



**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 33 of 2015

Date of order: 29.11.2018

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

**Sri Asit Roy,
Son of Late Tarapada Roy,
Presently working as Assistant Loco Pilot
In the Sealdah Division under control of
Chief Crew Controller at Sealdah,
Residing at 14A, Gouri Shankar Ghosal Lane,
Kolkata – 700 011.**

... Petitioner/Applicant.

Versus

1. **Union of India
through the General Manager,
Eastern Railway,
Fairlie Place,
Kolkata – 700 001**
2. **The Chief Electrical Engineer,
Eastern Railway,
Sealdah Division, Sealdah,
Kolkata – 700 014.**
3. **The Division Railway Manager/
Additional Divisional Railway Manager(O),
Eastern Railway, Sealdah Division,
DRM Building,
Kolkata – 700 014.**
4. **Sr. Divisional Personnel Officer/
Divisional Personnel Officer,
Eastern Railway,
Kolkata – 700 014.**
5. **Sr. Divisional Electrical Engineer(TRS),
Eastern Railway, Sealdah,
Kolkata – 700 014.**
6. **The Chief Crew Controller (K),
Eastern Railway,
Sealdah Division, Sealdah,
Kolkata – 700 014.**
7. **Mr. Samir Kumar Biswas,
Working as Chief Loco Inspector(TRS),
Eastern Railway,
Sealdah Division, Sealdah,
Kolkata – 700 014.**

And
Inquiry Officer.

... Respondents.

For the Applicant : Mr. B.R. Das, Counsel
Mr. S. Bhattacharyya, Counsel

For the Respondents : Mr. B.L. Gangopadhyay, Counsel

O R D E R (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has sought the following relief in the instant Original Application filed under Section 19 of the Administrative Tribunals Act, 1985:-

"(i) Rescind, recall, quash and/or cancel the orders being Annexure II, A2, A3 and A4 for all intents and purposes.

(ii) Restore the petitioner to his original position of Loco Pilot Passenger along with the scale of pay at the appropriate stage and the Grade Pay with further directions for repayment of the amount deducted from his salary and/or withheld, forthwith as if no punishment was imposed upon the petitioner.

(iii) Treat the period of suspension from 13.12.2012 to 3.1.2013 as spent in duty for all intents and purpose.

(iv) Certify that transmit the entire records and papers pertaining to the applicant's case so that after the cause shown thereof conscientious justice may be done unto the applicant by way of grant of relief as prayed for in (i) to (iii) above.

(v) Pass such other order/orders and/or direction/directions as deemed fit and proper.

(vi) Costs."

2. Heard both Ld. Counsel, examined pleadings and documents on record.

3. The case of the applicant, as advanced through his Ld. Counsel, is that he was appointed by the respondent authorities as an Assistant Driver (Electrical) on 14.7.1988 and was ultimately promoted to the post of Loco Pilot (Passenger) in 2003. While serving in the said post of Loco Pilot, a disciplinary proceeding was initiated against the applicant for alleged violation of Railway Service

40/

Conduct Rules, 1966 on the ground of alleged over-shooting of the DN Home Signal at the Jaynagar Majilpur Station on 13.12.2012 at 5:29 hrs.

That, the disciplinary authority had imposed a punishment of removal from service. The appellate authority modified the said penalty, permanently reducing him to the post of Assistant Loco Pilot. In the meantime, the applicant had also been put under suspension which was subsequently revoked. The applicant thereafter submitted a revisional application to the Chief Electrical Engineer, Sealdah Division, the reviewing / revising authority, who, however, mechanically upheld the punishment of the appellate authority and hence being aggrieved, the applicant has approached the Tribunal seeking relief.

The applicant, inter alia, has advanced the following grounds in his support:-

- (i) That, the respondents acted in colourable exercise of jurisdiction in not acting in proper view of the situation before imposing a punishment of reduction to a lower post and that such reduction is shockingly disproportionate in the context of the charge which cannot be proved beyond all reasonable doubts.
- (ii) That, even the Enquiry Officer had made it clear that the error of the applicant was on account of construction work of the respondent authorities which had dislocated the safety and other considerations on account of such ongoing construction work.
- (iii) That, there was no loss of any nature, whatsoever, on account of the alleged act of the applicant and, hence, the extreme punishment of permanent nature was also in flagrant disregard to the provisions of punishment as laid down in Rule 6 of Railway Servants (Discipline & Appeal) Rules, 1968.
- (iv) That, the appellate authority failed to pass a reasoned order and, that, the principles of natural justice has been violated in his case.

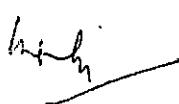
hsl

4. The respondents, per contra, have argued that the applicant, while working as LPP/SLDH/South in train No. 34712 Dn. SDAH-LKPR local on 13.12.2012 disregarded and overshot the DN Home Signal at "Red Position". The applicant had submitted a statement on the same but on the basis of the report of the committee for Brake Power Checking, the applicant was suspended w.e.f. 13.12.2012. A joint note was thereafter prepared by the respondent authorities and, in the said joint note, the applicant was held responsible for the accident. Upon receipt of an application from the applicant to revoke his suspension order, the disciplinary authority revoked the same with the directions that his service would be used for non-passenger carrying train till finalization of the DA proceeding.

That, a major penalty charge sheet was issued against him on 27.12.2012 and the applicant submitted his defence on 10.1.2013. The I.O. held the DA enquiry strictly as per rules and the applicant attended the said enquiry. After completion of the enquiry a copy of the same was forwarded to the applicant, who represented against the same on 29.8.2013 and, that, thereafter, the disciplinary authority, after consulting the enquiry report, representation of the applicant and all other relevant documents, passed an order of removal from service with immediate effect vide his order dated 9.9.2013. The applicant, however, was considered for compassionate allowance.

The applicant, thereafter, appealed to the appellate authority and a further revisional appeal to the revisional authority. While the appellate authority reduced the penalty, the revisional, appellate authority upheld the orders of the appellate authority and that given the alleged misconduct of the applicant, there is no scope of reconsideration of penalty meted out to him and hence the O.A. deserves to be dismissed, ab initio.

5. The issue before us is whether the principles of procedural justice or natural justice has been violated in the context of the applicant.



6. At the outset, we proceed to examine the proceedings in detail. We find thereupon, that a fact finding committee was held on 13.12.2012 which held the applicant responsible for the accident (Annexure A-6 to the O.A.). Thereafter, a chargesheet dated 28.12.2012 was issued by the Sr. DEE/TRS/SDAH as the competent authority (Annexure A-1 to the O.A.). The applicant/charged official submitted his parawise reply to the charge-sheet on 10.1.2013. Enquiry proceedings were initiated on 7.8.2013 (Annexure A-8 to the O.A.) in which the applicant/charged official had also cross-examined PW1, PW2, PW3, PW4 and PW5 and was also interrogated by the EO (Annexure A-8 to the O.A. colly.). Thereafter, the enquiry report dated 20.8.2013 was communicated to him against which he submitted his written statement of defence on 29.8.2013 (Annexure A-9 and A-10 to the O.A. respectively). After having considered the enquiry report, the applicant/charged official's defence as well as other relevant documents as necessary, the disciplinary authority issued his penalty orders on 9.9.2013 (Annexure A-2 to the O.A.). The applicant/charged official preferred an appeal dated 19.9.2013 to the appellate authority. The appellate authority issued his orders on 26.12.2013, modifying the punishment of removal from service to reducing the applicant/charged official to the post of Assistant Loco Pilot with maximum of the pay as ALP. Being still aggrieved with the orders of the appellate authority, the applicant/charged official preferred a Revisional Application (Annexure A-12). The Revisional Authority thereafter disposed of the said revisional appeal vide his orders dated 30.7.2014 which was communicated to him on 5.11.2014 (Annexure A-4 to the O.A.).

Hence at no stage, it is established that the applicant/charged official was not offered an opportunity to defend himself and there is not a single occasion when it can be held that the principles of natural justice were violated in the case of the applicant/charged official. In fact, on two occasions, namely when the appellate authority reduced the penalty (Annexure A-3 to the O.A.) and when compassionate allowance in the form of 2/3rd of pension and 2/3rd of Gratuity

[Signature]

were sanctioned the applicant/charged official (Annexure A-2 to the O.A.), the applicant's case had been considered with sympathy by the respondent authorities.

Next we examine the issue as to whether procedural justice was violated in the case of the applicant/charged official and herein we are guided by the Railway Servants (Discipline & Appeal) Rules, 1968, particularly Rule 25 which states as follows:-

"Rule – 25. 'Revision :- (1) Notwithstanding anything contained in these rules:-

- (i) The President; or
- (ii) The Railway Board; or
- (iii) The General Manager of a Railway Administration or an authority of that status in the case of a Railway servant under his control; or
- (iv) The appellate authority not below the rank of a Divisional Railway Manager in cases where no appeal has been preferred; or
- (v). Any other authority not below the rank of a Deputy Head of a Department in the case of a Railway servant serving under his control [may at any time, either on his or its own motion or otherwise, call for the records of any inquiry and revise any order made under these rules, or, under the rules repealed by Rule 29, after consultation with the Commission where such consultation is necessary and may]-
- (a) Confirm, modify or set aside the order; or
- (b) Confirm, reduce, enhance or set aside the penalty imposed by the order, or imposed any penalty where no penalty has been imposed; or
- (c) Remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or
- (d) Pass such other orders as it may deem fit."

Further, as per RBE No. 12/85 and RBE No. 235/86, it has been clarified that, when a revision petition is submitted by the employee, the petition should be dealt with in the same manner as if it were an appeal. We, therefore, proceed to examine the provisions of appeal in RSDA Rules, 1968.

Rule 22 refers to consideration of appeal as per Board's letter No. E(D&A)78/RG 6-11, dated 3.3.78 vide which an appellate authority has to consider three main aspects:-

"(ii) The Appellate Authority has to consider three main aspects viz.

- (i) Whether the procedure was followed correctly and there has been no failure of justice;
- (ii) Whether the Disciplinary Authority's findings are based on the evidence taken on record during the inquiry; and
- (iii) Whether the quantum of penalty imposed is commensurate to the gravity of offence.

help

After considering the above points the case should, if necessary, be remitted back to the Disciplinary Authority with directions; otherwise the Appellate Authority should pass reasoned, speaking orders, confirming, enhancing, reducing or setting aside the penalty. The order of the Appellate Authority should be signed by the authority himself and not on his behalf."

Legally speaking, the rules therefore provide that a revisional authority also has to examine the following:-

- (i) As to whether the procedure was followed correctly and there has been no failure of justice;
- (ii) Whether the disciplinary authority's findings are based on evidence taken on record during enquiry.
- (iii) Whether the quantum of penalty imposed is commensurate to the gravity of the offence.

Another issue which is raised by the Ld. Counsel for the applicant in the pleadings as well as during the oral hearing is that the penalty imposed on the applicant/charged official for permanent retention to a lower time scale of post and pay is against the provisions of Rule 6(vi)(a) of the RSDA Rules, 1968.

The Revisional authority's orders as forwarded vide memo No. ELS/6/24 dated 5.11.2014, reads as follows:-

"The undersigned has carefully gone through all relevant papers in the subject case and appeal at page 213 of the linked-file.

2. Considering the nature of guilt and likely consequence and his past performance, there is hardly any scope for any consideration in the subject and the punishment imposed by the AA is upheld without any doubt. Appeal is therefore regretted.

Sd/- illegible
COM/E. Railway"

As the said order is cryptic, non speaking and issued without ascertaining procedural accuracy, adequacy of evidence, proportionality of penalty as well as application of relevant penalty as per RSDA Rules, 1968, we deem it fit to remand the matter back to the Revisional Authority who is respondent No. 2, to issue a fresh order based on provisions of Rule 25(1) of RSDA rules, 1968 read with RBE No. 12/85, RBE No. 235/86 and Board's letter dated 3.3.78 (supra).

[Signature]

While remanding the matter back to the Revisional Authority we are guided by the Hon'ble Apex Court's ratio in *Chairman, LIC of India v. A. Masilamani*, 2012 (8) Supreme Today 224 (SC) as also in *Managing Director, ECIL, Hyderabad v. B. Karunakar*, AIR 1994 SC 1074, wherein it has been held that the court must remit the concerned case to the appropriate authority from the point that the proceedings stood vitiated and to conclude the same.

With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP

