

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA**

OA No.350/00170/2014

Date of order: 01/08/2016

PRESENT:

THE HON'BLE MR. JUSTICE VISHNU CHANDRA GUPTA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

.....

Sri Biswajit Roy Chowdhury, son of Sri Milan Roy Chowdhury residing at 6/13, Kashi Mondal Lane, Post Office Belur Math, Police Station Belur, District-Howrah, Pin-711202.

.....Applicant

-Versus-

1. The Union of India service through the General Manager, Metro Railway, Metro Bhavan, J.L.Behru Road, Kolkata-700071.
2. The Chief Operations Manager, Metro Railway, Metro Bhavan, 33/1, J.L.Nehru Road, Kolkata-700071.
3. The Deputy Chief Operations Manager, Metro Railway, Metro Bhavan, J.L.Nehru Road, Kolkata-700071.
4. The Sr. Transportation Manager (O), Metro Railway, Metro Bhavan, 33/1, J.L.Nehru Road, Kolkata-700071.

.....Respondents

For the Applicant :Mr.A.Banerjee, Counsel
For the Respondents :Mr.B.L.Gangopadhyay, Counsel

ORDER

JUSTICE V.C.GUPTA, JM:

In this case, the applicant has challenged the order of punishment dated 08.10.2013 passed consequent upon the charge sheet dated 26.06.2013 issued to him under Rule 11 of the Railway Servants (Discipline and Appeal) Rules, 1968 and the order dated

(Signature)

January, 2014 rejecting the appeal preferred by him as against the order of punishment, referred to above, without availing of all the remedies under the said Rules, 1968. In this regard the relevant provision of the Rules is quoted herein below for ready reference:

"17. Orders against which no appeal lies -
Notwithstanding anything contained in this part, no appeal shall lie against -

- (i) any order made by the President;
- (ii) any order of an interlocutory nature or of the nature of step-in-aid of the final disposal of a disciplinary proceeding, other than an order of suspension;
- (iii) any order passed by an inquiring authority in the course of an inquiry under Rule 9.

18. Orders against which appeal lies -
Subject to the provisions of Rule 17, a Railway servant may prefer an appeal against all or any of the following orders, namely: -

- (i). an order of suspension made or deemed to have been made under Rule 5.
- (ii). an order imposing any of the penalties specified in Rule 6 whether made by the disciplinary authority or by any appellate or revising authority;
- (iii). an order enhancing any penalty imposed under Rule 6;
- (iv). an order which -
 - (a) denies or varies to his disadvantage his pay, allowances, pension, Provident Fund benefits, service gratuity or other conditions of service as regulated by rules or by agreement;
 - or
 - (b) interprets to his disadvantage the provisions of any such rule or agreement;
- (v). an order-
 - (a) stopping him at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar;
 - (b) reverting him while officiating in a higher service, grade or post to a lower service, grade or post otherwise than as a penalty;
 - (c) reducing or withholding the pension or denying the maximum pension admissible to him under the rules, if he is a pensionable Railway servant;



(d) reducing or withholding the Government contribution to Provident Fund and Special Contribution to Provident Fund or Gratuity admissible to him under the state Railway Provident Fund Rules and Gratuity Rules, if he is a non-pensionable Railway servant; :

(e) determining the-subsistence and other allowance to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or for any portion thereof;

(f) determining his pay and allowances:-

(i) for the period of suspension, or
(ii) for the period from the date of his dismissal, removal or compulsory retirement from service to the date of his reinstatement;

(g) determining whether or not the period from the date of his suspension or from the date of his dismissal, removal or compulsory retirement to the date of his reinstatement shall be treated as a period spent on duty for any purpose. . .

Explanation: -

In this rule:-

- (i) the expression 'Railway servant' includes a person who has ceased to be in railway service;
- (ii) (ii) the expression 'pension' includes additional pension, gratuity and any other retirement benefit.

19. Appellate Authorities - (1). A Railway servant, including a person who has ceased to be in Railway service, may prefer an appeal against all or any of the orders specified in Rule 18 to the authority specified in this behalf either in the Schedules or, where no such authority is specified—

(i) where, a penalty, is imposed by a revising authority under Rule 25, to the authority to which it is immediately subordinate;

(ii) where a penalty is enhanced, either in appeal or on revision, to the authority to which the authority making the order is immediately subordinate;

(iii). In the case of an appeal against an order specified in clause (iv) of Rule 18, relating to a rule, to the authority which appointed the appellant or the authority which made the rule to which the order under appeal relats, whichever of them may be the higher authority, and in the case of an appeal relating to an agreement, to the authority which appointed the appellant;

(iv) in case of an appeal against an order specified in clause (v) of Rule 18-

(a) in respect of a Railway servant on whom the penalty of dismissal from service can be imposed only by the President, to the President and;

142

(b) in respect of any other Railway servant, to the authority to which the authority making the order is immediately subordinate.

(2) Notwithstanding anything contained in sub-rule (1).

(i). an appeal against an order in a common proceeding held under Rule 13, shall lie to the authority to which the authority functioning as the disciplinary authority for the purpose of that proceeding, is immediately subordinate;

(ii). where the person who made the order appealed against becomes, by virtue of his subsequent appointment or other-wise, the appellate authority in respect of such order, an appeal against such order shall lie to the authority to which such person is immediately subordinate;

Provided that in a case where the appellate authority is the Railway Board, the appeal shall be dealt with by any Member of the Railway Board, who has not made the order appealed against.

(3) A Railway servant may prefer an appeal against an order imposing any of the penalties specified in Rule 6 to the President, where no such appeal lies to him under sub-rule (1) or subrule (2), if such penalty is imposed by any authority other than the President, on such Railway servant in respect of his activities connected with his work as an office bearer of an association, federation or union participating in the Joint Consultation and Compulsory Arbitration Scheme;

24. Special provisions for non-gazetted staff –

(1) Where the penalty of dismissal, removal, compulsory retirement, reduction or withholding of increment has been imposed, the appellate authority may, at its discretion and if it considers it necessary, give the non-gazetted Railway servant a personal hearing before disposing of the appeal. At this personal hearing, the Railway servant may be accompanied, if he so chooses, by another Railway servant employed on the same Railway Administration, Office of the Railway Board, its attached office or subordinate office, as the case may be, in which the appellant was or is working or an official (who is not a legal practitioner) of a Railway Trade Union recognized by the Railway Administration on which the appellant was or is employed.

(2) A Group 'C' Railway servant who has been dismissed, removed or compulsorily retired from service may, after his appeal to the appropriate appellate authority has been disposed of, and within 45 days thereafter, apply to the General Manager for a revision of the penalty imposed on him. In this application, he may, if he so chooses, request the General Manager to refer the case to the Railway Rates Tribunal for advice before he disposes of the revision petition.



On receipt of such a request, the General Manager shall refer the case to the Chairman, Railway Rates Tribunal for advice sending all the relevant papers.

On receipt of the revision application by the General Manager, or on receipt of advice from the Railway Rates Tribunal, as the case may be, the General Manager shall dispose of the application in accordance with the procedure laid down in Rule 25 and pass such orders as he may think fit:

Provided that the procedure mentioned in this sub-rule shall not apply in cases where the General Manager or the Railway Board are the Appellate Authority:

Provided further that where a revision application has been disposed of by the General Manager under this sub-rule, no further revision shall lie under Rule 25.

(3) A Group 'D' Railway servant, who has been dismissed, removed or compulsorily retired from service may, after his appeal to the appropriate appellate authority has been disposed of and within 45 days thereafter, apply to the Divisional Railway Manager and where he is not under the control of any Divisional Railway Manager to the senior-most Administrative Grade Officer under whose control he may be working, for a revision of the penalty imposed on him. The Divisional Railway Manager or the senior-most Administrative Grade Officer, as the case may be, shall thereafter dispose of the revision application in accordance with the procedure laid down in Rule 25 and pass such orders as he may think fit:

Provided that the procedure mentioned in this sub-rule shall not apply where the Divisional Railway Manager or the senior-most Administrative Grade Officer or any higher authority, as the case may be, is the appellate authority:

Provided further that where a revision application has been disposed of by the Divisional Railway Manager or the senior-most Administrative Grade Officer under this sub-rule, no further revision shall lie under Rule 25.

25. Revision -- (1) Notwithstanding anything contained in these rules: -

- (i) the President, or
- (ii) the Railway Board, or
- (iii) the General Manager of a Railway Administration or an authority of that status in the case of a Railway servant serving under his control, or
- (iv) the appellate authority not below the rank of a Divisional Railway Manager in cases where no appeal has been preferred, or
- (v) any other authority not below the rank of Deputy Head of Department in the case of a Railway Servant serving under his control . may at time, either on his or its own



motion or otherwise, call for the records of any inquiry and revise any order made under these rules or under the rules repealed by Rule 29, after consultation with the Commission, where such consultation is necessary, and may –

- (a) confirm, modify or set aside the order; or
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
- (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or
- (d) pass such orders as it may deem fit:

Provided that –

(a). no order imposing or enhancing any penalty shall be made by any revising authority unless the Railway servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed;

(b). subject to the provisions of Rule 14, where it is proposed to impose any of the penalties specified in Clauses (v) to (ix) of Rule 6 or the penalty specified in Clause (iv) of Rule 6 which falls within the scope of the provisions contained in sub-rule (2) of Rule 11 or to enhance the penalty imposed by the order under revision to any of the penalties specified in this sub-clause, no such penalty shall be imposed except after following the procedure for inquiry in the manner laid down in Rule 9, unless such inquiry has already been held, and also except after consultation with the Commission, where such consultation is necessary.

(2). No proceeding for revision shall be commenced until after –

- (i) the expiry of the period of limitation for appeal; or
- (ii) the disposal of the appeal where any such appeal has been preferred:

Provided that the provisions of this sub-rule shall not apply to the revision of punishment in case of Railway accidents.

(3). An application for revision shall be dealt with in the same manner as if it were an appeal under these rules.

(4). No power of revision shall be exercised under this rule:-



(i). by the appellate or revising authority where it has already considered the appeal or the case and passed its orders thereon; and

(ii). by a revising authority unless it is higher than the appellate authority where an appeal has been preferred or where no appeal has been preferred and the time limit laid down for revision by the appellate authority, has expired:

Provided that nothing contained in clauses (i) and (ii) above, shall apply to revision by the President.

(5). No action under this rule shall be initiated by -

(a) an appellate authority other than the President;

or

(b) the revising authorities mentioned in item (v) of sub-rule (1)

after more than six months from the date of the order to be revised in cases where it is proposed to impose or enhance a penalty or modify the order to the detriment of the Railway servant; or more than one year after the date of the order to be revised in cases where it is proposed to reduce or cancel the penalty imposed or modify the order in favour of the Railway Servant.

Provided that when revision is undertaken by the Railway Board or the General Manager of a Zonal Railway or an authority of the status of a General Manager in any other Railway Unit or Administration when they are higher than the appellate authority, and by the President even when he is the appellate authority, this can be done without restriction of any time limit.

Explanation: For the purposes of this sub-rule the time limits for revision of cases shall be reckoned from the date of issue of the orders proposed to be revised. In cases where original order has been upheld by the appellate authority, the time limit shall be reckoned from the date of issue of the appellate orders."

2. Admittedly the applicant has approached this Tribunal, straightaway, without filing any revision. Section 20 of the Administrative Tribunals Act, 1985 provides as under:

"20. Applications not to be admitted unless other remedies exhausted.—

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the



remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,—

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."

3. As remedy under Rule 24/25 for the employees of railway is mandatory and not optional, so not exhausting it would stand in way of approaching the Tribunal. Hence, we are of the view that without expressing any opinion on the merit of this matter this OA can be dismissed at this stage and it is accordingly dismissed for the aforesaid reason. However, liberty is granted to the applicant to comply with the provision of section 20 of the A.T. Act, 1985, referred to above, before approaching this Tribunal challenging the order of punishment. No costs.

(Jaya Das Gupta)
Member (Admn.)

(Justice V.C.Gupta)
Member (Judicial)