

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.203/00607/2017

Jabalpur, this Friday, the 15th day of February, 2019

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Itwari Ram Age 59 years S/o Shri Sahas Ram By Post
Ex.P.M. "A" / HGR R/o Qt. No.57/4 Porter Kholi Bilaspur
Now at Present R/o Sharda Mandir Near Yadav Hotel
Word No.14 Sirgitti Bilaspur Distt. Bilaspur (C.G.)
495004 Mobile No.09893038364 **-Applicant**

(By Advocate –**Shri J.A. Lohani**)

V e r s u s

1. Union of India, through the General Manager (G.M.)
S.E.C.R. Zonal Office Building Bilaspur (C.G.) 495001
2. Divisional Railway Manager (DRM) S.E.C.R. Office of
Divisional Railway Manager (D.R.M. Office) Bilaspur
(C.G.) 495001
3. Sr. Divisional Operations Manager, S.E.C.R. Office of
Sr. D.O.M. (Cord) at Divisional Railway Manager
(D.R.M. Office) Bilaspur (C.G.) 495001
4. Sr. Divisional Personal Manager SECR Office of Sr.
D.O.M. (Cord) at Divisional Railway Manager (D.R.M.
Office) Bilaspur (C.G.) 495001 **- Respondents**

(By Advocate –**Shri Vivek Verma**)
(Date of reserving the order:26.09.2018)

ORDER

By Ramesh Singh Thakur, JM:-

This Original Application has been filed by the applicant against the punishment order of removal from service vide order dated 21.07.2010 and the appeal preferred by the applicant has also been rejected vide order dated 13.01.2017 (Annexure A/3 colly.). Thereafter the revision petition preferred by the applicant was further rejected on 26.05.2017 (Annexure A/1).

2. The applicant has prayed for the following reliefs:-

“8.1 That this Hon’ble Tribunal may kindly be pleased to call upon the entire record pertaining to the case of the applicant leading to passing of impugned order dtd.21/07/2010, 15/01/2017, 18.05.2017 passed by respondent-authority, for the kind perusal of this Hon’ble Tribunal.

8.2 That this Hon’ble Tribunal may kindly allow this application by giving direction to the respondents to consider the case of applicant is also entitle for Compulsory Retirement from Railway Service but with sanction of Full pensionary benefits as compulsory retirement pension, in the interest of justice.

8.3 Any relief’s or appropriate directions to the respondents as deemed fit and proper suitable similar order passed for similar charges for similarly situated persons order dtd.21/06/2013 & 17/04/2015

(Annexure A/6), under the similar facts & circumstance of the present case may also be kindly be granted by this Hon'ble Tribunal along with cost of this application."

3. The facts of the case are that the applicant was appointed on the post of Porter on 28.01.1980. Later on the applicant was promoted to the post of P.M. 'A' on 05.07.1995. That for the medical reasons he remained absent from 10.07.2009 to 20.01.2010 and onwards against which enquiry was held under Rule 9 of the Railway Servant (Discipline & Appeal) Rule, 1968 under the substance of the imputation of misconduct or misbehavior after holding enquiry by issuing major penalty charge sheet dated 03.03.2010 for the allegation about remaining unauthorisedly absent from duty on 10.07.2009 to 20.01.2010, the said act failed to maintain devotion to duty and acted in the manner of unbecoming of Railway employee by contravening the Rule 3.01 (ii) and (iii) of the Railway Servant (Conduct) Rule, 1966.

4. The submission of the applicant is that the charge sheet was issued on 03.03.2010 which was not been served

to applicant as he used to reside at allotted railway quarter but notice / charge sheet was issued to the address to somewhere else which is against the very provisions of law against the principles of natural justice. A copy of charge sheet dated 03.03.2010 is annexed as Annexure A/2. The enquiry was conducted by CDTI Belpahar ex-parte in absence of applicant and submitted report dated 29.05.2010. The Disciplinary Authority by taking ex-parte decision and the punishment order was issued vide order dated 21.07.2010 (Annexure A/3) and the applicant was removed from railway service with immediate effect as measure of penalty and with sanction of only 2/3rd as pensionary benefit compassionate allowance by considering his earlier services. The applicant preferred appeal and the said appeal was rejected and the order passed by the disciplinary authority was confirmed by appellate authority vide order dated 13.01.2017. The applicant filed revision petition making submission that he had not received punishment order but physically received

on 11.01.2016 through R.T.I. The said order dated 21.07.2010 was received by the applicant on 06.01.2016 and immediately on 08.01.2016 appeal was preferred which was kept pending for a year and was decided on 13.01.2017 by confirming the said punishment. A copy of the order dated 21.07.2010 and order dated 13.01.2017 are annexed as Annexure A/3. Thereafter the applicant preferred a revision petition on 25.01.2017 (Annexure A/4) against the order dated 13.01.2017, which was kept pending for long period and the applicant has sent a reminder on 17.04.2017 and ultimately the respondent department had decided the same vide order dated 26.05.2017 (Annexure A/1) whereby the revision petition has been rejected and confirming the punishment imposed by the disciplinary authority and appellate authority has been affirmed. A copy of order dated 25.01.2017 is annexed as Annexure A/4.

5. The main ground for challenging the impugned order are that the order passed by the respondents hold material

illegality, perversity and irregularity which is bad in eyes of law. The applicant had served the department for the period of 29 years and therefore by considering earlier services of applicant in Railway and in exercise of power conferred under Rule 10(5) and Schedule-II vide Rule 06 and 07 of Power delegated under RS(D&A) Rules 1968, the applicant is entitled for compulsory retirement from railway service but with sanction of full pensionary benefits as compulsory retirement pension. The other ground of challenge by the applicant is that since he used to reside at allotted railway Quarter No.57/4 Railway Porter's Kholi, but the enquiry against the applicant was conducted behind the back without issuing charge-sheet. The railway had issued charge sheet on the address not where the applicant used to reside, instead of pasting the notice at the residential Railway quarter 57/4 Railway's Porter Kholi, it was intentionally sent to wrong address i.e. R/o Village Kushouber where the applicant had no relation with such village as he used to reside at Railway allotted

quarter which can be verified by rent which was being deducted from his salary. Further the ground of challenging the impugned order is that the long absent of employee is not a crime, as the applicant has not intentionally remained absent but due to mental distress and jaundice infection during alleged period due to illness, loss suffered to the applicant, due to which the applicant had suffered a lot, and loses service and benefits in future. But these all losses is for the applicant but no loss to the administration. So, the impugned punishment order is bad in the eyes of law. Furthermore, the applicant deserves for similar order as is entitled for compulsory retirement from railway service but with sanction of full pensionary benefits as compulsory retirement pension for similar charge two different opinion order been passed. Therefore the applicant is also seeking similar order from this Court who are similarly situated candidate as applicant therefore seeking for similar relief.

6. The respondents have filed their reply. In the preliminary submissions it is submitted by the replying respondents, that the instant application has been filed by the applicant against the order dated 21.07.2010, 13.01.2017 and 26.05.2017, whereby the respondents have removed the applicant due to unauthorized absent. It has been specifically submitted by the replying respondents that the charge sheet and charges framed against the applicant for unauthorized absent from duty from the period of 10.07.2009 to 20.10.2010 and the applicant failed to maintain devotion to duty and acted in the manner of unbecoming of Railway employee by contravening the rule 3.1 (ii) and (iii) of RS (Conduct) Rule 1966 and thereby rendered himself liable for disciplinary action under RS(D&A) Rules, 1968. The applicant was directed to submit a written statement of his defense within 10 days of the memorandum, and also directed to if he so desire to take the assistance of any other railway servant unofficial of Railway. Trade Union who satisfied the requirement of

Rule 9 (13) of Railway Servant (Discipline and Appeal) Rule 1968. It was also made clear that if he does not submit his written statement of defense within the period specified in Para 2 or does not appear in person before the inquiry authority or otherwise fails or refuses to comply with the provisions of Rule 9 of the RS(D&A) Rules, 1968 or the orders/direction issued in pursuance of the said Rule, the inquiring authority may hold the inquiry ex-parte. The memorandum of charge was pasted on Station Notice Board in presence of two witnesses, since the applicant was not available at headquarter station and another copy was sent to residential address through registered post. Thereafter Shri P.K. Behra was appointed as an enquiry officer in case of the applicant and submitted his ex-parte enquiry report dated 25.09.2010. The copy of the enquiry report was pasted on Station Notice Board on 07.07.2010 in presence of three witnesses because the applicant was not available at Headquarter Station and another copy was sent to residential address of the

applicant which returned undelivered. The replying respondents have specifically submitted that the service of notice of imposition of penalty as per RS(D&A) Rules, 1968 has been complied with. The disciplinary authority on the basis of the available evidence and report, hold guilty in this case and found that the applicant is not a fit person to be in railway service any more. Therefore in exercise of power conferred in Rule 10 (5) of Schedule II vide Rule No.6 and 7 of the delegation of power under RS(D&A) Rules, 1968 with the full application of mind imposed the punishment of removal from railway service with immediate effect as measure of penalty with sanction of 2/3rd as a pensionary benefits compassionate allowance, considering the service of applicant. It has been further submitted by the replying respondents that the appeal preferred by the applicant against the removal from service dated 21.07.2010 before the appellate authority on 08.01.2016. Subsequently the appellate authority vide order dated 13.01.2017 rejected the appeal on the ground

of time barred appeal and confirmed the punishment of removal from service. Then subsequently the applicant preferred a revision petition before the revisionary authority which was also rejected on 26.05.2017 and confirmed the punishment imposed by the disciplinary authority.

7. The specific contention of the replying respondents is that the replying respondents have dealt with the enquiry as per law and the ex-parte proceedings were initiated against the applicant, as the applicant was not found at the headquarter station. The replying respondents have complied with the RS (D&A) Rules, 1968 regarding the service of notice of imposition of penalty. A copy of the last known address (collectively) is enclosed as Annexure R/1. It has been further submitted by the replying respondents that the applicant mentioned different address in different documents. As per the records the last address of the applicant was quarter No.689/1, Type –I at New Loco Colony, Bilaspur and as per the Adhaar Card

the address of the applicant is Sahas Ram House No.620/4 Road No.61 South New Loco Colony Torwa Bilaspur (C.G.) and as per the application dated 08.01.2016 regarding non payment of settlement dues submitted by the applicant mentioned the address as a Quarter No.57/4 Porter Kholi Distt. Bilaspur (C.G.) and also the family certificate issued by the Ward Member 65 Shri M. Shrinu submitted the address of the applicant as a New Loco Colony Ward No.65 Bilaspur (Annexure R/2). The replying respondents have given the ample opportunity for filing written statement and also made compliance of requirement of Rule 9(13) of RS (D&A) Rules, 1968. But the applicant did not submit written statement within the specific period and has also not appeared before the enquiry officer. Resultantly the enquiry officer submitted ex-parte enquiry report dated 25.09.2010 and the copy of the enquiry report was pasted on Station Notice Board on 07.07.2010 in presence of three witnesses because the applicant was not available at Headquarter Station and

another copy was sent to residential address of the applicant which returned undelivered. So, the action taken by the respondent-department is as per law and there is no ambiguity or illegality in the order of the respondent-department.

8. We have heard the learned counsel for both the parties and also gone through the documents attached with the pleadings.

9. From the pleadings it is crystal clear that the applicant vide order dated 21.07.2010 has been punished with the order of removal from service. The appeal has been rejected vide order dated 13.01.2017 (Annexure A/3). Thereafter revision petition has also been rejected on 26.05.2017.

10. Precisely the main ground of the applicant in this O.A. is that the applicant remained absent from 10.07.2009 to 20.01.2010 and onwards against which enquiry was held under Rule 9 of the Railway Servant (Discipline & Appeal) Rule, 1968 under the substance of

the imputation of misconduct or misbehavior after holding enquiry by issuing major penalty charge sheet dated 03.03.2010 for the allegation about remaining unauthorisedly absent from duty w.e.f.10.07.2009 to 20.01.2010, the said act failed to maintain devotion to duty and acted in the manner of unbecoming of Railway employee by contravening the Rule 3.01 (ii) and (iii) of the Railway Servant (Conduct) Rule, 1966.

11. The contention of the applicant is that the applicant has not been properly served with the memo of charge sheet as the applicant used to reside at allotted railway quarter but notice / charge sheet was issued to the address to somewhere else, which is against the very provisions of law against the principles of natural justice. From the reply of the respondent department it is stated that the applicant remained absent from duty for the period of 10.07.2009 to 20.10.2010 and the applicant failed to maintain devotion to duty and acted in the manner of unbecoming of Railway employee by contravening the rule 3.1 (ii) and (iii) of RS

(Conduct) Rule 1966. The replying respondents have specifically submitted that the applicant was directed to submit a written statement of his defense within 10 days of memorandum, and also directed to if he so desire to take the assistance of any other railway servant unaffiliated of Railway. Trade Union who satisfied the requirement of Rule 9 (13) of Railway Servant (Discipline and Appeal) Rule 1968. It is clear from the reply that the applicant did not submit his written statement of defense within the period specified in Para 2 of the said notice and also did not appear in person before the inquiry authority. Resultantly, ex-parte inquiry was conducted. It has been specifically submitted that the memorandum of charge was pasted on Station Notice Board in presence of two witnesses since the applicant not available at headquarter station and another copy was sent to residential address through registered post. So the allegation of the applicant that he has not been properly served with the memo of charges is baseless. In the reply it has been further

submitted by the replying respondents that Shri P.K. Behra was appointed as an enquiry officer and inquiry was conducted ex-parte. The enquiry report was submitted on 25.09.2010 which was pasted on Station Notice Board on 07.07.2010 in presence of three witnesses because the applicant was not available at Headquarter Station and another copy was sent to residential address of the applicant which returned undelivered. So, the replying respondents have specifically submitted that the service of notice of imposition of penalty as per RS(D&A) Rules, 1968 has been complied with. The disciplinary authority on the basis of the available evidence and report hold guilty in this case and found that the applicant is not a fit person to be in railway service any more. Therefore, in exercise of power conferred in Rule 10 (5) of Schedule II vide Rule No.6 and 7 of the delegation of power under RS(D&A) Rule 1968, with the full application of mind imposed the punishment of removal from railway service with immediate effect as measure of penalty with sanction

of 2/3rd as a pensionary benefits compassionate allowance, considering the service of applicant. Though the applicant has preferred appeal against the order dated 21.07.2010 of removal from service before the appellate authority on 08.01.2016. Subsequently the appellate authority vide order dated 13.01.2017 rejected the appeal on the ground of time barred appeal and confirmed the punishment of removal from service. The applicant had further filed a revision petition before the revisionary authority which was also rejected on 26.05.2017 and confirmed the punishment imposed by the disciplinary authority. The replying respondents has dealt with the inquiry as per law and the ex-parte proceedings has been initiated against the applicant, as the applicant was not found at the headquarter station. The replying respondents have complied with the RS (D&A) Rules, 1968 regarding the service of notice of imposition of penalty. A copy of the last known address (collectively) is sent to the applicant which is enclosed as Annexure R/1. It has been specifically submitted by the

replying respondents that the applicant has mentioned different address in different documents, as per the records the last address of the applicant was quarter No.689/1, Type –I at New Loco Colony, Bilaspur and as per the Adhaar Card the address of the applicant is Sahas Ram House No.620/4 Road No.61 South New Loco Colony Torwa Bilaspur (C.G.) and as per the application dated 08.01.2016 regarding non payment of settlement dues submitted by the applicant mentioned the address as a Quarter No.57/4 Porter Kholi Distt. Bilaspur (C.G.) and also the family certificate issued by the Ward Member 65 Shri M. Shrinu submitted the address of the applicant as a New Loco Colony Ward No.65 Bilaspur (Annexure R/2). So, it is clear from the reply of the respondents that the respondents have given ample opportunity for filing written statement and also made compliance of requirement of Rule 9(13) of Railway Servant (Discipline and Appeal) Rules, 1968. Despite this the applicant did not submit his written statement within the specific period and

has also not appeared before the enquiry officer. So there is no ambiguity in conducting the ex-parte enquiry and also the enquiry officer submitted his ex-parte enquiry report dated 25.09.2010. Not only this, the copy of the enquiry report was pasted on Station Notice Board on 07.07.2010 in presence of three witnesses because the applicant was not available at Head Quarter Station and another copy was sent to residential address of the applicant which returned undelivered. So the action taken by the respondent-department is as per law and there is no ambiguity or illegality in the order of the respondent-department.

12. In view of the above, we do not find any reasons to interfere in the action taken by the respondent-department.

13. Resultantly, this O.A. is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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