

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

OA/050/00518/2014

Reserved on : 12.12.2018

Date of Order : 17.01.2019

C O R A M

HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Madan Murari Pandey, son of Late Rameshwar Pandey, resident of Village-Deoria, P.S.-Gothani, District-Siwan, Bihar.

..... Applicant.

- By Advocate : Shri G. Bose assisted by Shri Vikash Jha.

-Versus-

1. The Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. The Divisional Railway Manager, North Eastern Railway, Varanasi.
3. The Additional Divisional Railway Manager, North Eastern Railway, Varanasi.
4. The Senior Divisional Operating Manager (G), North Eastern Railway, Varanasi.

..... Respondents.

By Advocate :- Shri S. K. Ravi, Id. SC

O R D E R

Per Mr. J.V. Bhairavia, J.M.:-

In the instant case, the applicant

has challenged the Charge Memo dated 18.12.2012 [Annexure A/3)

issued by respondent no. 4 alleging that on 26.09.2012, when the applicant being Station Master was on duty from 8rs to 16 hrs, at that time, Train no. 13019 Up Express coming from Pachrukhi to Siwan met with an accident near gate no. 90. The applicant was held guilty for not giving prior information to the gateman at Gate No. 90. Therefore, major penalty charge memo was issued against the applicant by the respondent no. 4. The applicant thereafter on 31.12.2012 [Annexure A/4] filed show cause before respondent no. 4 giving details of his defence. The Inquiry Officer after inquiry submitted report on 24.02.2013 [Annexure A/5] in which he has held that the allegation levelled against the applicant has not been proved. The Disciplinary Authority vide his letter dated 26.03.2013 [Annexure A/6] asked the applicant to submit representation within fifteen days on the point of disagreement with the Inquiry Officer's report. Thereafter, the applicant on 06.04.2013 [Annexure A/7] submitted his detail representation to respondent no. 4. The respondent no. 4 after considering representation of the applicant passed impugned order of punishment dated 22.04.2013 [Annexure A/1] by which the applicant has been awarded punishment of de-gradation from Pay Scale Rs. 9300-34800/- + GP Rs. 4800/- to Rs. 9300-34800/- + GP Rs. 4200/- for a period of three years

with cumulative effect. The appeal of the applicant was also rejected by respondent no. 3 vide order dated 16.04.2014. Aggrieved by the said order, the applicant has filed this OA with a prayer to quash and set aside the order dated 22.04.2013 [Annexure A/1 and order dated 16.04.2013 [Annexure A/2].

2. The respondents have filed their written statement in which they are reiterated the facts and submitted that on the report of Inquiry Officer, the Disciplinary Authority was disagreed and served disagreement note along with enquiry report to the applicant for reply and defence and after receipt of response from the applicant, the Disciplinary Authority after considering all the facts and circumstances found the applicant guilty and awarded punishment vide order dated 22.04.2013. Thereafter, the Appellate Authority was also disposed of the appeal filed by the applicant on 16.04.2013 confirmed the punishment awarded by the Disciplinary Authority. It is further submitted that due opportunity was granted to the applicant at every stage of disciplinary proceeding.

3. The applicant has filed rejoinder to the written statement and reiterated the submissions made in the OA.

4. Learned counsel for the applicant submitted that the respondents was not provided any opportunity of personal hearing to the applicant to defend the allegation levelled against him as per Rule 22 of the Railway Servant (Discipline & Appeal) Rules.

5. Learned counsel for the respondents submitted that the applicant has never demanded for personal hearing hence, question of personal hearing does not arise and the Appellate Authority rightly disposed of the appeal of the applicant and confirmed the order of the Disciplinary Authority vide order dated 16.04.2014. In this regard, the respondents has placed reliance on the judgment dated 06.11.2017 passed by Hon'ble High Court of Patna in CWJC No. 13417 of 2017.

6. Learned counsel for the applicant submitted that the telephone of gate no. 90 connected with the telephone of gate no. 89 C and gate no. 93A, 94 C, 1STC and 1STA were also connected together. So it cannot be said that applicant has not communicated to the gateman (Annexure A/10).

7. Learned counsel for the respondents submitted that on request of the applicant, Inquiry Officer has called for the officials who

submitted the joint inquiry report of the accident and the gate man of gate no. 90 as court witness in the departmental enquiry and enquired about the incident. However, the enquiry officer submitted his report dated 24.03.2013 stating that allegation levelled against the applicant has not been proved.

8. Heard the parties and perused the records as well as the citations filed by both the parties.

9. It is noted that Disciplinary proceeding was initiated against the applicant with respect to major penalty charge memo dated 18.12.2012. the main allegation levelled against the applicant was that on 26.09.2012, he was posed as siwan Junction as Station Master and was on duty from 8 hrs to 16 hrs., he was working in RRI (Route relay interlocking) panel at Siwan Junction station. At the relevant time, train no. 13019 UP Express was coming from Pachrukhi Station to Siwan station and met with an accident near gate no. 90. The applicant was found guilty of not giving prior information to the gate man posted at gate no. 90 Spl. Taking line clearance from Puchrukhi. It was also charge against the applicant that the applicant had mentioned about private no. 78 and it was stated that the gatemen had given the private no. as 44, it was found incorrect during investigation of the accident. Therefore, a

major penalty charge memo was issued against the applicant. The applicant had filed his show cause. The applicant had participated in the Disciplinary Proceeding and though the witnesses were not cited in charge sheet. However, the Inquiry Officer examined the witnesses and the applicant was also provided to cross examination of the said witnesses, the Inquiry Officer had submitted his report on 24.02.2013 in which he had reported that allegation levelled against the applicant has not been proved. However, the Disciplinary Authority disagreed with the said Inquiry Report and given opportunity to the applicant to represent on their disagreement note. The applicant has filed his representation within stipulated time. Thereafter, considering the material on record, the DA by recording its finding the said DA has concluded that the charges levelled against the applicant were proved and accordingly awarded the punishment vide impugned order dated 22.04.2013.

10. Aggrieved by the said punishment order passed by the Disciplinary Authority, It is noted that the applicant had filed statutory appeal before the Appellate Authority. It is submitted by the counsel for the applicant that the said Appellate authority has not at all consider the grounds stated in the appeal and without affording due opportunity of personal hearing as per provision of Rule 22 of the Railway Servant

(Discipline & Appeal) rules and rejected the appeal without considering the points raised in the appeal by the applicant.

11. It is noticed that at every stage, the applicant delinquent was granted due opportunity to defend his case, he participated in the said proceedings. The appeal filed before the appellate Authority was also considered by the said authority and said appeal was rejected by assigning the reason for it and confirmed the order of disciplinary Authority.

The applicant mainly submitted that no opportunity of personal hearing was granted by the Appellate Authority before disposing of the appeal and acted in contravention of the provision of Rule 22 of the Railway Servant (Disciplinary & Appeal) rules. The said submission of the applicant is not acceptable as such, there is no provision with regard to grant of opportunity of personal hearing by the Appellate Authority in the said Rule. In this regard

The counsel for the respondents has placed reliance on judgment passed in CWJC no. 13417 of 2017 dated 06.11.2017 by hon'ble High Court of Patna in the case of Ajay Kumar vs. U.O.I. through the General Manager,

Eastern Railway, Kolkata, the Hon'ble High Court had held that there is no provision in the statute for a right of personal hearing by the Appellate Authority. The observation of the Hon'ble High Court in the said case is fairly applicable in the present case. Therefore, it cannot be said that the applicant was deprived of benefit of any statutory provisions. We have also examined the reason stated by the Appellate Authority while upholding the order passed by the Disciplinary Authority and the said findings of the Appellate Authority has not suffered from any infirmities. Even otherwise, we do not found any omission or infirmity in the punishment order as well as the appellate authority's order and it cannot be said to be passed as machanical order.

12. In view of above discussion, we are of the considered opinion, no interference is found to be necessary in the decision of the disciplinary authority as well as the appellate authority. Hence, the OA is dismissed.

[Dinesh Sharma]
Administrative Member

[Jayesh V. Bhairavia]
Judicial Member

Pkl/

