



In the Central Administrative Tribunal

Calcutta Bench

OA. 350/0177/2017

Mani Bhushan, S/o Shailendra Kr. Jha, aged about 34 years, working as LP(G)/DSL under DME (Power), E. Rly., Malda at present residing at Qtr. No. 475/A, Railway Barran Colony, Malda, Post - Jhaljhalia, P.S. English Bazar, Malda, Pin - 732102, W.B.

...Applicant

1. Union of India, through the General Manager,
Eastern Railway, Fairlie Place,
Kolkata - 700001.
2. Divisional Railway Manager,
Eastern Railway,
Malda - 732102.
3. Additional Divisional Railway Manager,
Eastern Railway,
Malda - 732102.
4. Senior Divisional Mechanical Engineer,
Eastern Railway,
Malda - 732102.
5. Divisional Mechanical Engineer (Power),
Eastern Railway,
Malda - 732102.
6. Senior Divisional Personnel Officer,
Eastern Railway,
Malda - 732102.

...Respondents

No. O.A. 350/00177/2017

Date of order: 20.2.2017

Present : Hon'ble Mr. A.K. Patnaik, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

For the Applicant : Mr. C. Sinha, Counsel

For the Respondents : Mr. A.K. Banerjee, Counsel

O R D E R (Oral)

Per Ms. Jaya Das Gupta, Administrative Member:

The applicant in this case has approached this Central Administration Tribunal under Section 19 of the Administrative Tribunal Act, 1985 seeking the following reliefs:-

- "a. To set aside and quash impugned Charge Memorandum No. MP/1122/05/35/2016/1532 dated 18.7.2016 issued by Divisional Mechanical Engineer (Power), Eastern Railway, Malda.
- b. To set aside and quash impugned Speaking Order dated 22.6.2016 issued by ADRM/Malda.
- c. To set aside and quash impugned letter dated 30.6.2016 issued by Divisional Mechanical Engineer (P), Eastern Railway, Malda.
- d. To set aside and quash impugned Enquiry proceeding dated 28.10.2016, 27.12.2016 and 6.1.2017.
- e. Any other order or orders as the Hon'ble Tribunal deems fit and proper."

2. Notice has not been served on the respondent authorities.

3. The applicant, who is working as Loco Pilot (Goods) was awarded a minor penalty and was imposed with a punishment order dated 6.11.2015.

Such orders are set out below:-

"P. Notice No. MP/1124/11/102/2015/1894 Malda, Dated: 6.11.15

Shri Mani Bhushan, Loco Pilot/Goods
Under SSE/Loco/MLDT.

Sub: Punishment on SF 11 No.: MP/1122/11/102/2015 dated
7.9.2015
Ref.: Cos reply dated 20.10.2015.

After going through the case file, the CO Shri Mani Bhushan,

LPG/MLDT has found that he violated the service conduct rule.

Hence, his FIVE (05) set of privilege passes are withheld whenever due.

If the Charge Official wishes to make an appeal against the above penalty, he can do so to the next higher authority i.e. Sr. Divl. Mechanical Engineer / Eastern Railway / MLDT within a period of FORTY FIVE (45) days of receipt of this Notice through proper channel. While doing so, he should keep in view of the provision of sub-Rules (1) & (2) of Rule 21 of RS (D&A) Rules, 1968."

4. The appellate authority after considering his appeal purely on humanitarian ground reviewed the punishment and revised the punishment by way of order:

"withholding of 02 sets of privilege passes as & when due."

5. Against such orders of the appellate authority the applicant applied to the revisionary authority on 13.4.2016 and the said authority have given the following order dated 22.6.2016 which runs as follows:-

Speaking Order

Sub: Revision application dated 13.4.2016 from Sri Mani Bhushan, LP (Goods)/Malda/Eastern Railway.

Ref.: Punishment Notice No. MP/1124/11/102/2015/367 dated 15.2.2016.

1. I have gone through the revision application dated 13.4.2016 from Shri Mani Bhushan, Loco Pilot (Goods)/Malda.
2. Sri Mani Bhushan was issued with a minor penalty chargesheet no. MP/1122/11/102/2015/1627 dated 7.9.2015 by the disciplinary authority i.e. DME (P)/Malda. The charge were as follows:
" On 6.9.2015 Sri Mani Bhushan was called to work inside New Farakka/NTPC siding ex. Tildanga after complete rest at Tildanga but he refused to work NTPC siding on the plea of no learning road in NTPC siding. Again call was served to him at 18 hrs. for Loco 18540 + 16171 BGS cement ex. Tildanga PCT but he again refused to perform duty and fled away from Tildanga without any authority. He had been given road learning of Tildanga NTPC siding in the month of April, 2015 as per CMS report and Sri Mani Bhushan had confirmed it to the disciplinary authority at the time of

competency test of Loco Pilot (Goods). Siding road learning (LR) is valid for six months and was not overdue. As a result the load detained badly causing loss of revenue to Railways.

This is a gross of violation of Service Conduct Rule and a highly indiscipline act for a Running Staff."

3. Subsequently, Sri Mani Bhushan submitted his explanation dated 20.10.2015 to the abovementioned chargesheet. The disciplinary authority imposed the penalty of withholding of five sets of privilege passes on Sri Mani Bhushan.
4. Further, Sri Mani Bhushan submitted his appeal dated 13.1.2016 to the appellate authority i.e. Sr. DME/Malda. The appellate authority in his speaking order indicated that the charged official (Sri Mani Bhushan) has been proved guilty beyond doubt. But considering his appeal on humanitarian ground, the appellate authority reduced the punishment to withholding of two sets of privilege passes.
5. Sri Mani Bhushan has now submitted a revision application dated 13.4.2016 to the revisionary authority i.e. ADRM/Malda.
6. After going through the entire case and the service record of Shri Mani Bhushan, the following points were noted.
 - 6.1 Sri Mani Bhushan was born on 1.3.1982 and his date of appointment as an Assistant Loco Pilot on 16.3.2006.
 - 6.2 During his service of last ten years, he has been punished or suspended earlier as indicated in the next page.
 - a) Placed under suspension from 13.7.2010 to 20.7.2010 vide letter no. MP/1126/01/21/2010/1204 dated 13.7.2010 which was subsequently revoked vide letter No. MP/1126/04/21/2010/1251 dated 21.7.2010.
 - b) Withholding of three sets of privilege passes by the disciplinary authority vide punishment notice no. MP/1124/11/116/2015/428 dated 24.2.2016. This was subsequently reduced to withholding of one set of privilege pass and one set of PTO by the appellate authority (Sr. DME/Malda) vide punishment notice no. MP/1125/11/116/2015/1190 dated 13.6.2016.
 - c) Withholding of increment for two years (non-cumulative) by the disciplinary authority (DME/Power) vide punishment notice no. MP/1124/11/138/2016/962 dated 10.5.2016.
7. After applying my mind adequately, I came to the conclusion that in the instant case, the minor penalty issued to the charged official (Sri Mani Bhushan) is not commensurate to the gravity of the offence. Hence, the minor penalty issued to him is being dropped. Further, the disciplinary authority (DME/Power) is being directed to issue a major penalty chargesheet to Sri Mani Bhushan."

6. Though the ADRM, Malda has signed as an appellate authority he must have issued this order as a second appellate authority/revisionary authority as an appeal order was passed earlier on 15.2.2016.

7. Section 25 of the Railway Servants (Discipline & Appeal) Rules lays

down the following rules. Relevant extracts of proviso 1(a) & (b), 2, 3, 4 is as under:

"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 - 23 may at any 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 orders thereon; and 24

(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.

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(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."

8. In the present O.A. we see that the disciplinary authority is being directed to issue a major penalty chargesheet to the applicant i.e. Shri Mani Bhushan by the revision authority. The above order of revising authority does not come under the scope of statute and deserves to be quashed.

Therefore, the revision order dated 22.6.2016 is quashed and set aside.
The revision authority is directed to take action on the revision petition of the applicant within three months of getting a copy of this order, as per the relevant Section of Railway Servants (Discipline & Appeal) Rules and intimate the same thereon to the applicant within two weeks thereafter.

9. The O.A. is disposed of accordingly with the above directions. No costs.

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(Jaya Das Gupta)
Administrative Member

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(A.K. Patnaik)
Judicial Member

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