

OA No. 050/00342 of 2014 with MA 384/2014

Date of order reserved: 26.03.2018

Order pronounced on 06.04.2018

(Patna, this the day of April, 2018)

CORAM

Hon'ble Shri A.K. Upadhyay, Member [A]
Hon'ble Shri Jayesh V. Bhairavia, Member [J]

1. Mahendra Prasad son of late Ghamleshwar Prasad, Retired Divisional Officer, East Central Railway, Mugalsarai Resident of Chhoti Daulatpur Post/PS-Jamalpur District- Munger (Bihar).

.....Applicant

By Advocate : Shri M.P. Dixit

Versus

1. The Union of India through the Chairman Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
2. The Secretary, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
3. The General Manager, East Central Railway, Hajipur.
4. The Deputy Chief Personnel Officer (Gazetted) East Central Railway, Hajipur.
5. The Financial Advisor & Chief Accounts Officer, East Central Railway, Hajipur
6. Sri Arun Bhagra, Retired Additional General Manager, South Central Railway cum Inquiry Officer Sai Mansarover, 357, 13th A. Main Yelhanka, New Town, Bangalore-560064.

.....Respondents

By Advocate: Shri S.k. Griyaghey

ORDER

Jayesh V. Bhairavia, M [J]:- The applicant in this O.A prays for the following reliefs:-

"[8.1] That your Lordships may graciously be pleased to quash and set aside the order dated 19.03.2014, 12.03.2014, 22.10.2013 and charge sheet dated 30.01.2013 as contained in Annexure A/5, A/6, A/3 & A/1 respectively.

[8.2] *That Your Lordships may further be pleased to held the impugned reason of withholding the pensionary benefits including Death cum Retirement Gratuity, Commuted Value of Pension etc of the applicant as null, void and abnitiio wrong.*

[8.3] That the respondents further be directed to release the entire pensionary benefit including Final pension, Death cum Retirement Gratuity and Commuted Value of Pension etc without any further delay together with statutory interest at the rate of 18percent on the aforesaid amount

[8.3] Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the applicant."

2. The brief facts of the case are as under:-

- (i) The applicant was an employee of Railway who superannuated from service on 31.01.2013 from the post of Divisional Personnel Officer (Group-A), East Central Railway, Mugalsarai.
- (ii) The applicant was served one charge sheet dated 30.01.2013 on 31.01.2013 at 06:00 P.M. (18:00 hrs) at his residence. As per the said charge sheet the allegation levelled against the applicant that in the year 2009 he was nominated as one of the member of selection committee for the examination of Shunting Master Grade-II alongwith DOM and DCM, Mugalsarai he misinterpreted/violated the relevant rules contained in Master Circular 31 with regard to promotion of Non-Gazetted (Group-C) staff and due to his carelessness and slack supervision, 07 deserving candidates were declared fail.
- (iii) On receipt of said charge memo, the applicant submitted his reply on 06.02.2013 followed by reminder dated 07.06.2013 and 23.08.2013 denying the allegation and he also challenged the competence of the authority to issue such charge memo. It was contended that the applicant was served with the charge sheet dated 30.01.2013 on 31.01.2013 at 6 P.M at his residence, at that time the applicant was already retired from service therefore, the General Manager, E.C. Railway, Hazipur has no authority to serve/issue charge sheet because no punishment as defined under the provision of Rule 6 of Railway servant (D&A) Rule 1968 can be imposed by the General Manager, E.C. Railway, Hazipur after the retirement of the railway employee (Group-"A"), in this regard the applicant has also brought to the notice of the respondents of the Railway Board's letter no. F(E) III/2008/PM-1/6 dated 15.10.2008 Therefore, the memorandum of charge is in derogation to

statutory rules and requested to cancel the said memorandum of charge at the earliest.

- (iv) In the meanwhile, the respondent no.4 sent a letter dated 22.10.2013 (Annexure A/3) the said letter was received by the applicant on 17.12.2013 whereunder it has wrongly been stated that the respondent no 3 is competent authority to issue charge sheet against Group-A officer. The respondents had denied the preliminary objection with regard to competency of the General Manager i.e respondent no.3 to issue/serve the memorandum of charge after retirement of the applicant and directed to submit his reply within 15 days in response to charge memorandum (S-05) dated 30.01.2013.(Annexure A/3 refers)

In response to the said letter, the applicant had submitted his written protest on 23.12.2013 (Annexure A/4) stating that the respondent no.3 is not competent authority to issue charge sheet which is itself explanatory. It is submitted that thereafter respondents had never responded this reply/representation and withheld the DCRG, Commuted Value of Pension and final pension. However the applicant submitted his representation for release of DCRG, Commuted Value of Pension/final pension and for dropping the disciplinary proceedings but respondent did not reply.

- (v) The applicant further submitted that on perusal of charge memorandum, it appears that there is no allegation against the applicant about misappropriation of government money, committing any fraud or any allegation of grave misconduct. The allegations are for the period of 2010 and charge memorandum has been issued after about 02 years from the alleged occurrence which is bad in law and fit to be set aside on ground of delay. The applicant relied upon a judgement passed in the case of D.V. Kapoor and F.R Jerutsiam by Hon'ble Apex Court wherein it has been held that the gratuity and other retiral

dues cannot be withheld even on account of pendency of the criminal case.

- (vi) The applicant has received a letter dated 12.03.2014 from the office of General Manager Hazipur whereby it was informed that the inquiry under Rule 9 of the Railway Servant (D&A) Rules 1968 is being held against the applicant the DPO/Mugalsarai now retired. In this regard, the Disciplinary Authority considers that an inquiry officer should be appointed to inquire into the charges framed against the delinquent employee therefore in exercise of the power conferred by sub rule (2) of Rule 9 of Railway Servant (D&A) Rule 1968 Shri Arun Bhagra, retd. A.G.M./ S.C. Railway as inquiry officer to inquire into the charges framed against the delinquent employee vide memorandum dated 30.01.2013 (Annexure A/6).
- (vii) Vide letter dated 19.03.2014, the office of General Manager, Hazipur, East Central Railway, the applicant was informed that Shri Amul Kumar Singh also appointed as I.O. as well as presenting officer alongwith the I.O. i.e Shri Arun Bhagra , I.O. Annexure A/5).
- (viii) The learned counsel for the applicant mainly contended that the impugned charge sheet dated 30.01.2013 and appointment of I.O. are against the provisions of statutory rules therefore it is not sustainable in the eye of law. The representation submitted by the delinquent applicant vide dated 23.12.2013 in response to respondents letter dated 22.10.2013 was never considered and decided to initiate disciplinary proceedings against the applicant which is as such not permissible as per law in the facts and circumstances of the case. Therefore, the applicant has preferred this O.A. for the reliefs as stated in para 8 of the relief clause.

3. In response to notice, the respondents have filed their written statement and denied the contention of applicant. The learned counsel for the respondents further submitted that :

- (i) This matter relates to illegality committed by the applicant while discharging the function as a member of Selection Committee for the examination of Shunting Master Grade-II. The said examination was held on 04.09.2010 and 18.09.2010 at Railway Inter College, Mugalsarai and its final result was published on 01.02.2011.
- (ii) Thereafter, a complaint was made to Vigilance Office on 08.03.2011 regarding committing the illegality in the said examination which was investigated by Vigilance and found true hence memo of charge SF-5 was served upon the applicant on 31.01.2013 while he was in service of Railway.
- (iii) The case of applicant was sent to Railway Board for obtaining 1st stage advice of CVC from where the post facto approval was received for initiating disciplinary proceeding against the applicant.
- (iv) It is further submitted by the l/c for respondents that under Rule 2(1)(C) (ii) of Railway Servant (D&A) Rules 1968, the General Manager is the competent Disciplinary Authority to issue major penalty Charge sheet to the persons at the rank of Divisional Personnel Officer and as per provision of Rule (9) and (10) of Railway Services (Pension) Rule 1993, in case of a Railway servant who has retired on attaining the age of superannuation or otherwise and against whom departmental proceeding is pending, a provisional pension shall be sanctioned hence DCRG, Commuted value of pension and final pension cannot be sanctioned. It can only be sanctioned after completion of departmental proceedings.

- (v) L/c for respondents further submitted that due to his carelessness/slack supervision unfair means were adopted and the candidates got his copy written by another candidates and succeeded due to which 07 deserving candidates were declared failed.
- (vi) It is further submitted that since the charge sheet was issued on 30.01.2013 by the respondent no.3 i.e Disciplinary Authority under the Rules and the same was served to charge official (C.O.) on 31.01.2013 during his service period. As per the Rules the applicant was in service upto 24:00 hrs on 31.01.2013, he retired from railway service with effect from 01.02.2013 therefore the Railway Board's letter no. F(E) III/2008/PM-1/6 dated 15.10.2008 mention by the applicant in his represent is not relevant in this case because it envisaged the provision under which the disciplinary action has been taken in favour of a retired employee. Therefore, the decision of respondents is proper and this OA is liable to be dismissed.

4. The applicant has filed his rejoinder and reiterated his earlier submissions, additionally the learned counsel for the applicant further submitted that as per the letter dated 17.10.2012 issued by the Manager, Mugalsarai, the applicant was informed that from afternoon of 31.01.2013, the applicant would be retired on attaining the age of superannuation (Annexure P/1 refers). It is further contended that as per the instructions in master circular no. 35 issued by the respondent railway authority i.e the applicant was retired on 31.01.2013. The learned counsel for the applicant placed reliance on OM dated 14.10.2013 issued by the DOPT and contended that whenever a disciplinary case is filed is submitted to the disciplinary authority seeking approval of disciplinary authority for initiation of departmental proceedings against a government servant, a draft of articles of charge completing in all respects, alongwith imputations in support of list of witnesses and documents, shall be submitted to the disciplinary authority for its consideration. Similarly, whenever a case is referred to CVC for his first advice, a draft of the articles of charge, complete in all respects shall be submitted to its CVC

for its consideration. In the case of applicant the said procedure is not followed, therefore the impugned action of the respondents is required to be set aside. The l/c has relied upon judgement passed by the Hon'ble Apex Court in the case of Union of India & others Vs B.V.Gopinath and submitted that the respondent no.3 i.e the General Manager has no competence to issue memorandum of charge to the applicant, therefore the impugned charge memo issued against the applicant required to be quashed and set aside.

5. Heard the parties, perused the documents and considered their submissions.

6. In the present case, the applicant who was served with the memorandum of charges on 31.01.2013 for major punishment has been challenged on the ground that the applicant was retired on 31.01.2013 and the memorandum of charges was served at 06:00 P.M. at his residence on 31.01.2013 i.e after his retirement. According to the applicant, as per the provision of Rule 6 of Railway Servant (D&A) Rules 1968, for imposition of major punishment, the respondent no.3 i.e the General Manager, E.C. Railway does not have any authority or competence and jurisdiction to issue the memorandum of charge to the delinquent employee after his retirement. Therefore, the impugned charge sheet dated 30.01.2013 (Annexure A/1) and denial of the respondents of the grievance of the applicant vide their letter dated 22.10.2013 and thereafter appointing the Inquiry Officer to inquire into the charges framed against the applicant vide order dated 12.03.2014 and 19.03.2014 are against the provision of statutory rules of railway department.

In contra, the l/c for respondents has submitted that as per the service condition, the applicant (CO) was on duty upto 24 hours (i.e 12 O'clock at night of 31.01.2013) on 31.01.2013 and he retired from the railway service with effect from 01.02.2013. The charge memorandum was served to CO i.e applicant herein on 31.01.2013 at 06:00 P.M. therefore, the said charge memo was served to charge official during his service. As per the provision of Rule 2(1) (C) (ii) of Railway Servant (D&A) Rules 1968, the General Manager is the competent Disciplinary Authority to issue major penalty charge sheet to the person at the rank of

Divisional Personnel Officer and accordingly the respondent no.3 being competent to issue and serve the major penalty charge sheet to the applicant and the charge sheet was served to the applicant on 31.01.2013 before his retirement. Therefore the applicant grievance was not accepted by the disciplinary authority and disciplinary proceeding was ordered to proceed further to its lawful logical conclusion.

7. It is an admitted fact that the memorandum of charge was served at 06:00 P.M. on 31.01.2013 by the respondent no.3. It is noticed that as per the instructions issued in the master circular no. 35 with regard to retirement of a railway servant in para/instruction-4 of the said circular, it is very categorically stated that the date of retirement i.e date of birth (date of retirement on attaining 58/60 years of age) and it will be 1st of a month: afternoon of the 1st day of preceding month and for any other date of a afternoon of the last day of that month. In view of this provision, the railway employee said to be retired on afternoon of the last day of preceding month meaning thereby that upto 24 hours of 31st January 2013, the applicant was in service. It also admitted that the charge sheet was served upon him at 06:00 P.M. on 31.01.2013 therefore, it cannot be said that the said memorandum of charge/charge sheet served upon after the retirement of the applicant (CO). Once it is established that the applicant (CO) was in service on 31.01.2013 , the respondent no.3 was very much competent to issue and serve the memorandum of charge to the applicant (CO) as per the provision of Rule 2(1) (C) (ii) of Railway Servant (D&A) Rules 1968. The judgement relied upon by the learned counsel is not applicable in the peculiar facts and circumstances of the case. Therefore, the submission of the applicant is against the non-competence of Disciplinary Authority for issuance of the charge sheet and initiation of Disciplinary Proceedings does not survive and accordingly we reject the said submission.

In view of what is discussed hereinabove, the O.A and MA stand dismissed.
No orders as to costs.

(Jayesh V. Bhairavia) M [J]

(A.K. Upadhyay) M (A)

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