

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

OA 050/00855/2014

Reserved on : 22.09.2017

Date of Order: 14.11.2017

C O R A M

HON'BLE MR. A.K. UPADHYAY, ADMINISTRATIVE MEMBER
HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER

Arjun Rai, S/o Late Upendra Nath Rai, working as Chowkidar under Senior Section Engineer (Bridge), East Central Railway, Garhara, R/o C/o Shri Naresh Paswan, Quarter No. 294/B, East Central Railway, Garhara.

..... Applicant.

By Advocate: Shri M.P. Dixit

-Vs-

1. The Union of India through the General Manager, East Central Railway, Hajipur, District – Vaishali.
2. The General Manager (Personnel), East Central Railway, Hajipur, District – Vaishali.
3. The Divisional Railway Manager, East Central Railway, Danapur, P.O. Khagaul, District – Patna.
4. The Additional Divisional Manager, East Central Railway, Danapur, P.O. Khagaul, District – Patna.
5. The Senior Divisional Personnel Officer, East Central Railway, Danapur, P.O. Khagaul, District – Patna.
6. The Senior Divisional Engineer (Co-ordination), East Central Railway, Danapur, P.O. Khagaul, District – Patna.
7. The Divisional Engineer (Bridge), East Central Railway, Danapur, P.O. Khagaul, District – Patna.
8. The Assistant Divisional Engineer (Bridge), East Central Railway, Danapur, , District – Patna.
9. The Senior Divisional Financial Manager, East Central Railway, Danapur, P.O. Khagaul, District – Patna.
10. The Executive Engineer (Bridge), East Central Railway, Mughalsarai.
11. The Senior Section Engineer (Bridge), East Central Railway, Garhara.

..... Respondents.

By Advocate: Shri Mukund Jee with Smt. Rinki Kaushik

ORDER

Per Jayesh V. Bhairavia:- The applicant herein has filed the instant OA seeking the following reliefs:-

“(8.1) That Your Lordships may graciously be pleased to quash and set aside the impugned order dated 27.5.2014 passed by respondent no. 10 as contained in Annexure A/9.

(8.2) That Your Lordships may further be pleased to direct / command the respondents to pay the salary from the date of removal up to the date of reinstatement in service with interest in favour of the applicant henceforth along with all consequential benefits including increments and promotion treating the entire period as on duty for all purposes.

(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, as enumerated by the applicant in his OA, are as below:-

[i] The applicant is presently working as Chowkidar under Section Engineer (Bridge), East Central Railway (E.C. Rly.).

(ii) The applicant while working as permanent Group D employee on the post of Chowkidar at Garhara had been issued a show cause

notice dated 7.7.2009 (Annexure A/1] alleging that he obtained appointment in the Railway through impersonation. The applicant replied to that show cause on 17.7.2009 [Annexure A/2] denying the allegation.

(iii) Subsequently, the applicant was issued a major penalty charge sheet dated 2.5.2011 [Annexure A/3] for the same allegation. The applicant's claim is that without passing any order on his show cause reply dated 17.7.2009, issuing major penalty charge sheet and that too by a lower authority, after three years of issuance of show cause, is not in accordance with rules.

(iv) That the applicant even though had already submitted his reply to the said charge sheet denying the allegations, the respondent no. 8 had appointed Inquiry Officer who conducted the inquiry and the applicant submitted his defence brief [Annexure A/4]. Thereafter, the I.O had submitted his report on 15.09.2011 holding that the charges against the applicant were not proved.

(v) That, in the meantime, the applicant was removed from service vide order dated 17.05.2012 [Annexure A/5]. Thereafter, the applicant submitted his representation dated 25.05.2012 [Annexure A/6] for supply of copy of the inquiry report as well as the findings of the Disciplinary Authority. The same were not served.

(vi) The applicant pleads that on the basis of some complaint against his appointment made by one Shri Arjun Rai of Pasapur that the impugned order of removal dated 17.5.2012 has been passed. But the so called complainant has not been examined in the inquiry proceeding. The applicant further pleads that the disciplinary authority did not take into consideration the deposition of one Shri Amar NathJha dated 1.08.2011 who clearly stated in reply to question no. 4 and 6 that both were appointed in the year 1985 and he identified the applicant who is the same person and who had worked with him since 1985 till the date of screening. This fact was overlooked by the disciplinary authority while passing the impugned order. It is a settled law that before passing any adverse order against an employee, copy of the inquiry report must have been served upon the delinquent employee, otherwise it will be violative of the principle of natural justice, and in the present case, no copy of inquiry report has been served on the applicant.

(vii) That, thereafter, the applicant submitted an appeal on 21.6.2012 before respondent no. 7 against the order of removal highlighting the infirmities in the inquiry proceedings. But no order has been passed. Even his reminders dated 27.8.2012 and 3.10.2012 remained unanswered.

(viii) Pursuant thereto, the applicant filed one OA 1023 of 2012 before this Tribunal challenging the removal order dated 17.05.2012. The respondents filed their written statement annexing

copy of inquiry report in which the I.O has held that the charges levelled against the applicant were not proved. This Tribunal, vide its order dated 11.12.2013, set aside the removal order and remanded the matter back to the Disciplinary Authority (respondent no. 8) to pass a reasoned and speaking order after providing prescribed opportunities to the applicant in terms of extant rules / guidelines/rulings in the matter within a period of three months. It was further directed that the consequential benefits to the applicant would be governed in terms of the fresh order to be passed by the respondents in terms of the above direction.

(ix) The applicant claims that respondent no. 10 has passed the impugned order after expiry of the period fixed by this Tribunal with the following punishments:-

" The period from the date of removal of Shri Arjun Rai from Railway Service i.e. 17.5.2012 shall be treated as 'Dies Non'.

"Further he shall be allowed to join in the lowest starting pay scale of his cadre Chowkidar i.e Pay Scale Rs. 5200-20200 + Grade Pay Rs. 1800".

"Further, no payment of consequential benefits shall be admissible to Shri Arjun Rai for the period (date of removal) 17.5.2012 to the date of joining. Further in the Grade Pay of Rs. 1800/-".

(x) The applicant submits that the above order is totally contrary to the spirit of this Tribunal order dated 11.12.2013 in OA 1023 of 2012. According to the direction of the Railway Board, if the I.O has found the charges not proved, then the D.A is bound to issue a disagreement notice before passing any adverse order, but in this case neither any disagreement notice has been issued nor any opportunity has been given to the applicant. It is the further case of the applicant that his Disciplinary Authority is respondent no. 8 who has earlier issued charge sheet and removal order but how respondent no. 10 has issued the impugned order when he is neither DA nor respondent in the earlier OA. The applicant further submits that before joining and after joining he made representations which elicited no response.

In sum, the applicant submits the action of the respondents is arbitrary, malafide and against the principle of natural justice, hence this OA.

3. The respondents, through their written statement, have submitted as below:-

(i) The respondents have stated that the applicant was issued a letter dated 7.7.2009 to submit his explanation to his fake appointment in the Railway vide Annexure A-1. The applicant submitted his explanation. The explanation of the applicant was not satisfactory, and since the nature of allegation was so grave, the matter was required to be inquired into. In view of this, a major penalty charge sheet dated 28.1.2011[Annexure R/2] was issued

against the applicant. As per DA rules, an I.O was appointed to conduct the inquiry proceedings. The I.O after conducting the inquiry submitted his report vide his letter dated 15.09.2011 [Annexure R/1]. The respondents have further stated that it is a case of vigilance department and as per instructions issued by them, necessary action was taken against the applicant. The Disciplinary Authority accordingly passed removal order on the basis of the inquiry report dated 15.09.2011.

(ii) It is further stated that the appeal of the applicant dated 21.6.2012 is not available on record, therefore, the same was not disposed of.

(iii) The Tribunal's order dated 11.12.2013 passed in OA 1023 of 2012 was duly complied by the respondents by passing a speaking order dated 17.5.2014 which was communicated to the applicant vide letter dated 27.5.2014. In the light of the Tribunal's order, the applicant was allowed to join on the lowest starting pay and the period for removal from 17.5.2012 to the date of his joining was treated as Dies Non as he had not worked during the said period.

4. The applicant has not filed any rejoinder to controvert the submissions of the respondents.

5. Heard the parties and perused the records.

6. This is a second round of litigation. In the instant case, the impugned order dated 27.5.2014 [Annexure A/9] has been challenged by the

applicant on the ground that without following the directions issued by this Tribunal vide order 11.12.2013 in OA 1023 of 2012 and in an arbitrary manner, the impugned order has been passed by the respondents, imposing severe penalties, including fixing the pay of the applicant in lowest starting pay scale of his cadre Chowkidar i.e. Rs. 5200-20200 /- + G.P. Rs. 1800/- and treating the period from the date of removal of the applicant to the date of his joining as Dies Non, without any consequential benefits.

7. It is apt to note here that this Tribunal, while disposing of the earlier OA 1023 of 2012, held that the removal order of the applicant dated 17.5.2012 is bad in law and further quashed the same with observation that said removal order passed by the disciplinary authority is neither a reasoned order nor speaking, in fact the said order is conspicuous by their lack of logic and substantive basis. It is also observed that the applicant has neither been provided with the copy of inquiry report nor copy of the findings of the disciplinary authority, the representation for the same has also not elicited any response. Therefore, the applicant has been denied his basic right to respond to the findings of the inquiry report.

8. It was also observed that conclusions of the disciplinary authority are in disagreement with the findings of the inquiry report, it was incumbent upon the Disciplinary Authority to record for disagreement as also to provide a suitable opportunity to the applicant before passing order [reasoned and speaking] which he may have deemed appropriate, and for this reason also, the order of removal of the applicant is vitiated. The appeal filed by the applicant remained pending with the department without adjudication.

9. This Tribunal had also observed that with respect to the charge of impersonation and false claims for securing the employment are grave in nature, the respondents were well within their rights to take such action as appropriate and to hold such inquiry, as prescribed under the rules. However, the same right is circumscribed by the obligation to extend and provide opportunity to the charged official to give his response. In not meeting these obligations, the respondents have clearly defaulted in respecting the rights of the applicant and have, thereby, rendered their actions and orders vulnerable to legally justifiable challenges.

10. By making the above observations, this Tribunal has directed the respondent to reconsider the matter after providing prescribed opportunity to the applicant in terms of the extant rules / guidelines / rulings in the matter and to pass a reasoned and speaking order as appropriate within time frame.

11. It is unfortunate that again the respondent authorities failed to appreciate the letters and spirit of this Tribunal's order dated 11.12.2013 passed in earlier OA 1023 of 2012 and without considering the material on record and also without giving any opportunity to the applicant, the said respondents had passed the impugned order, that too without recording any reason as to how and in which manner the charges levelled against the delinquent were proved. In other words, there is no definite conclusion arrived at for proving the guilt or misconduct of the applicant. The decision for imposing punishment upon the applicant is without any cogent reason. The impugned order dated 27.5.2014 cannot be said to be a reasoned and speaking order.

12. It is required to be noted that the respondent authorities has totally failed to appreciate the importance of speaking order. The compulsion of disclosure of reasons guarantees consideration. The condition to give reasons minimise arbitrariness, it gives satisfaction to the party against whom order is made and also enables the appellate forum to make judicial review effectively. The affected party must know why and on what grounds an order has been passed against him as one has the right to know not only the result of his appeal but also the reasons in support of the decision. This is the cardinal principles of natural justice. In the present case, the applicant, being affected by the impugned order, has been denied the opportunity in violation of natural justice.

13. In the present case as stated above, the respondent authorities have bypassed the observation and order passed by this Tribunal in its earlier order in OA 1023 of 2012 and further the respondent authorities also failed to appreciate the importance of recording proper reasons and to pass speaking order thereafter, that too by providing appropriate opportunity to the affected employee, hence this Tribunal has no option but to remit the matter again to the concerned competent respondent to reconsider the case of the applicant afresh in the light of the observations and directions passed by this Tribunal in earlier OA 1023 of 2012 as also observations made hereinabove and to pass a reasoned and speaking order within a period of three months from the date of receipt of communication of this order. Till then the impugned order dated 27.5.2014 shall remain in abeyance. It is further directed that the status of the applicant so far his employment as Chowkidar with the respondents is concerned shall not be disturbed.

14. In sum, this OA stands disposed of in terms of the above direction.

No order as to costs.

(Jayesh V. Bhairavia)
Member (J)

(A.K.Upadhyay)
Member (A)

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