

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00709/17
With
MA/050/00379/17

Date of Order: 23.04.2019

C O R A M
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

K.K. Ambastha, S/o Late Chandra Shekhar Prasad, Resident of Mamsai, PO- Mamsai, District- Vaishali(Bihar).

.... **Applicant.**

By Advocate: - Mr. J.K. Karn

-Versus-

1. The Union of India, through the General Manger, EC Railway, Hazipur- 844118.
2. The Divisional Railway Manager, EC Railway, Sonpur- 841101.
3. The Addl. Divisional Railway Manager, E.C. Railway, Sonpur- 841101.
4. The Sr. DPO, EC Railway, Sonpur- 841101.
5. The Sr. Divisional Engineer (Co-Ordination), EC Railway, Sonpur.

.... **Respondents.**

By Advocate: - Mr. Bindhyanchal Rai

O R D E R
[ORAL]

Dinesh Sharma, A.M:- The applicant is aggrieved by Order No. DEN/Spl/SEE/DAR/KKM/08/656 dt. 28.04.14 issued by the Sr. Divisional Engineer/Co-Ord. E.C. Railway, Sonpur whereby, instead of passing fresh order in terms of and in compliance to order of this Tribunal dated 25.11.2013, the appellate authority has passed a non-speaking order agreeing with the finding of the enquiry report and order passed by the disciplinary authority. The applicant had earlier approached this Tribunal by OA 496/2009 which was decided on 25.11.2013. The Tribunal had set aside

the orders of the disciplinary authority as well as the appellate authority and remitted the matter back to the respondents “*to consider the inquiry report (along with applicant's reply thereon) afresh and to pass such orders, as they may deem appropriate in accordance with the applicable rules, regulations and rulings governing the matter. All actions consequential thereto, including matter relating to the applicant's post retirement entitlements, should also be taken by the respondents and completed within an overall time frame of 4 months from the date of receipt/communication of this order*”. The applicant considers the order passed by the appellate authority (the impugned order) as strange and not justified in the eyes of law and has, therefore, requested for setting it aside. The applicant has also requested for directing the respondent authorities to refix the pension and the pensionary benefits of the applicant by removing the effect of punishment.

2. The applicant has also filed an MA 379/2017 in which he has requested for condonation of delay which occurred because of his following another remedy under a contempt petition.

3. The respondents have filed their written statement in which they have stated that the OA is not maintainable being barred by limitation. They have also justified the “speaking order” issued by the appellate authority stating that it has been issued after due consideration. The respondents have also replied to the Misc. Application and have objected to the condonation of delay stating that the plea of filing contempt case has

nothing to do with the instant case and therefore the request for condonation of delay should not be accepted.

4. Heard the parties. A perusal of the impugned “speaking order” will make it clear that it is not a speaking order at all. The order only mentions that *“I have gone through the charges levelled. The enquiry report and final defence of the employee on the enquiry report afresh and came to the conclusion that I also agree with the findings of the enquiry report and order passed by the disciplinary authority”*. Such an order is definitely not in proper compliance of the order passed by this Tribunal in the earlier OA. The action would certainly attract contempt proceeding but for the technical reason that the word “speaking order” was missing in this Tribunal’s earlier order. Obviously, it is for this reason that the applicant first chose contempt proceeding and later came up with this OA. It is, apparently, a sufficient reason for the delay and deserves condonation. In my considered opinion, the “speaking order” is clearly a non-speaking order. The appellate authority has not given any reasons why he came to the conclusion and agreed with the findings of the disciplinary authority. It is unfortunate that such a laconic order has been passed after this Tribunal had remitted the matter back to the respondents for applying their mind afresh and passing appropriate order in accordance with the applicable rules, regulations and rulings governing the matter. This Tribunal had already mentioned, in para-4 of our decision, that *“the appellate authority has also not elaborated on the rationale in upholding the punishment. In the circumstances, it stands established that the order of punishment as well the*

disposal of the appeal are not in conformity with the applicable rules, regulations and rulings in the matter.” The failure to do so again, makes the order as infirm as was the original order which was quashed by this Tribunal.

5. I, therefore, have no option but to quash this order and remit the matter back for passing a fresh speaking order as directed by the decision of this Tribunal in OA 496/2009. Needless to say, the applicant is already retired and he is suffering because of this matter not getting finally resolved. Hence, the respondents are directed to ensure that a correct, reasoned and speaking order is issued by the appellate authority, after proper application of mind, within one month from the date of receipt of this order. In case no order is issued within this period, all the punitive actions which is the subject matter of appeal before the appellate authority, would be deemed to be non-est and the applicant would be paid revised consequential benefits within three months thereafter. The OA and MA are disposed of accordingly. No costs.

[Dinesh Sharma]
Administrative Member

Srk.