

**Central Administrative Tribunal
Principal Bench**

OA No. 2806/2012

Order reserved on : 22.01.2019
Order pronounced on: 08.02.2019

***Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)***

Shri Anup Kumar Sharma,
S/o Shri Bhagwan Swaroop Sharma,
Ex. Senior Booking Clerk,
Shalaka
Presently R/o H,.No.31/244
Rawli, Agra.

... Applicant

(By Advocate: Ms. Meenu Mainee)

Versus

Union of India through

1. General Manager,
North Central Railway,
Allahabad.
2. Divisional Railway Manager,
North Central Railway,
Agra Cantt.

... Respondents

(By Advocate: Sh. Satpal Singh with Ms. Neetu Mishra)

ORDER

By Hon'ble Sh. Pradeep Kumar, Member (A)

The applicant was appointed in Group-D as a casual labour on 16.06.1979. Thereafter he was regularized as a

Parcel Porter, which is also a Group-D post in the year 1984 and the relevant appointment letter was issued by Assistant Personnel Officer (APO) working under the respondents. Subsequently, he appeared and passed in a departmental selection for the post of Parcel Clerk, which is a Group-C post in the year 1995. Thereafter he was promoted and posted as Senior Parcel Clerk in the scale of Rs.1200-2040 in the year 1995 for which the order was issued by Divisional Railway Manager (Establishment), [(DRM (E) for short] Kota Division on 18.09.1997. This posting letter also makes a mention that this was issued with the approval of the Competent Authority.

2. Subsequently, the applicant was issued a major penalty charge-sheet on 18.07.2005, which contained two charges. The reason is that the applicant had issued a certificate dated 26.05.2005 wherein he certified to the Labour Officer that certain parcel handling labourers engaged by a contractor, were working under the Railway. These contract labourers had filed a case for their regularization in the Railway, in the Tribunal at Allahabad. The Sr. Divisional Commercial Manager, Kota Division had earlier issued clear directions dated 10.03.2000 debarring issuance of any such certificate by any official who is not competent to issue the same. The applicant was not a designated competent authority to issue such a certificate. Once issuance of a certificate dated

26.05.2005, came to light, the above referred charge-sheet was issued to the applicant.

3. The charge-sheet indicated the names of two departmental prosecution witnesses. One was Sh. K.L.Sharma, who was working as Divisional Commercial Inspector/Agra Fort, who was the then Chief Booking Clerk at Agra Fort under whom the applicant worked when the said certificate was issued. The second witness was Sh. S.S.Gupta, Chief Parcel Supervisor, Agra Fort. The applicant denied the charges vide his letter dated 05.08.2005.

The respondents thereafter decided to conduct the enquiry by appointing an enquiry officer and Sh. K.L.Sharma was appointed as the enquiry officer. The applicant represented that prosecution witness cannot be nominated as an enquiry officer and requested for a change of enquiry officer. The applicant also objected against treating Sh. S.S.Gupta as a prosecution witness.

4. Taking this representation into account, the respondents nominated another enquiry officer by the name Sh. Man Singh Meena, who was Divisional Commercial Inspector, Mathura. The applicant again sought to change the enquiry officer. This was not agreed to and a speaking order was passed by the disciplinary officer namely Divisional

Commercial Manager, and a letter conveying this decision was issued by the office of DRM (Commercial) on 02.01.2008 wherein the reasons were given and the applicant was also requested as under:

“You are not co-operating in the enquiry in connection with the subject case. In this view of the matter, the enquiry proceedings can be conducted ex-parte for which you will be answerable.”

5. However, the applicant again requested to change the enquiry officer vide his letter dated 04.01.2008. This was, however, not accepted and enquiry proceeded.

6. The enquiry report was submitted by Sh. Man Singh Meena on 20.03.2008. Both the charges were proved. This enquiry report concluded as under:

“After going through all the abovenoted facts, it is clear that the charges leveled against Shri Anoop Kumar Sharma are fully proved in view of his sending to the Labour Commissioner on 26.05.2005 – Dr. A.K.Singh, Central Area Labour Commissioner, Lucknow certified letters against the Senior Divl. Commercial manager, Kota letter No.237/O/Hamal dated 10.3.2000 in a case filed by the Porters in the C.A.T., Allahabad; such certified letters issued by the P.W.S.I and P.W.S.II and records. In this view of the manner, all the charges leveled against the C.O. stand proved.

In order to save himself from these charges, requests by the C.O. for adjourning the case time and again, to change the Enquiry Officer and non-cooperation in the enquiry in spite of sending registered letters to him, prove that there is nothing with the C.O. to defend his case. Therefore, by appearing in between periods and by threatening by the C.O. given to the E.O. that if you decide the case in my favour I shall attend or give me guarantee of full payment for unauthorized absence then I shall give cooperation in the enquiry or otherwise I shall file a case against you in the Court. From all these facts, it is clear that the C.O. was given full opportunity

to present his case for defence. But, he did not present himself. It is proved from these facts that the charges leveled against the C.O. are proved and for sending certified letters against the Sr. D.C.M., Kota letter No.237(O)/Hamal dated 10.3.2000 to the Labour Commissioner, Lucknow the C.O. is held guilty of the charge.”

7. The said enquiry report was given to the applicant to submit his defence. The same was submitted vide applicant's representation dated 29.03.2008. This was considered by Divisional Commercial Manager (DCM), Agra and he passed a speaking order dated 01.05.2008 and imposed the punishment of compulsory retirement upon the applicant. Feeling aggrieved, the applicant made an appeal to the appellate authority, namely, Sr. DCM, which was rejected on 01.02.2008. Thereafter, the applicant made a revision petition to the competent authority, namely, Additional Divisional Railway Manager (ADRM). This was also rejected on 06.01.2009.

8. Feeling aggrieved, the applicant approached the Tribunal vide OA No.1075/2010. The judgment was pronounced on 28.04.2011. In this OA, applicant had pleaded that the penalty of compulsory retirement imposed on 01.05.2008 was by the DCM, who is a subordinate authority to the one who had promoted/appointed the applicant as Senior Parcel Clerk in the grade Rs.1200-2040 in the year 1997. This promotion order was issued by DRM (Estt.) and it was pleaded that DCM

is a lower authority and as such not competent to impose the punishment. Other grounds were also raised.

9. The Tribunal passed the following orders:

“We accordingly quash the orders passed by the appellate and the revisional authority and remand the case back to the concerned authorities, leaving the other contentions open, with a direction to look into the appeal dated 1.10.2008 of the applicant afresh and after considering the contentions raised in the appeal/representation, as also the issue raised in the MA, of the order not having been passed by a competent authority, take a considered decision on the appeal/revision petition and pass appropriate speaking and reasoned orders in accordance with the rules and law. The applicant will have liberty to challenge the fresh orders passed by the authorities. This be done within a period of three months from the date of receipt of a copy of this order.”

10. Thereafter the applicant made an appeal to the appellate authority, namely, Sr. DCM, which have been considered and speaking order passed on 17.06.2011 wherein the punishment of compulsory retirement had been upheld. Thereafter, the applicant had filed a revision petition to the competent authority, namely, the ADRM, Agra, who had considered the same and passed a speaking order on 25.08.2011 wherein the decision by the appellate authority dated 17.06.2011 was upheld after recording detailed reasons. Feeling aggrieved by this rejection, instant OA has been filed.

It has been pleaded that the original punishment order was issued by the DCM, who being a lower authority than the

one who appointed him to the post of Senior Parcel Clerk was not competent to order the punishment. Moreover, the provisions of Clause 9.12 and 9.21 of the Railway (Discipline and Appeal) Rules have not been followed. Clause 9.12 specifies that the enquiry officer is required to give 30 days' time to the charged official to make any representation and this is to be done before the enquiry report is finalized. Clause 9.21 requires the enquiry officer to bring out the evidence which has come against the charged official, to his/her notice so that he/she can explain the circumstances while submitting his/her defence.

11. The respondents had opposed the petition and pleaded that the Divisional Organization in the Railways is headed by a DRM. DRM is assisted by ADRM. There are approximately 12 Branches under the DRM, namely, Commercial, Operating, Signal, Engineering, Personnel, Mechanical, Electrical. Stores, Security, Accounts, Safety, Medical etc. Each of these Branches is headed by a Branch Officer, who is normally working in the Junior Administrative Grade and the designation can be like Sr. DCM, Sr. DPO and so on. Each of these Branch Officers is in turn supported by the officers in senior scale whose designations can be like DCM, DPO and so on. These officers in senior scale are in turn supported by

ACM, APO and so on, who are working in junior scale or Group-B.

The Railway (Discipline and Appeal) Rules powers are well defined and they are in keeping with the scale of the charged official at the time of imposition of punishment.

12. In the instant case, the applicant was appointed as a Group-D employee in the year 1984 by an order passed by a Personnel Branch Officer namely APO, a post which is equivalent to ACM, who is a Commercial Branch Officer, where the applicant was appointed. By virtue of this, the appointing authority and the authority competent to impose punishment was ACM. However, subsequently, the applicant was promoted as Senior Parcel Clerk in the grade of Rs.1200-2040 in the year 1997 and he was in this grade when the charge-sheet was issued as well as when the punishment of compulsory retirement was imposed on 01.05.2008. For officials in this grade, who are working under Commercial Department, the competent authority to impose this punishment is DCM, who has actually passed these orders.

13. All establishment related issues in a Division are processed by Personnel Branch and related orders are issued by the Personnel Branch only and these letters are issued by a nominated officer who writes his designation as DRM (Estt.). However, all such letters are issued with the approval of the

competent authority. In respect of the applicant, the relevant letter of promotion/posting as Senior Parcel Clerk was also issued accordingly, with the approval of the competent authority in the year 1997. However letter was issued on behalf of DRM (Estt.) as per practice. By this act of issuing this letter, it cannot be argued, even in the least, that DRM has become the appointing authority. The appointing authority for the applicant, who was Senior Parcel Clerk in Rs.1200-2040 scale, continues to be DCM who is a Senior Scale Officer.

14. The respondents further drew attention that the applicant had not cooperated with the enquiry. He went on representing for change of the enquiry officer even after it was changed once and he continued to object the presence of prosecution witnesses whereas the said witness was the relevant incharge at the station where the parcel handling contract labourers work.

The applicant did not participate in the enquiry and as such there was no occasion to implement all the provisions of DAR rules which has now been cited as a grievance in the instant OA.

However, the enquiry report was given to the applicant before the punishment was imposed on 01.05.2008 to elicit his defence and thereafter the applicant had approached the

Tribunal also wherein these issues were again raised. As directed by the Tribunal on 24.08.2011, the appellate authority, namely, Sr. DCM had again considered the matter and revision authority, namely, ADRM had also considered the matter and both these authorities have passed detailed speaking orders and upheld the punishment of compulsory retirement imposed on 01.05.2008.

15. The question of DCM being an incompetent authority for imposing the said punishment, was raised by the applicant in OA No.1075/2010 already. However, the Tribunal did not quash the order of disciplinary authority dated 01.05.2008 and had been pleased to issue directions only to the appellate authority and the revisional authority to consider the matter of incompetency of DCM and pass speaking order. Accordingly, the question of DCM not being the competent authority at this stage again, is barred by *res judicata*.

16. In view of the foregoing, the instant OA is devoid of merit and needs to be rejected.

17. The applicant relied upon the following judgments:

- (1) **Transport Commissioner, Madras vs. A.Radha Krishna Moorthy**, 1995 (1) SC SLJ 147
- (2) **Ministry of Finance and another vs. S.B.Ramesh**, (1998) 3 SCC 227

- (3) **Ram Krishan Prajapati vs. State of UP**, (2000) 10 SCC 43
- (4) **Medha Kotwal Lele and others vs. Union of India and others**, (2013) 1 SCC 311.
- (5) **Union of India and others vs. Shri Deva Ram**, CW No.1368/2003 decided on 04.11.2003
- (6) **Union of India and ors. vs. Jagdish Prasad**, WP (C) No.4847/2012 decide don 22.04.2013.
- (7) **Hari Prasad Billore vs. Union of India and ors.**, TA No.9 of 1986 decided on 28.11.1986 by Jabalpur Bench of this Tribunal.

18. Matter has been heard at length. Ms. Meenu Mainee represented the applicant and Sh. Satpal Singh with Ms. Neetu Mishra, represented the respondents.

19. The facts of the case are not in doubt. The applicant was working as Senior Parcel Clerk in the grade of Rs.1200-2040 with effect from the year 1997. Despite there being clear instructions from the Division dated 10.03.2000, the applicant issued a certificate to the labourers engaged by Parcel Handling Contractor who were fighting a case with the respondent – Railway seeking their regularization. The applicant was not the nominated person to issue such a certificate and as such he had acted in a manner unbecoming

of a Railway servant and accordingly, a major penalty charge-sheet was issued. The applicant sought change of the nominated enquiry officer for certain reasons which was considered and the enquiry officer was changed. However, applicant continued to seek change of the enquiry officer. The applicant also objected to the relevant prosecution witness. All these acts were tantamount to not cooperating with the enquiry. Eventually, it transpired that applicant did not participate in the enquiry for most of the period.

20. Thereafter, the competent authority, namely, DCM, who is a senior scale officer and is the designated competent authority to impose the said punishment upon a staff under his charge in the scale of Rs.1200-2040, had imposed the punishment of compulsory retirement vide his order dated 01.05.2008.

The applicant's plea that his appointment letter as Senior Parcel Clerk in the scale of Rs.1200-2040 was issued by DRM (Estt.), who is a superior authority to that of DCM is not acceptable as various letters in a Division, issued by Establishment/Personnel branch are issued under the authority of DRM (Estt.) and various letters issued by Commercial Branch are issued under the authority of DRM (Commercial) and so on. In fact the punishment order dated

01.05.2008 was issued by DCM under the letter head DRM (Commercial).

Issuance of such a letter by DRM (Estt.), cannot change the competent authority to impose punishment, which is governed by a separate set of instructions. The applicant's plea in this regard are, therefore, not acceptable and are rejected.

21. The applicant's other plea is that Clause 9.12 and 9.21 were not complied with. These contentions have to be seen in the light that the applicant had not been cooperating with the enquiry at all stages at the relevant point of time. He has not presented himself to the enquiry. Even so, the enquiry report was thereafter supplied to the applicant to make a representation. This opportunity was availed and he submitted his representation dated 29.03.2008. It was only thereafter that the competent authority, namely, DCM had passed a detailed speaking order dated 01.05.2008 and imposed the punishment of compulsory retirement.

Thereafter, the matter was agitated in the Tribunal in OA No.1075/2010 and in compliance of the judgment dated 28.04.2011, the appellate authority, namely, Sr. DCM had passed his detailed speaking order on 17.06.2011. In keeping with the observations of the Tribunal in their orders dated 28.04.2011, the appellate authority had specifically

noted in the speaking order vide para 2 that the DCM was the competent authority in respect of the charged official and accordingly, the punishment order dated 01.05.2008 was as per rules.

Thereafter, the revisional authority, namely, ADRM had also passed a detailed speaking order dated 25.08.2011.

22. In view of the foregoing, the directions by the Tribunal have been fully complied with by the respondents and the provisions of Railway (Discipline and Appeal) Rules have also been substantially complied with. Various judgments quoted by the applicant are in different context and those ratios are not applicable in the instant case. Various pleas made by applicant are not finding acceptability. Hence, these contentions of applicant are rejected.

23. In view of the foregoing, the OA is dismissed being devoid of merit. There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(Justice L.Narasimha Reddy)
Chairman

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