

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
CIRCUIT SITTING : BILASPUR**Original Application No.203/00075/2017**

Jabalpur, this Tuesday, the 09th day of July, 2019

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

B.K. Mazumdar, s/o Raiharan Majumdar, Retd. Masalchi Catering
Unit r/o Hemu Nagar, Torwa, Bilaspur 495001 **-Applicant**

(By Advocate – Shri A.V. Shridhar)

V e r s u s

1. Union of India through the Secretary, Railway Board, Rail Bhawan, Rafi Marg, New Delhi 110001.
2. The General Manager, South East Central Railway, Bilaspur, Chhattisgarh 495004.
3. Divisional Railway Manager, South East Central Railway, Old GM Building, Bilaspur, Chhattisgarh 495004.
4. Senior Divisional Commercial Manager, South East Central Railway, Old GM Building, Bilaspur, Chhattisgarh 495004.
5. Divisional Commercial Manager, South East Central Railway, Old GM Building, Bilaspur, Chhattisgarh 495004.
6. Assistant Commercial Manager, South East Central Railway, Old GM Building, Bilaspur, Chhattisgarh 495004 **- Respondents**

(By Advocate – Shri R.N. Pusty)

(Date of reserving order : 05.12.2018)

O R D E R

By Ramesh Singh Thakur, JM.

The applicant is aggrieved by the order dated 04.10.2016
(Annexure A-1) whereby his mercy petition against the order of

punishment dated 29.08.2012 (Annexure A-4), which has been subsequently modified by the Revisionary Authority vide order dated 06.11.2013 (Annexure A-5), has been rejected.

2. The applicant has, therefore, sought for the following reliefs:

“8.1 That the learned Tribunal may kindly be pleased to call the entire records pertaining to the case of the applicant.

8.2 That, the learned counsel may kindly be pleased to quash the impugned order no. E(D&A)2016AE19-2 dated 04.10.2016 (Annexure A/1).

8.3 That, the learned Tribunal may kindly be pleased to quash the imposition of punishment vide order No Con/BSP/C/Misc/BKM/06/12 dated 29.08.2012 and order No Con/BSP/C/Misc/BKM/06/12 dated 06.11.2013 whereby the Revision Petition of the applicant has been partly allowed and the punishment of the applicant has been modified and reduced to with holding of next increment raising pay from Rs.9400/-+Rs.2000/- to Rs.9840+Rs.2000/- GP in scale of Rs.5200-20200/- due on 01.07.2013 for a period of one and a half year.

8.4 That, the learned Tribunal may kindly be pleased to direct the respondents to grant all consequential benefits arising from the quashing of the order dated 01.07.2013.

8.5 Cost of the Original Application be awarded.

8.6 Any other relief which the learned Tribunal deems fit and proper may be awarded.”

3. Precisely, the case of the applicant is that while working as Masalchi, he was served with a charge memorandum dated 26.06.2012 (Annexure A-2). The applicant filed his response to the charge memorandum on 06.07.2012 and has asked for supplying the documents as also for holding enquiry to defend himself. However, the Disciplinary Authority, without considering the response of the applicant, has imposed minor punishment of stoppage of one increment for a period of two years vide order dated 29.08.2012 (Annexure A-5). The Appellate Authority has also affirmed the orders passed by the Disciplinary Authority. The applicant preferred revision petition before the Revisionary Authority on 22.07.2013. The Revisionary Authority, vide its order dated 06.11.2013 (Annexure A-5), has modified the punishment to withholding of one increment for a period of one and half years instead of two years. Thereafter, the applicant had preferred mercy

petition before the Hon'ble President of India, which has been rejected on 04.10.2016 (Annexure A-1).

4. The main grounds for challenging the impugned orders are that there are procedural irregularities in conducting the enquiry proceedings. The applicant has been denied the opportunity for defending himself as his request for open enquiry has been denied by the respondents. Further, the order of imposition of punishment is a non speaking order. Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968 provides for procedure for imposition of minor penalties. As per the rules, no penalty shall be imposed without recording a finding on each imputation of misconduct or misbehavior. However, no reasons have been assigned by the Disciplinary Authority while holding the applicant guilty.

5. The respondents, in their reply, have submitted that the Disciplinary Authority had not considered necessary to hold enquiry. The applicant was intimated and the desired documents were supplied to him. However, while submitting his reply, the applicant only emphasised on considering his case sympathetically. Therefore, after going through the entire case file and the explanation of the applicant, the Disciplinary Authority imposed

the minor punishment of stoppage of one increment for a period of two years, which was affirmed by the Appellate Authority. However, the Revisionary Authority, taking a lenient view, modified the punishment order.

6. Heard learned counsel for the parties and perused the pleadings available on record.

7. It is obvious from the charge memorandum dated 26.06.2012 (Annexure A-2) that the same has been issued for imposing minor punishment on the applicant. The statement of imputations of charge reads as under:

STATEMENT OF IMPUTATIONS

A statement of the imputations of misconduct or misbehavior on which action is proposed to be taken against Sri B.K.Majumdar/Masalchi, Catering unit/APR.

During the joint inspection of Commr Inspector on 04.06.12 of Catering Unit at Platform No-2/3 of APR station the following irregularities on the part of the said Sri B.K. Majumdar/Masalchi, Catering unit/APR was detected.

That the said Sri B.K.Majumdar/Masalchi, Catering unit/APR while performing duties in catering unit APR was performing duties without wearing upper garments and ID proof tarnishing the image of Rlys. The said Sri B.K.Majumdar/Masalchi, Catering unit/APR was found selling Tea @ Rs5/- instead of Rs3/- and Water bottle @ Rs 15/- instead of Rs 12/-. The Bisleri water bottles were not placed for cooling to increase the sale of Pawan Brand

PDW. The commodity like chips provided free with biscuits are also sold separately to gain monetory benefit.

It was also noticed that the sale list board was placed inside the catering unit to prevent visibility of passengers and only Rail Ahar was mention, that to at a very high level far from visibility from near due to whichi only one ahar out of 10 packet was sold.

It was also observed that though the sale of the unit is good but the accountability is shown very less. The said Sri B.K. Majumdar/Masalchi, Catering unit/APR is also alleged to give statement in press without obtaining permission from administration violating conduct rules.

The above act of the said Sri B.K.Majumdar/Masalchi, Catering unit/APR clearly exhibits breach of conduct rule malpractice and ulterior motive to gain personal monetory benefit thereby causing harassment and defrauding the bonafied passangers and loss of revenue to the Railway Administration.

By the above act of omission and commission Sri B.K.Majumdar/Masalchi, Catering unit/APR has failed to maintain absolute integrity & devotion to duty and acted in a manner like unbecoming of a Railway Servant, contravening to Rule 3.1 (i) & (ii) of RS (Conduct) Rules, 1966 and thereby rendered himself liable for disciplinary action in terms of RS (D&A) Rules, 1968 as amended from time to time.

8. From the statement of imputations, it can be seen that the charges of not performing the duties in proper uniform, selling the tea and water bottle in higher rate and selling free commodity by gaining monetary benefit were levelled against the applicant. The applicant was also alleged for giving statement in press without

obtaining permission from administration. The applicant, vide his letter dated 26.06.2012, had requested for conducting inquiry, however, the Disciplinary Authority did not consider it necessary as per Rule 11 (1) (b) of the RS (D&A) Rules, 1968 and communicated its decision to the applicant. The applicant submitted his reply to the charge memorandum on 03.08.2012 and requested to consider his case sympathetically. Ultimately, the Disciplinary Authority after considering the explanation/reply of the applicant and going through the case file, imposed a minor penalty of stoppage of one increment for a period of two years vide order dated 29.08.2012. However, the Reivisionary Authority, vide order dated 06.11.2013, had modified the same to the extent of one and half years. The mercy petition preferred by the applicant was also rejected on 04.10.2016 on the ground that since the applicant has himself requested to consider his case sympathetically after denial of his request for conducting inquiry, therefore, the prayer of the applicant for conducting inquiry at subsequent stages, does not hold any merit.

9. The procedure for imposing minor penalties has been prescribed in Rule 11 of the RS (D&A) Rules, 1968. As per Rule 11 (1) (b) of the Rules, conducting inquiry is not mandatory for

imposition of the penalty unless the Disciplinary Authority feels it necessary. In the instant case, though the applicant initially demanded for an open inquiry which was turned down by the Disciplinary Authority, however, subsequently, while submitting his reply to the charge memorandum, he requested to consider his case sympathetically by exonerating him from the charges and he had withdrawn his demand for open inquiry. Hence, the Disciplinary Authority has imposed the punishment without conducting any inquiry.

10. Learned counsel for the applicant argued that the impugned order of punishment is a non speaking order as no reasons have been assigned by the Disciplinary Authority. He brought our attention to Rule 11 (1) (d) of the RS (D&A) Rules, 1968 which provides for recording a finding on each imputation of misconduct or misbehaviour.

11. It is a settled preposition of law that failure to give reasons amounts to denial of justice. The administrative authority who is discharging quasi judicial duty is required to give reasons while rejecting any claim. But in the present case, we find that the Disciplinary Authority, while passing the order of punishment, has taken note the fact regarding the applicant's

misconduct/negligence. Since the applicant, while submitting his final reply to the chargesheet, has himself asked for considering his case sympathetically by exonerating him from the charges, therefore, the provisions of Rule 11 (1) (d) cannot be attracted in his case. Moreover, the Hon'ble President of India has already considered the grounds taken by the applicant in the mercy petition and passed a well reasoned and speaking order.

12. In the result, we do not find any irregularity or illegality in the impugned orders passed by the authorities. Accordingly, the O.A is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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