CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH

…

Original Application No.64/2012

This, the 10th day of May, 2019

Reserved on 06.05.2019

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CORAM:

HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)

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Harphool S/o Shri Uma Ram, aged about 57 years, resident of Qtr. No.E-9-E, Near Hanuman Mandir, Railway Colony Sadulpur, District Churu, at present employed on the post of Trackman in the office of Asst. Divisional Engineer, Sadulpur, NWR, District Churu.

…APPLICANT

BY ADVOCATE : Mr. J.K.Mishra

VERSUS

1. Union of India through General Manager, North-Western Railway Hqrs. Jaipur Zone, Chainpura, Jagatpura, Jaipur, Rajasthan.
2. Assistant Divisional Engineer, North Western Railway, Sadulpur, District Churu.

RESPONDENTS

BY ADVOCATE : Mr. Vinay Chhipa

ORDER

Per Smt. Hina P. Shah, Member (J)

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking following reliefs:-

> *"That impugned order dated 24.05.2011, Annexure-A/1, issued by 2nd respondent, and the wrong entries made in his service book as mentioned in para 4.5 of this OA, may be declared illegal and the same may be quashed.*

The respondents may be directed to restore the two increment from 07.12.2008 i.e. date of expiry of the penalty and allow all consequential benefits including payment of arrears thereof along with market rate of interest.

(ii) That any other direction or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

(iii) That the costs of this application may be awarded."

2. Brief facts of the case as stated by the applicant is that the applicant was initially appointed to the post of Gangman and at present he is employed on the post of Trackman in the office of ADEN at Sadulpur, NWR. He was issued charge sheet SF-5 under Rule 9 of Railway Servants (Disciplinary and Appeal) Rules, 1968 vide memo dated 27.02.2006 for remaining unauthorizedly absent and was also a habitual absentee in the past (Annexure-A/2). An enquiry was conducted and he was imposed the penalty of reduction to minimum stage at Rs.2650 from 3300 in the pay scale of Rs.2650-4000 and his increment for years shall remain postponed for two years vide NIP dated 07.12.2006. It is the contention of the applicant that no period of reduction has been specified/mentioned in the penalty order (Annexure-A/3). It is further stated that he has not preferred any appeal against the penalty order dated 07.12.2006 and as per the said order, his penalty was over by 07.12.2008. It is only when the period of reduction was not specified and his increments which were postponed two years have not been released, he made a representation dated 05.02.2011 stating that his pay was reduced from Rs.3300 (revised to 6380) was reduced to Rs.2650 (revised pay 5380). The penalty was over on 07.12.2008 but his pay has been fixed at Rs.6380 (without releasing two withheld increments), instead of

Rs.6880/-. The respondent No.2 vide letter dated 24.05.2011 has rejected his representation on the plea that punishment was made with future effect (Annexure-A/1). Further, there is an entry that his pay is reduced to minimum of the scale of Rs.2650/- for two years with future effect, but said penalty order does not disclose that the said penalty was with the future effect. It is his submission that the impugned order dated 24.05.2011 passed on the representation of the applicant does not tally with the penalty imposed on the applicant vide NIP dated 07.12.2006. It is his further submission that the said order did not mention as to whether the reduction shall operate to postpone the future increments permanently as it is specified that the period is for two years only. Therefore, the applicant states that in his case, the period of reduction was not specified at all and as a matter of fact the effective penalty was only of postponing of next increments for two years and there is no mention that it would be with future effect and therefore, he has approached this Tribunal challenging the impugned order dated 24.05.2011 for quashing and setting aside the same as the said order is ex-facie illegal, discriminatory and violative of Article 14 of the Constitution of India.

3. The respondents while filing their reply on 27.09.2012 have raised preliminary objection that the present Original Application has not been filed against any specific order, whereas, as per the Section 19 (1) of the Administrative Tribunals Act, 1985, Original Application before the Tribunal is maintainable against the order. But in the present matter, the applicant was imposed the penalty vide order dated 07.12.2006 and the same was not challenged in the present case, therefore, the OA is liable to

be dismissed on this ground. The impugned order dated 24.05.2011 is not the actual order, which is required to be challenged as it is merely a reply to the representation of the applicant. As per the Rule 18 of the Railway Servants (Discipline & Appeal) Rules, 1968 remedy to file appeal against such order is provided and the applicant could file an appeal before the competent authority within stipulated period, but he failed to do so and after lapse of more than 5 years and after execution of penalty order, the applicant has preferred the present OA. Therefore, the same is liable to be dismissed on the ground of limitation as well as for not exhausting the departmental remedy available to the applicant.

4. Heard Shri J.K. Mishra, learned counsel for the applicant and Shri Vinay Chhipa, learned counsel for the respondents and perused the material available on record.

5. Learned counsel for the respondents raised objection on limitation as according to them the matter cannot be adjudicated on merits as the applicant has failed to explain the delay in approaching the Tribunal and has also not filed any misc. application for seeking condonation of delay in filing the OA. It is further contended that even though the penalty order dated 07.12.2006 was for a period 2 years and it was over on 07.12.2008, the applicant kept mum since 2008 and have approached the respondents only by making a representation on 05.02.2011. The respondents further contended that even though the alternate remedy of filing appeal against the order dated 07.12.2006 was available with the applicant but still he did not file any appeal to the said order. It is the further contention of the respondents that the impugned order dated

24.05.2011 is only a communication and not the actual order, which is required to be challenged, as it is merely a reply to the representation filed by the applicant and since the penalty order dated 07.12.2006 is not under challenge in this OA, therefore, the same is not maintainable. In support of his contentions, he relied upon the judgments of Hon'ble Supreme Court, which is as under:-

(i) Ramesh Chand Sharma vs. Udham Singh Kamal and others, reported in AIR 1999 SC 3837.

(ii) C. Jacob vs. Director of Geology and Mining and another, reported in AIR 2009 SC 264.

(iii) Union of India and others vs. M.K. Sarkar, reported in AIR 2009 SCW 7621.

(iv) B.C. Chaturvedi vs. Union of India and others, reported in AIR 1996 SC 484.

(v) Indian Oil Corporation ltd. and another vs. Ashok Kumar Arora, reported in AIR 1997 SC 1030.

6. On the other hand, the learned counsel for the applicant contended that from perusal of the penalty order dated 07.12.2006, it was not clear that the said penalty is with cumulative effect or without cumulative effect. He further contended that the order at Annexure-A/3 dated 07.12.2006 did not make it clear the question of penalty. Therefore, even though his penalty order was over in 2008, he has made representation in the year 2011, when he came to know that he has not been given the future benefits and therefore, the impugned order dated 24.05.2011 passed on his representation is the actual order whereby the limitation period should start. Accordingly, the applicant has filed the present OA on 22.02.2012 within the time frame prescribed in the Administrative

Tribunals Act, 1985 and therefore there is no question of delay and therefore there is also no need to file any misc. application for condoning the delay in filing the OA. He also pointed out that in reply to the point of limitation, the respondents themselves in his reply stated that the same do not need any reply, which shows that the present Original Application filed by the applicant is within the time. It is further contended that the applicant only by way of impugned order dated 24.05.2011 came to know about the penalty that it is with cumulative effect. Therefore, there is no delay in filing the OA.

7. Considered the rival contentions of both the parties and perused the pleadings available on record.

8. Admittedly, in the present case, actual penalty order dated 07.12.2006 is not under challenge and only the impugned order dated 24.05.2011 which is under challenge is nothing, but a reply to the representation filed by the applicant on 05.02.2011. From perusal of the penalty order dated 07.12.2006, it makes it very clear that the order was passed for withholding the increment for 2 years with cumulative effect. Further, from perusal of the entry in the service book made on 07.12.2006 (Annexure-R/1), it is clear that the applicant was aware about the fact that penalty of withholding increments for 2 years was with cumulative effect. The applicant cannot make an excuse to state that he was unaware about the entry made in the service book. It also reveals from the penalty order dated 07.12.2006 that the same was served upon the applicant which can be seen from the Annexure-R/2, and the same shows that the applicant has received the said order. Therefore, in our opinion, the penalty order

dated 07.12.2006 is with cumulative effect and there is no ambiguity in the order.

9. The actual crux of the matter is delay in approaching the Tribunal by the applicant. The applicant has failed to file any misc. application for condonation of delay, as the actual cause of action arose vide order dated 07.12.2006, but on the other hand the applicant has approached this Tribunal only on 23.02.2012 challenging the impugned order dated 24.05.2011, which is in fact was a reply to the representation of the applicant dated 05.02.2011. It is also clear that the penalty order was served upon the applicant long back and he has filed present OA stating that the same is not hit by clause of limitation as he has challenged the impugned order dated 24.05.2011, which is in our opinion only a communication given by the respondents in pursuance to his representation dated 05.02.2011, whereas the actual penalty order is dated 07.12.2006, which is not under challenge. Therefore, the OA deserves to be dismissed. Further, the departmental remedy is available to the applicant by way of filing appeal against the penalty order dated 07.12.2006, but the applicant has also failed to exhaust the same. Further, it is clear that the actual cause of action arose on 07.12.2006, but the applicant has filed the present OA in the year 2012, therefore, there is gross delay in filing the OA and there is no application for condoning the same and therefore on this count also the OA deserves to be dismissed.

10. We have also considered the judgments cited by the learned counsel or the respondents. The respondents on the plea of limitation have relied on the judgments of Hon'ble Supreme Court passed in the case of

Ramesh Chand Sharma (supra), in which it has been held that the Tribunal cannot admit and dispose of the application on merits in view of the statutory provision contained in Section 21 (1) of the Act and in absence of any application for condonation of delay, the Hon'ble Supreme Court had dismissed the said case on the ground of limitation. The respondents also relied upon the judgment of Hon'ble Supreme Court passed in the case of C. Jacob (supra), in which it has been held that every representation made to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. The reply to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim. The same view is taken by the Hon'ble Supreme Court in the case of Union of India and others vs. M.K. Sarkar (supra). The respondents have also relied upon the judgment of B.C. Chaturvedi (supra), wherein it has been held by the Hon'ble Supreme Court in para12 of the judgment, which is as under:-

> "12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate

authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

Also, in the case of Oil Corporation Ltd. and another vs. Ashok Kumar Arora (supra), the same view is taken in para18 and 19 of the said judgment, which reads as under:-

" 18. At the outset, it needs to be mentioned that the High Court in such cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate court/Authority. The jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non- observance of principles of natural justice, denial of reasonable opportunity; findings are base on no evidence, and or the punishment is totally disproportionate to the proved misconduct of an employee. There is catena of judgments of this Court which had settled the law on this topics and it is not necessary to refer to all these decisions. Suffice it to refer to few decisions of this Court on this topic viz., State of Andhra Pradesh Vs. S.Sree Rama Rao, 1963 (3) SCR 25, State of Andhra Pradesh Vs. Chitra Venkata Rao, 1976(1) SCR 521, Corporation of City of Nagpur and Anr. Vs. Ramachandra, 1981 (3) SCR 22 and Nelson Motis Vs. Union of India and Anr., AIR 1992 SC 1981.

19. The Enquiry Officer on appraisal of the materials before him held that the respondent was actively involved and a brain behind procuring false medical certificates and medical bills not only for himself but for other employees and on the basis of which the reimbursement claims were made by the respondent and other employees. The corporation sanctioned these reimbursement claims of the various employees which had resulted into monetary loss to the corporation. Before the Enquiry Officer except the respondent other employees of the Corporation admitted the charges and consequently a minor penalty was awarded to them. The respondent contested the charges levelled against him and denied that he was instrumental in cheating or committing forgery of the medical bills. On consideration of report and findings of the Enquiry Officer, the Disciplinary Authority took a lenient view in respect of other employees. Having regard to the involvement of the respondent in the entire episode, the Disciplinary Authority awarded him the penalty of dismissal from service. The order of dismissal passed by the Disciplinary Authority against the respondent was also affirmed by the Appellate Authority. Curiously enough, the High

Court in its impugned judgment compared the case of the respondent with the other employees who have been awarded a lesser penalty and opined that there is a discrimination resorted to by the Disciplinary Authority in the matter of awarding the punishment. It is this action of the Disciplinary Authority in awarding the penalty being discriminatory and violative of Article 14 of the Constitution. In support of this reasoning, the High Court placed reliance on the decision of this Court in Sengara Singh and others Vs. State of Punjab and others, 1983 (3) S.L.R. 685 and the passage therefrom was reproduced in the impugned judgment which is distinguishable on facts. We have gone through the impugned judgment of the High Court dated 27th May, 1993 and were of the view that the High Court was wrong in interferring with the punishment awarded by the Disciplinary Authority. The High Court has totally overlooked the finding of the Enquiry Officer and affirmed by the Disciplinary Authority that the respondent w as instrumental in obtaining forged medical bills not only for himself but also for other employees and he was the main actor behind the cheating to the corporation. It is because of this finding, the Disciplinary Authority, in our opinion, rightly considered the award of penalty/punishment to the respondent differently than the other employees who although got the benefit of reimbursement on the forged bills but they accepted their guilt before the Enquiry Officer. Having regard to the facts and circumstances of this case, we are of the opinion that the High Court had committed serious jurisdictional error while interferring with the quantum of punishment. There is neither any discrimination resorted to by the Disciplinary Authority nor the punishment awarded to the respondent was disproportionate to his misconduct. The impugned judgment and order of High Court, therefore, are unsustainable."

11. Thus, from the perusal of the aforesaid judgments as well as the discussions made in the above paras, the present OA is liable to be dismissed on the point of limitation. Accordingly, the same is dismissed with no order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

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