

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/020/00837/2017

Date of CAV : 04-10-2018
Date of Order : 30-10-2018

Between :

R.Seetha Rami Reddy S/o R.Venkat Rami Reddy,
Aged about 52 years, Occupation Gangman,
Working in the O/o Sr Section Engineer/P.Way,
South Central Railway, Vijayawada Division,
Eluru, R/o Door NO.1-175, Raja Rajeswari Nagar,
Near FCI Godowns, IV Road, Eluru 534 005.

....Applicant

AND

Union of India rep by

1. The General Manager,
South Central Railway, Secunderabad.
2. The Additional Divisional Railway Manager,
South Central Railway, Vijayawada Division,
Vijayawada.
3. The Senior Divisional Railway Engineer/Central,
South Central Railway, Vijayawada Division,
Vijayawada.
4. The Assistant Divisional Railway Engineer/Central,
South Central Railway, Vijayawada Division,
Vijayawada.Respondents

Counsel for the Applicant: Mr. K. Siva Reddy

Counsel for the Respondents : Mr. D. Madhava Reddy, SC for Rlys

CORAM :

THE HON'BLE MR.B.V.SUDHAKAR, ADMINISTRATIVE MEMBER
THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the Administrative Tribunal's Act, 1985 to

- (i) To call for the records pertaining to the proceedings No. B/W.571/V/DAR/RSRR-EE/Staff (Appeal) dt.1.1.2015 by the Respondent NO.3 and confirmed by the Respondent No.2 in proceedings No.SCR/P-BZA/425(a)/W3/2015/06/RP 3.5.2016 wherein the period between removal order passed by the Respondent No.4 and reinstatement treated the period as dies non even after reversing the said order and modified to minor penalty is arbitrary, illegal and violative of Articles 14, 16 and 21 of the Constitution of India and contrary to Rules and set aside the same to the extent of treating the period as dies non between removal order and reinstatement order ;
- (ii) Consequently direct the respondents to pay full pay and allowance permissible under law for the period of removal and reinstatement of the applicant with all consequential benefits;
- (iii) To pass such orders as this Hon'ble Tribunal deems fit and proper in the circumstances of the case.

2. The brief facts of the case are that, the applicant while working as Gateman in LC Gate Number 340 on 4.5.2013 between NZD-VAT the Respondent NO.4 issued a charge Memo dated 6.5.2013 under Rule 6 of the Railway Servants (D&A) Rules, 1968 alleging that the Applicant had opened the gate in front of a train number 17239 without taking the safety precautions as mentioned in gate working rules and the gate was opened after exchanging of pvt. Number with station master and this lead to an accident of averted collision of train with road vehicle. The applicant denied the said imputation. Having not satisfied with the explanation given by the applicant, the Respondent No.4 appointed an Inquiry Officer to conduct the

inquiry. The Respondent No.4 placed the applicant under suspension on 4.5.2013 and the said suspension was revoked on 14.6.2013.

3. The applicant further submits that the inquiry officer submitted the report to the Respondent NO.4 holding that the charge was proved and the same was communicated to the applicant on 18.2.2014. The applicant submitted the explanation to the said inquiry report and bringing various lapses committed by the Inquiry Officer and requested the respondent No. 4 to drop the charge. The Respondent No.4 without considering the facts and explanation submitted by the applicant passed an order dt. 13.3.2014 and imposed the penalty of 'Dismissal from service w.e.f. 15.3.2014 and also gave a time of 45 days to prefer an appeal to the 3rd Respondent.

4. Thereafter, the applicant preferred an appeal to the 3rd Respondent on 22.3.2014 bringing several lapses committed by the respondent No.4 and also written submission on 29.12.2014. After considering the submissions made by the applicants and facts of the case, the 3rd Respondent was kind enough to allow the appeal on 1.1.2015 by modifying the penalty of 'removal from service' to that of 'reinstatement into service as Gatekeeper' duly keeping him in lowest stage of pay ie Rs.5200+GP 1800 = Rs.7000/- in pay band Rs.5200-20200+ GP Rs.1800 for a period of three years (non-recurring). Pursuant to the said order, by proceedings dated 7.1.2015, the applicant was reinstated as Track Maintained IV asked to work under control of SSE/RH/BZA after he was medically fit to hold the post. The 3rd Respondent have treated the intervening period from 'the date of the

removal from service' and the 'date of joining into service' shall be treated as 'dies-non'. It is also pertinent to mention that the 3rd Respondent also failed to consider that pay and allowances of the applicant during his suspension period and the order in appeal is silent and it is obligatory on the part of the respondents as per Rules to pass the order how to treat the suspension period. As per Estt, Serial Circular No.55/86 Circular letter No. P(R) 654 dated 16.4.1986 / 21.4.1986 the respondents have accepted the recommendation of the Committee of the National Council, period of suspension to be treated as duty if only minor penalty is imposed after conclusion of disciplinary proceedings. Rules 17 to 22 of the Railway Servant (D&A) Rules, 1968 deal with the procedure how to dispose of the appeals and no Rule empowers the Appellate Authority to deal the intervening period of removal to the minor penalty as dies non.

5. The applicant further submits that, aggrieve by the decision of the 3rd Respondent, he preferred a revision to the 2nd Respondent on 23.11.2015 and the 2nd respondent without considering the circular and without considering the rules has dismissed the revision by order dated 3.5.2016. Hence this application.

6. Though the respondents have filed reply statement, the same was returned with office objection. The reply statement has not been resubmitted duly complying with the office objection. Accordingly the case was heard based on the material placed before us.

7. In support of his contentions, learned counsel for the applicant relied on the decisions of (i) Madhya Pradesh High Court in Battilal Vs. UoI & Ors [2005 (3) MPHT 32]; (ii) Madras High Court in the case of Arokiadoss Vs. The Commisioner of Police, City Police Office, Chennai-600 008 in WA No.673/2008, dated 30.4.2009; (iii) CAT Principal Bench in the case of B.L.Sharma Vs. Municipal Corporation of Delhi [OA No.836/2012, dated 13.2.2014].

8. On the basis of the Departmental Enquiry held against the applicant after issue of the charge memorandum dated 06.05.2013, the Enquiry Officer gave his findings and his Report which was supplied to the applicant on 24.02.2014. Thereafter the Disciplinary Authority passed order on 13.03.2014 vide Annexure A-4 imposing penalty of dismissal from service with effect from 15.3.2014. As it was found that the applicant has miserably failed to discharge his duties as Gateman.

9. After filing the appeal, the Appellate Authority passed order dated 01.01.2015 and modifying the penalty of 'removal from service' to that of 'reinstatement into service' as Gateman duly keeping him in lowest stage of pay i.e., Rs.5,200 + GP 1,800m+ 7,000/- in pay band Rs.5,200-20,200 + GP 1,800/- for a period of 03 (three) years (Non-Recurring). The Revision petition filed by the applicant was rejected and the penalty imposed by the Appellate Authority vide order dated 1.1.2015 was upheld by the Revisionary Authority vide order dated 3.5.2016 (Annexure A-8 to OA).

10. It is pertinent to mention here that the applicant was placed under suspension on 4.5.2013 and his said suspension was revoked on 14.6.2013.

The 4th Respondent has passed order dated 13.3.2014 for dismissal of the applicant from service.

11. It was submitted by the learned counsel for the applicant that the Appellate Authority could not have passed the order to treat the period from the date of removal from service and the date of joining into service of the applicant as dies non as the same was not permissible as per the law laid down in OA No. 836/2012 by CAT, Principal Bench, dated 13.02.2014. Learned counsel for the applicant submits that in view of the order passed by the Appellate Authority the order passed by the Disciplinary Authority dated 13.3.2014 has been merged with the order dated 1.1.2015. Therefore the order passed by the Appellate Authority that the 'intermittent period should be treated as dies non' is not permissible and is illegal.

13. The decision relied upon by the applicant in the case of Arokiadoss Vs. The Commissioner of Police, decided on 30.04.2003 by the Hon'ble High Court of Madras wherein the final authority ie the Respondents have passed an order modifying the dismissal order to that of reduction of time scale of pay by two stages for a period of two years with cumulative effect and in the facts and circumstances of the said case it was held by the Hon'ble High Court that the applicant in the said case entitled for notional promotion after lapse of two years from the date of original punishment. The facts and circumstances of the said case are quite distinguishable and

not applicable to the facts and circumstances of the present case.

14. This Tribunal is unable to accept the said submission of the applicant as in OANo.836/2012, dated 13.2.2014, the delinquent officer was not placed under suspension and on the other hand, in the present case the applicant was placed under suspension and thereafter 'removed from service'. Besides that, in the present case the applicant (delinquent officer) was not totally exonerated from the charge levelled against him but he was not found guilty and hence only the penalty was modified. Respondents have relied on the decision of Hon'ble High Court of Madhya Pradesh in the case of Battilal Vs. UoI & Ors wherein it has been held that, in the facts and circumstances of the said case, it was held that, 'the Disciplinary Authority or the Appellate Authority had full authority to direct how the period between the date of termination to date of reinstatement is to be treated and pass appropriate orders thereon. In the said case the Appellate Authority had considered the matter and directed that the said period be treated as dies non and the Hon'ble High Court did not interfere in the said order observing that that there is no illegality or infirmity in the order'. Therefore taking into consideration the facts and background of this case, this Tribunal finds that there is no ground to interfere with the penalty imposed by the Appellate Authority vide order dated 1.1.2015.

14. Accordingly the OA is dismissed as devoid of merits. No order as to costs.

Dated : October, 2018.

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