

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH, AHMEDABAD**

Original Application Nos.398/2017
Dated the 18th day of July, 2019

CORAM :

Hon'ble Ms Naini Jayaseelan, Member(Administrative)
Hon'ble Shri M.C.Verma, Member (Judicial)

Mukeshkumar Jaiprakash Nehra,
Son of Jaiprakash Nehra
Aged 36 years, Working as Ticket Collector,
Residing at 160/C, Railway Colony,
New 49 Quarters, Palanpur – 385 001.

... Applicant

By Advocate Shri Joy Mathew

V/s.

- 1 Union of India,
Notice to be served through,
General Manager, Western Railway,
Churchgate, Mumbai – 400 020.
- 2 The Additional Divisional Railway Manager,
(Appellate Authority),
Western Railway, Divisional Office,
Naroda Road, Nr Chamunda Bridge,
Ahmedabad- 382 345.
- 3 The Sr. Divisional Commerce Manager,
Office of the Divisional Railway Manager,
Naroda Road, Nr. Chamunda Bridge,
Ahmedabad – 382 345.
- 4 The Chief Commercial Manager,
(Revisional Authority),
Western Railway, Head Office,
Churchgate, Mumbai – 400 020.

... Respondents

By Advocate Shri M J Patel

ORDER (ORAL)

Per: Shri M C Verma, Judicial Member

1 Being aggrieved by non releasing the benefits viz. Arrears of pay, seniority, promotion etc., consequence to and in pursuant to order dated 18.11.2016 Annexure A-17) issued by Office of DRM, Ahmedabad Division instant OA has been preferred by the applicant.

2 The brief facts as has been set out by the applicant in his OA are that he was appointed as Ticket Collector in 2003, under Sports Quota. That a charge memo was issued against him imputing that he has availed special time off special CL on sports account by using forged/false letters. That in inquiry it was found that the charge was not proved but Disciplinary Authority dis-agreeing with inquiry officer imposed penalty of removal from service against the applicant in 2007-08. That appeal was preferred by applicant and the Appellate Authority remanded back the matter to Disciplinary Authority to pass afresh a speaking order and the Disciplinary Authority recorded his disagreement with the Inquiry Officer's report and held that the charge of producing fake letters and misleading the administration was held to be proved. Applicant again preferred appeal and when his appeal was not decided he approached the Tribunal, vide OA 300/2010 and by order dated 14.09.2010 this Tribunal gave direction to the Appellate Authority to decide the appeal within two months and thereafter the appeal was rejected by Appellate Authority by passing order on 15.11.2010. That applicant preferred Revision Petition, and when Revisionary Authority also did not decide his petition he preferred OA 189/2011 and this Tribunal disposed of his OA 189/2011 on 24.06.2011 directing the Revisionary Authority to decide the Revision Application within three months. The Revision Petition was also rejected. Being aggrieved by the order of

Revisionary Authority applicant approached the Tribunal by way of OA 332/2011 and this Tribunal vide order dated 5.7.2013 disposed of the OA by quashing and setting aside all impugned orders and directed the respondents to reinstate the applicant forthwith in service with all consequential benefits. That the order passed by the Tribunal was not complied with by the department and hence applicant preferred Contempt Petition No.50/2013, which was followed by Review Application No. 2/2014. Both CP-50/2013 and RA 2/2014 were disposed of by the Tribunal and anyhow applicant was reinstated in service on 03.06.2014.

2.1. Giving aforesaid backdrop facts it has been pleaded that as far as present matter relates a new Inquiry Officer appointed and another inquiry afresh was conducted against the applicant. That this Inquiry Officer on completion of the inquiry also submitted his report in favour of applicant but the Disciplinary Authority this time also issued dis-agreement note. That applicant submitted his representation and Disciplinary Authority imposed a penalty of reduction in the same pay band by two stages below for a period of 6 months without future effect. Applicant preferred appeal which was also rejected on 05.07.2016 and on 06.10.2016 applicant preferred a Revision Petition which is still pending and during pendency of Revision Petition Office of Divisional Railway Manager issued an order on 18.11.2016, treating the intervening period as duty period and granted all the consequential benefits to the applicant. The grievance of the applicant in instant OA is that though this order dated has been passed by Disciplinary Authority, but for reasons best known to respondents, it has not been implemented till date. By way of instant OA applicant has made prayer to direct the respondent to release his benefits viz.

Arrears of pay, seniority, promotion etc., pursuant to order dated 18.11.2016 issued by Office of DRM, Ahmedabad Division.

3 The respondent department after issuance of notice appeared and filed reply. As far as facts that the departmental Inquiry was held, order dated 18.11.2016 was passed have not been denied by the respondents. The stand and contention of the respondents in the reply is that the decision of Revision Petition has not been passed and as far as implementation of order dated 18.11.2016 relates, the DAR case of applicant was put up to competent authority i.e. DRM-ADI and it has been decided to forward the same to the GM/CCG for taking "Suo-Motto" review the decision of DA i.e. Sr. DCM/ADI and it is still under consideration of GM/CCG. It has not been specified as to when the GM/CCG took "Suo-Motto" note.

4 Heard Shri Joy Mathew, learned counsel who appeared for the applicant and Shri M J Patel, learned counsel who appeared for respondents. Shri Joy Mathew while pressing for a direction to respondents to implement the order dated 18.11.2016 in letter and spirit and urged that even if GM has taken suo motto review, the same is illegal as GM is having power to review the penalty order within six months of its passing and that more than six months have passed but no order has yet been passed. That the lawful action would have been to decide the revision petition of the applicant but no order on revision petition has also been passed. He also submits that during pendency of this OA applicant did receive one show cause notice from Office of DRM- asking to show cause why the penalty imposed by Disciplinary Authority and upheld by Appellate Authority be not enhanced and therefore another OA was filed by the applicant and in said OA the Tribunal has directed the respondents not to act upon the show cause order.

5 Shri M J Patel, learned counsel for respondents contended that the order dated 18.11.2016 relates to modification of penalty and that GM was within his power to review the order of penalty. He explained why the order relating to Revision Petition & order dated 18.11.2016 could not be passed earlier and assured that same would be disposed of as early as possible. He submitted that it would be appropriate if the OA be disposed of with direction to decide the Revision Petition & Suo moto review of order dated 18.11.2016 within a given time frame.

6 Having considered the submissions and taking note of pleading it has emerged that the GM in DAR case “Suo-Motto” review of the decision of Disciplinary Authority within specified period is permissible by GM/CCG. He is competent to review and to modify the order passed by Sr. DCM/ADI and that order dated 18.11.2016 passed by Sr. DCM/ADI is still under consideration of GM/CCG. It is not known when the GM/CCG took “Suo-Motto” note, whether within permissible period of limitation or beyond that as the pleading qua this aspect is silent and Learned Counsel of parties to lis also claimed inability to tell when the GM/CCG took “Suo-Motto” note. Be that it may be, it would be in interest of justice if GM , who is representing respondent no.1 be directed to pass a speaking order within a fixed time frame, on Review relating to Suo-Motto cognizance, if taken, for review of order dated 18.11.2016 passed by Sr. DCM/ADI.

7 In view of aforesaid discussion the GM Western Railway, through whom UOI, the respondent no.1 is being represented, is directed to pass a speaking order within a period of one month on Review relating to Suo-Motto cognizance for review of order dated 18.11.2016 passed by Sr. DCM/ADI. At this stage Shri M J Patel, learned counsel for respondents submitted that one month would be too short and he requested that

period of two months may be granted and learned counsel for applicant submits that he has no objection if two months time is granted for disposing of the Review relating to Suo-Motto cognizance but if no order is passed within two months also then respondent authority be bound to implement order dated 18.11.2016.

8 In view of submissions made the time of one month as has been directed above is extended and is stipulated as two months. the GM Western Railway thus is directed to take decision on Review, relating to Suo-Motto cognizance for review of order dated 18.11.2016 passed by Sr. DCM/ADI, within a period of two months from the date of receipt of copy of this order and the decision taken thereof be communicated to the applicant immediately thereafter. In the eventuality if no order on the Review relating to Suo-Motto cognizance is passed within stipulated period, the Review would be deemed to be non-est and respondent authority in that situation shall implement the order dated 18.11.2016 passed by Sr. DCM/ADI.

9 The OA is disposed of with above directions.

(M C Verma)
Member(J)

(Naini Jayaseelan)
Member(A)

abp