

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

O.A. No.050/00392/2015

Reserved on: 18.07.2018

Date of Order: 20.07.2018

C O R A M

HON'BLE MR. K.N. SHRIVASTAVA, ADMINISTRATIVE MEMBER

HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER

1. Binod Kumar, S/o Ram Balak Mahto, working as Substitute (Group D) under Station Superintendent, East Central Railway, Narayanpur, Anant (Bihar).
2. Lakhendra Rai, S/o Mishri Rai, working as Substitute (Group D) under Station Superintendent, East Central Railway, Narayanpur, Anant (Bihar).
3. Vijay Kumar Rai, S/o Raj Nath Rai, working as Substitute (Group D) under Senior Divisional Operating Manager, East Central Railway, Narayanpur, Anant (Bihar).

..... Applicants.

By Advocate : Shri M.P. Dixit

-Versus-

1. Union of India through the General Manager, East Central Railway, Hajipur, District- Vaishali (Bihar).
2. The General Manager (Personnel), East Central Railway, Hajipur, District- Vaishali (Bihar).
3. The Divisional Railway Manager, East Central Railway, Sonpur, PO- Sonpur, District- Saran (Bihar).
4. The Senior Divisional Operating Manager, East Central Railway, Sonpur, PO- Sonpur, District- Saran (Bihar).
5. The Senior Divisional Personnel Officer, East Central Railway, Sonpur, PO- Sonpur, District- Saran (Bihar).
6. The Assistant Operating Manager, East Central Railway, Sonpur, PO- Sonpur, District- Saran (Bihar).
7. The Station Superintendent, East-Central Railway, Narayan Anant (Bihar).

..... Respondents.

- By Advocate(s) :- Shri B.K. Choudhary, Ld. Sr. Counsel for Railways.
 Shri S.K. Griyaghey

O R D E R

Per Mr. Jayesh V. Bhairavia, M (J) :- This OA has been filed seeking the following reliefs:-

“(8.1) That your Lordships may graciously be pleased to quash and set aside the order dated 31.12.2013 / 010.01.2014 issued by respondent no. 5 as contained in Annexure A/1.

(8.2) That Your Lordships may further be pleased to direct / command the respondents to post the applicants also against regular post (Group D) with effect from the date their juniors including at Serial 222 have been posted without any further delay.

(8.3) That the respondents be further directed / commanded to grant all consequential benefits such as difference of salary, seniority, due promotion and benefit of ACP/MACP etc in favour of the applicants.

(8.4) Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the Applicants. ”

2. The facts, in brief, relevant to the present case are that the applicants were initially engaged as casual labour before 1981 and subsequently appointed as substitute and after completion of required number of working days as substitute, they were given temporary status w.e.f. 29.6.1993, 13.5.1995 and 1.5.1998 respectively. The further case of the applicants is that the respondents, in the meanwhile, issued a list of 222 screened substitutes for their posting against Group D posts in which the applicants figured at serial no. 196, 202 and 221 respectively. Subsequently, the applicants and few others including one Gautam Prasad Singh were excluded from posting for the reason that the Head Master of the concerned Government Primary School had given a letter indicating that the certificate of the applicants were false and bogus.

2.1 Pursuant thereto, the respondents issued a major penalty charge sheet against the applicants on 13.06.2005 and 14.01.2005 respectively for the allegation of submission of false certificates from the said school. After enquiry, the enquiry officer found the allegations leveled against them as false and baseless. Thereafter, the respondent no. 6, taking note of the inquiry officer's conclusion, vide his orders dated 04.04.2008 and

13.01.2006 respectively exonerated the applicants, including similarly placed employee, Shri Gautam Prasad Singh from the charges. Annexure A/4 and A/5 refer.

2.2 It is further stated that even after exoneration from charges by disciplinary authority, the respondents did not regularize the service of said Shri Gautam Prasad Singh. He, therefore, had filed an OA before this Tribunal vide OA 49 of 2012 for regular posting against Group D post which had been allowed by this Tribunal vide its order dated 30.01.2013 (Annexure A/6) and thereafter, the said employee was posted on regular basis.

2.3 The applicants had also approached this Tribunal vide OA 385 of 2013 for regular posting, which was disposed of on 3.5.2013 with a direction to the respondents that if the case of the applicants is found similar to that of applicant of OA 49 of 2012, then the representation be considered in accordance with law and judicial pronouncement, treating their OA as additional representation and a reasoned and speaking order be passed within three months (Annexure A/7). However, since the applicants' case was not considered as per the direction of this tribunal in OA 385 of 2013, the applicants had to file CP No. 4 of 2014 and during the pendency of the said CP, the respondents have passed the impugned order dated 01.01.2014 (Annexure A/1) whereby the respondents, instead of issuing regular posting order in favour of the applicants, referred the matter to the respondent no. 1 i.e General Manager for suo moto revision in terms of para 20 (e) of Master Circular 67, that too, 6 years after their exoneration from charges by the disciplinary authority. It appears that because of the pending disciplinary proceedings, the applicants were not posted as regular Group D employees.

4. The respondents in their written statement have submitted that the case of the applicants was examined again. According to them, the first

point involved in this case is what would be the consequences of fake documents upon which the appointment/ regularization of service is sought and the second point is as to whether the decision of the disciplinary authority in DE proceedings can be brought under suo motto revisional jurisdiction of General Manager as per para 20 (e) of the Master Circular. The competent authority, i.e. DRM has gone through the case and decided to forward it to the revisionary authority, i.e. General Manager for considering suo motu revision in terms of para 20 (e) of Master Circular No. 67 after 8 years.

5. The applicant No. 2 has filed MA 74 of 2017 through which he has brought on record an order dated 18.1.2017/10.02.2017 whereby he was ordered to be removed from service about one month prior to his superannuation and that too after 11/12 years from the date of the order of the disciplinary authority and also during the pendency of the present OA. The learned counsel for the applicant submits that the action of the respondents is illegal and also in violation of principle of natural justice. It is also submitted that the entire issue with respect to legality of notice issued by the respondents by exercising powers under Rule 25 (5) is under challenge before this Tribunal and during the pendency of it, the respondents have issued the removal order which amounts to abuse of process of law.

6. The applicants have highlighted the inaction of the respondents in taking decision on revision for about 9 years from the date of the order of the disciplinary authority exonerating the applicants of the charges.

7. The applicants have also filed an MA 107 of 2017 bringing on record a show cause notice dated 02.03.2017 issued by General Manager under Rule 25(5) of Railway Servants (D&A) Rules, 1968 in the capacity of revisionary authority. This show cause notice states that the General

Manager does not agree with the decision of exoneration of the disciplinary authority and hence he proposes to impose a higher penalty for which a show cause notice has been issued. The applicants were allowed to amend the prayer to challenge the show cause notice. The applicants have prayed for stay of implementation of the said show cause notice dated 2.3.2017. The applicants have relied upon a judgment dated 02.09.2016 of this Tribunal passed in OA 190/2012 and have contended in the said MA that the action of the respondents to issue show cause notice against the applicants is illegal and contrary to observations and findings of this Tribunal in the said OA. In the said OA, it is held that no revisional authority can pass order beyond the reasonable period of six months as laid down in the rules. It is further held that the revisional authority had issued show cause notice to revise the punishment order after three years that too after the delinquent had already undergone the punishment. The said belated action of the respondents is not sustainable in view of limitation provided under rule 29 of CCS (CCA) Rules. Therefore, such belated action on the part of the respondents was not accepted by the Tribunal and the said show cause notice was quashed and set aside by this Tribunal. (Annexure P/1 and P/2 refer). Based on this contention, the applicants have prayed for stay of operation of the show cause notice dated 2.3.2017.

8. The respondents have filed a supplementary reply in which they have enclosed a judgment of the Tribunal dated 11.05.2016 passed in OA No. 536/2013 in which the employee had similarly prayed for regular posting, but since he was punished for producing a fake educational certificate, his OA was dismissed and it was held that his case was not similar to those of OA No. 49 of 2012 and OA 385 of 2013. The respondents have also filed a copy of Part-VI of Railway Servants' (D&A) Rules, 1968, viz Rule 25 dealing with the powers of revision. The learned counsel further submitted that there is no limitation applies against the exercise of powers

by the Railway Board or General Manager of the zonal Railways in such matters. Therefore, the actions of the respondents is in consonance with the provisions of statutory rules, 1968.

9. Heard the parties and perused the documents.

10. The main issue for adjudication in this case is whether the revision can be undertaken by the revisional authority after a delay of about 6- 8 years. We have gone through the scheme of Revision prescribed under Rule 25 of RS(D&A) Rules, 1968. Revisional powers are special powers to the designated authorities to take action suo motu or otherwise for calling for the records and revise any order made under the rules, including imposing or enhancing or reducing the penalty. We are quoting below the relevant part of the Rule 25:

" 25. Revision:-

Provided further that 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
- (ii) by a revising authority unless it is higher than the appellate authority there 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

Note – This proviso shall not apply in cases or revision by the President.

Provided further that 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)-

- (i) more than six months after 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
- (ii) 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.

Note- (1) The time limits for revision of cases mentioned in the provision 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) When the 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."

11. From the above scheme, it is clear that if the revisional power is exercised either by GM or by the Railway Board (if they happen to be higher than the Appellate Authority), they can exercise the power without limitation. If the President is the Appellate Authority, he can also exercise the power of revision without limitation. However, even though the letter of the Rule specifies that no limitation applies against these authorities in exercising their power of revision, the Tribunal or the courts, in their power of judicial review can examine whether these powers are being exercised in a reasonable manner & time.

12. The written statement merely states that the disciplinary authority has not considered the case in true spirit but there is no statement what perversity has been committed by the disciplinary authority.

13. The revisional authority's show cause notice is extracted below:-

" Shri Vinod Kumar, Sub. NarayanPur Anant under Sr. DOM/Sonpur and Shri Vijay Kumar Rai, Sub. Working in Sr. DOM Office, Sonpur was served a Major charge sheet vide Memorandum No. प/134/एवजि/सितलपुर/04 dated 02.01.2004 for the charges mentioned in the Annexure to the said charge Memorandum.

AOM/Chg./SEE, the Disciplinary Authority, exonerated him vide NIP No. प/134/एवजि/सितलपुर/04 dated 01.03.2007. The exoneration does not seem to be proper as charges pertain to submission of fake certificate at the time of his initial appointment.

Hence, I do not agree with the decision of exoneration by Disciplinary Authority. I propose to impose a higher penalty under exercise of power vested in Rule 25 of Railway Servant

(D&A) Rule, 1968 keeping in view the instructions of Railway Board as given in RBE No. 110/93.

This may be treated as Show Cause Notice to Sri Kalinath Rai (C.O.) who is directed to submit a Written Statement of final defense against the proposed enhancement of punishment, if any, within 15 days from receipt of this Show Cause Notice. Non receipt of final defense within stipulated period will mean that Sri Rai has nothing to say in his defense and a decision will be taken ex-parte."

14. It can be seen that the above show cause notice does not mention why the revisional authority does not agree with findings of the disciplinary authority regarding the exoneration of the applicants from charges. On a cryptic show cause notice, the employee cannot be expected to submit reply in a matter which the authorities concerned had already closed 6-8 years back. If the enquiry officer's finding was perverse, and the disciplinary authority's decision showed lack of application of mind, it does not stand to reason why it should take 6 -8 years to detect it and start revision. It is also strange that while issuing the show cause notice, the General Manager did not think it necessary to record full facts which necessitated the review.

15. The learned counsel for the applicants submitted that this case is squarely covered by the decision of this Tribunal in OA 535 of 2013 in the case of Shri Kali Nath Rai vs U.O.I & Ors which was allowed by this Tribunal vide order dated 2.5.2017, holding that the show cause notice issued by the revisional authority 10 years after exoneration of the applicants by the disciplinary authority is not sustainable in the eye of law, and the same has to be quashed on judicial review. The respondents, thereafter, challenged the Tribunal's decision in the aforesaid case before the Hon'ble High Court, Patna through CWJC No. 11853 of 2017. The Hon'ble Patna High Court, vide order dated 20.11.2017, also affirmed the decision of the Tribunal as under:-

"Para 13- The Tribunal has committed no error whatsoever and the finding of the Tribunal that the revisional authority has no business to go into the issue after exoneration by the disciplinary authority after more than a decade and offer justification which are not there, the court refuses to interfere with the order of the Tribunal, dismisses the writ application but imposes a cost of Rs. 50,000 (Fifty thousand) payable by the railways, especially the General Manager, the revisional authority, E.C. Railway, Hazipur, District – Vaishali (Bihar), to the private respondents within a period of four weeks from today for sheer harassment and vexatious litigation which has been carried out by them for so many years. The order of the Tribunal must be implemented forthwith without any delay."

16. In the present case, the applicants were ordered to be exonerated from the charges on 4.4.2008, 13.1.2006 respectively by the disciplinary authority and after a span of more than 8 years, the respondents referred the matter of the applicants to General Manager, i.e Revisional Authority on 31.12.2013 and who vide letter dated 1.1.2014 informed of the suo moto revision of the decision of the disciplinary authority (Annexure A/1). It is also noticed that in response to it, the revisional authority issued show cause to the applicants by exercising powers conferred under rule 25 (5) of the Railway Servants (D&A) rules, 1968 and proposed for enhancement of the punishment. The said action of the respondents i.e referring the matter to revisional authority and the issuance of show cause notice 2.3.2017 i.e after a period of 6-8 years from decision of the disciplinary authority dated 4.4.2008 and 13.1.2006 respectively cannot be said to have been initiated within a reasonable time. Admittedly, there is no reason or explanation whatsoever assigned by the respondents for such belated exercise of powers for suo moto revision of the decision of the disciplinary authority exonerate the applicants from the charges. Therefore, the submissions of the respondents that under Rule 25 (5) of RS (D&A) Rules, 1968, the revisional authority can exercise its powers at any point of

time is not tenable as it has not being exercised within a reasonable time. The impugned orders of the respondents, therefore, needs to be quashed and set aside.

17. It is also noticed that the respondents, during the pendency of this OA, had removed the applicant no. 2, namely, Shri Lakhendra Rai from the railway service vide its order dated 18.1.2017 (Annexure A/8). The said order was brought on record by the applicants by filing MA No. 74 of 2017. The said order also suffers from violation of principles of natural justice. The action taken by the revisional authority after 11-12 years from the decision of disciplinary authority exonerating the applicant no. 2 from all charges cannot be said to be just and justifiable.

18. The present case is also covered by the order of this Tribunal in OA 535 of 2013 dated 2.5.2017 which has been affirmed by Hon'ble Patna High Court in CWJC No. 11853 of 2017 vide judgement dated 20.11.2017.

19. In conclusion, the OA is allowed and the show cause notice dated 02.03.2017 (Annexure P/1), the order dated 31.12.2013 (Annexure A/6), as also the order passed by the revisional authority dated 18.1.2017 / 10.2.2017 removing the applicant no. 2 from service are quashed and set aside. The applicants shall be entitled to the consequential benefits. The respondents shall comply with this order within a period of three months from the date of receipt of a copy of it. The MA 107 of 2017, MA 74 of 2017, MA 112 of 2017 accordingly stand disposed of. No order as to costs.

[Jayesh V. Bhairavia]
Member (J)

[K.N. Shrivastava]
Member (A)

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