the General Manager was influenced by the Chief Personnel Officer; hence, we refer to the order

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of the CPO dated 13.10.99 (Annexure A-5). The said order is reproduced below:-

"No. GMA/GENL/D&AR/BM

Dated: 12.10.1999

Shri Balaram Majhi,
Ex. Sr. Clerk, GM (G)'s Office,
D/19, Prasant Avenue,
Chittaranjan - 713 331.

Sub: Major penalty charge-sheet No. GMA/Genl./D&AR/BM dated 21.4.97.

Ref.: Your appeal dated 28.7.1999.

I have gone through the appeal dated 28.7.1999 submitted by Shri Balaram Majhi, Ex. Sr. Clerk, GM (G)'s office along with the relevant papers and connected files as observed as under:

1) The CO was well aware about the Joint Procedure Order No. Med/207-E.4 Pt. VII dated 20.11.86 effective from 1.1.87 for remitting the cash from outsider for treatment in KG Hospital.

2) The CO has recorded in the 480 Nos. BHT, the cash receipt No. To indicate in BHT by the CO are totally different from the cash receipt issued by Cash Office.

3) The CO has recorded "deposited in 2271 BHT" without mentioning the cash receipt No. Which suggests that the amount of Rs. 10.83 lakhs paid by the outsider for medical treatment has not been deposited to the Cash Office.

4) The case was first detected by the then CMS, Dr. S.C. Naskar and to find out the truth of such irregularities. He nominated a committee consisting of Dr. D. Sanyal, Sr. DMO and Dr. D.R. Das, DMO, K.G. Hospital.

5) There was no need to include any official in the committee other than, KG Hosital doctors where the records are maintained for treatment of outsider patients and the amount charged for the medical treatment.

6) The CO had been given full opportunity to defend this case in all respect by supplying the relevant documents as asked for and also an opportunity to inspect the documents at KG Hospital/CLW.

7) The CO's statement were of different opinion regarding maintenance of records/registers in KG Hospital for outsiders patients which suggests that the CO has tried to suppress the fact of non-depositing the money handed over to him by the patient from outsider towards medical expenses and thereby only denying his responsibility

8) The witnesses called for have indicated regarding the receipt of money from outsider for medical treatment taken in KG Hospital and the same has been recorded by the CO in the BHT as deposited without actually depositing the amount to Cash Office.

9) The CO had admitted that an amount of Rs. 1,000/- (Rupees one thousand) only was received by him for treatment of son of Shri Srikanta Pandey which had been returned by him in cash. The CO initially did not refund the money immediately but refunded at a later date when the case was surfaced. The CO had admitted of collecting

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the money from outsider and refunded to Shri Pandey.

10) The CO has failed to justify his act of writing false cash receipt No. In 480 Nos. BHT and also amount deposited "written by him in 2271 BHT" are adequate to prove his guilt.

In view of the above, it is amply cleared that Rs. 13.57 lakhs of money has been misappropriated by the CO. I have applied my mind keeping in view the principle of natural justice and without influenced by anyone, I passed the following orders- "Upheld the penalty imposed by DY. GM and DA.

(S. Gupta)
Chief Personnel Officer
& Appellate Authority."

6. We now come to the order passed by the General Manager. The General Manager, in Para 3 of his order dated 4.4.2012, has acknowledged the directions of the Hon'ble High Court Calcutta "to consider the appeal independently and upon proper application of mind uninfluenced by any of the observation made by the Chief Personnel Officer or by the Tribunal, in the capacity of Appellate Authority."

7. The General Manager, has, in his order, narrated the background of the matter that led to the disciplinary proceedings against the applicant on the grounds that he had contravened Rule 3.1(i) & (iii) of Railway Service (Conduct) Rules, 1966. In Para 6 of the speaking order, the General Manager has, in detail, brought out all the submissions made by the applicant in his appeal. The General Manager thereafter, has proceeded to analyse the records/documents which were available in the disciplinary proceedings against the applicant as well as the submissions made by the applicant in the appeal and has concluded on the following rationale:

"7.3. After imposition of the punishment of Dy. GM & Disciplinary Authority on 20.7.1999, Sri Majhi & C.O. preferred an appeal to GM/CLW & AA on: 28.7.1999. In the said appeal, he has neither refuted the allegations which has been brought in the charge memorandum dated 21.4.1997 nor produced any documentary evidence, in order to prove that he is not guilty, rather he has simply tried to shift the responsibility either on the head of nursing sister or on the doctors, without having any supporting documents to this effect.

7.4. Shri Majhi & C.O. has tried to raise the points on the existing

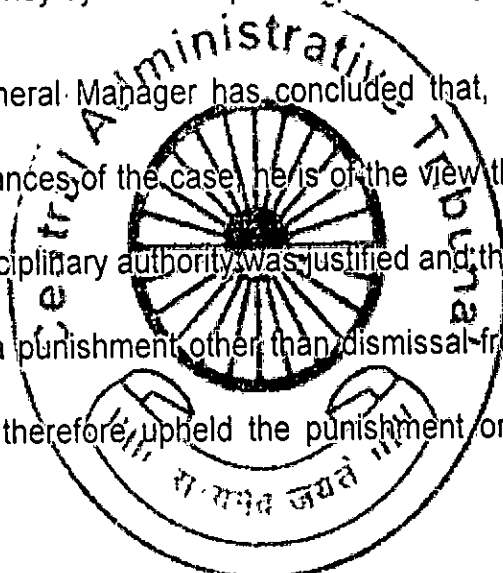
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system and procedure towards the realization of amount from the non-railway patients, owing to their treatment at KG Hospital, CLW, Chittaranjan, but did not categorically produce any document for the satisfaction of the General Manager, to the extent that he had not collected the money from the non-railway (outsider) patients, who were treated at the material point of time.

7.5. Sri Majhi & C.O. also focused on the joint procedure order (JPO) and tried to say that he was not an Accounts Clerk of Accounts department, which enables him to collect the amount. Simultaneously, he also stated that he followed the prevailing system of CMS office. It is a fact that no Accounts clerk was posted in the CMS office to collect the money, but it was the duty of the delinquent to deposit the collected amount (Govt. Money) from non-railway (outsider) patients, in the Cash & Pay Office, which he deliberately did not follow & deposit the amount, rather he mis-appropriated the same.

7.6. Thus, I am of the opinion that the act performed by Sri Majhi & C.O. cannot be termed as a negligence or simple omission on his part. Basically, it is called a planned way fraud and deliberate attempt of the delinquent. Wherein, the things have been done in a conscious mind and fully knowing the fact and implications of mis-appropriation of Government money by the delinquent is proved beyond doubt."

Finally, the General Manager has concluded that, considering all the facts and circumstances of the case, he is of the view that the punishment imposed by the disciplinary authority was justified and the applicant and CO deserves no less a punishment other than dismissal from service and the General Manager therefore upheld the punishment order passed by the DA.



FINDINGS

8. The logic, rationale and analysis based on which the General Manager has disposed of the appeal, are as follows:-

- (i) That, the applicant and appellant in the DP, in his appeal had not refuted the allegations which had been incorporated in the charge-memorandum dated 21.4.1997.

It is noted here that, at no stage of litigation, the applicant had challenged the disciplinary proceedings, per se. Rather, instead of pointing to any lacunae in the disciplinary proceedings, he has participated in the same.

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(ii) That, the applicant and appellant in the DP had not produced any documentary evidence in order to prove that he is not guilty.

Nowhere in the instant application, the applicant has stated that he brought additional records to substantiate his appeal before the General Manager.

(iii) Rather, the applicant and appellant in the DP had simply tried to shift responsibility to other officials without having any supportive documents to this effect.

As the instant application has neither referred to nor substantiated that any additional documents have been adduced to the appeal, we find no fault in the reasoning of the General Manager.

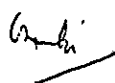
(iv) The General Manager had further held that the applicant and appellant in the DP had not categorically produced any documents for satisfaction of the General Manager to the extent that he had not collected money from the non-Railway outsider patient who were treated at the material point of time.

In his rejoinder, the applicant has not countered this finding of the General Manager.

(v) The applicant and appellant in the DP did not also counter the finding that it was his duty to deposit the collected amount of Govt. Money from non-Railway/outsider patient and that he did not deposit the amount.

(vi) The General Manager has concluded that it is a deliberate attempt over a considerable period of time of accumulating small amount of misappropriation of Govt. money which has ultimately amounted to misappropriation to Rs. 13.64 lakhs which has been fully established in the disciplinary proceedings.

9. The CPO, who had earlier passed his order dated 12.10.99



(Annexure "A-3" to the O.A) as appellate authority, had basically concluded on the presumption of wilful misappropriation by the CO notwithstanding the CO's awareness of the joint procedure order dated 12.11.1986 and that despite having full opportunity to defend his case, contradictory statements of the CO as well as adverse evidence of witnesses had led the CPO to uphold penalty imposed by Dy. General Manager and DA.

10. We find that while the CPO as appellate authority had passed a brief order relying on the disciplinary proceedings per se, the General Manager, on the other hand, had carefully analysed the office records, the submission of the CO and the appellant in the appeal and has thereafter arrived at his conclusions.

11. Hence, there is nothing on record to substantiate that the General Manager, while arriving at his conclusion, was influenced anyway by the CPO and the erstwhile appellate authority in concluding his appeal on 4.4.2012. Rather, we find that the General Manager has demonstrated clear application of mind, a sense of fairness, has referred to the relevant conduct rules and has thereafter proceeded to conclude based on facts as well as rules.

12. We are of the considered view that given such an order of the General Manager which was issued in compliance with orders of the Hon'ble High Court there are absolutely no grounds to declare it as bad in law; rather it is a well analysed, well reasoned and just order based on the rules that govern the applicant as well as the respondent authorities.

13. The fact that the appellate authority took a long time to decide on a statutory appeal cannot be a justification to reject the same as because the General Manager was complying with the orders of the Hon'ble High Court dated 13.2.2012. He had issued his orders on 4.4.2012, which cannot be

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labelled as a wilful delay on his part.

In this, we are guided by the Hon'ble Apex Court in restating the grounds of Judicial Review in *High Court of Judicature at Bombay v. Shashikant S. Patil (2000) 1 SCC 416*, that enumerates the ground as follows:-

- (a) where there has been a violation of the principles of natural justice; or
- (b) the proceedings have been held in violation of statutory regulations prescribing the mode of such enquiry; or
- (c) the decision is vitiated by considerations extraneous to the evidence and merits of the case; or
- (d) if the conclusion made by the authority is ex facie arbitrary or capricious that no reasonable person could have arrived at such conclusion; or
- (e) Other very similar to the above grounds."

It has also been held in *U.O.I. v. Mohd. Ramzan Khan (1991) 1 SCC 588*:

"Where the employee takes part in a disciplinary proceeding without raising any objection and even cross examines witnesses, he will not be permitted to advance the defence of delay in initiation of disciplinary proceedings."

The order dated 4.4.2012 challenged in the instant application does not invoke any of the grounds calling for judicial review.

The applicant has been provided with enough opportunities to present his case, the mode of enquiry was not vitiated by statutory violation, the order was not influenced by extraneous considerations and the conclusions are not arbitrary nor unreasonable.

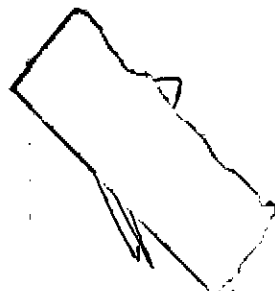
The applicant has not been able to substantiate any of the grounds invoking judicial review otherwise on his behalf. It is hence our considered view that the order of General Manager dated 4.4.2012 does not call for interference by the Tribunal and is dismissed accordingly.

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14. Hence, the O.A. fails to succeed. The parties are to bear their own costs.



(Dr. Nandita Chatterjee)
Administrative Member



(Manjula Das)
Judicial Member

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