

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.20/265/2019

Reserved on: 23.07.2019

Pronounced on: 29.07.2019

Between:

P. Venkateswara Rao, S/o. P. Chandra Rao, Group B,
Aged 51 years, Occ: Office Superintendent,
O/o. The Senior Divisional Electrical Engineer (TRS),
Electric Loco Shed, South Central Railway,
Vijayawada Division, Vijayawada.

... Applicant

And

1. Union of India, Rep. by
The General Manager,
South Central Railway, Rail Nilayam,
Secunderabad.
2. The Divisional Railway Manager,
South Central Railway, Vijayawada Division,
Vijayawada.
3. The Additional Divisional Railway Manager (Infrastructure),
South Central Railway, Vijayawada Division,
Vijayawada.
4. The Senior Divisional Signal & Telecommunication Engineer,
South Central Railway, Vijayawada Division,
Vijayawada.
5. Ch. Panduranga Vittal,
Occ: Senior Divisional Signal & Telecommunication Engineer,
South Central Railway, Vijayawada Division,
Vijayawada.
6. The Senior Divisional Personnel Officer,
South Central Railway, Vijayawada Division,
Vijayawada.

... Respondents

Counsel for the Applicant ... Mr. K.R.K.V. Prasad

Counsel for the Respondents ... Mrs. A.P. Lakshmi,
SC for Rlys

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The OA is filed for non drawal of increment.
3. According to the applicant, while working as Sr. Technician (Signal Maintainer), Vijayawada under control of Senior Section Engineer (Signal), Vijayawada, he was transferred on 8.2.2017 as Senior Technician under the control of Deputy Chief Signal & Telecommunication Engineer/Construction, Vijayawada. When, on his request, the transfer was cancelled on 6.3.2017, the same was not to the liking of 4/5th respondent (both being one and the same, one by designation, and another by name) and they developed prejudice against the applicant. The 4/5th respondent issued a charge memo dated 12.6.2017 to the applicant in regard to derailment of an empty rake. Applicant denied the charges in his reply dated 24.6.2017. Thereafter, applicant on 6.1.2018 being grievously injured while performing duty was medically found unfit by a Medical Board to work as Senior Technician in the S&T Wing. When the circumstances were so developing, salary of the applicant was suddenly reduced in Sep 2018 and on enquiry, applicant came to know that he was imposed with the penalty of withholding of annual increment for a period of 2 years in connection with the derailment of the empty rake of 17207 Express on 06.04.2017. Applicant thereupon represented to the 3rd respondent on 30.11.2018, followed by a reminder on 27.12.2018 stating that the

penalty was not served on him and that he was denied the opportunity to appeal. He also asserted that the Fact Finding Committee Report obtained under RTI by the applicant, did not find any lapse on his part. Despite his representation, there being no relief, OA came to be filed.

4. The contentions of the applicant are that the Fact Finding Committee did not fix responsibility on the applicant and it was accepted by the 2nd respondent who is superior to the disciplinary authority (4/5th respondent). Besides, Safety Bulletin No.2 published by the respondents in June 2017 reports that the responsibility has been fixed on the Points Man for derailment. Even the quarterly inspection report given by the supervisor of the applicant, confirms that the point 107/B was found to be working well, thus establishing the fact that there was no lapse on part of the S&T Wing. In addition, when the applicant had to be medically examined on being injured as to whether he can render duties in the post of Sr. Technician, the report submitted by the 4/5th respondent in respect of the applicant was bland whereas, in respect of another employee Mr. Manoj Kumar working in the same cadre, it was elaborate with clear details. Applicant claims that the 4/5th respondent deliberately gave a report lacking in detail in order to prevent him from being posted in an alternative post which is not under the control of the 4/5th respondent. On appeal to the Medical Board, applicant was posted to a different post. Above all, penalty order was not served on the applicant and also the Personnel Department, which is the nodal wing in regard to the service matters, was not informed resulting in drawing of the due increment in

time. After having drawn the increment, withdrawing same based on a undelivered penalty order is illegal and that all this happened because of the malafide intentions of the 4/5th respondent.

5. Respondents state that the allegation of the 4/5th respondent being prejudiced against the applicant, is unfounded. As the applicant did not maintain Point No.107 B, which caused derailment, he was penalised with stoppage of increment for a period of 2 years, as per rules on the subject. The information in regard to the duties of the applicant has been furnished to the Chief Medical Superintendent, Vijayawada in accordance with the Signal Engineering Manual. In regard to Mr. Manoj Kumar, another employee, medical authorities have asked for specific duties whereas in applicant's case, they did not and hence, not elaborated. The memo imposing the penalty was sent to the supervisor of the applicant, but it was not delivered to the applicant since he was hospitalized. Dealing clerk did not follow the procedure in delivering the penalty memo. Further, entry of penalty was informed to the Sr. Divisional Personnel Officer, who implements the penalty by marking a copy to the concerned OS/S&T cadre, OS/Bills Section and the OS/SR Section of the 6th respondent who, in fact, is the personal officer to implement the order. The memo dated 9.1.2018 confirms this fact. Without seeing the memo, applicant claiming that the Personnel Branch has not received the memo, is one another proof of the applicant misguiding the Tribunal. The 4/5th respondent is in no way concerned in regard to the drawal and cancellation of the increment. Applicant was not harassed by the 4/5th respondent. It is a fact that the 2nd respondent has

accepted the report and after review, directed to probe system failure. As directed after detailed investigation applicant was found to be guilty and consequently, penalty was imposed as per rules in vogue. Applicant has misled the court by not informing the fact that the 2nd respondent has directed review suspecting some lapse in the maintenance of point No.107B by the applicant.

6. Heard both the counsel and perused the pleadings.

7. (I) Applicant was charged vide memo dated 12.6.2017 for the derailment of an empty rake and in rebuttal, he denied the charges vide letter dated 24.6.2017. The fact finding report dated 24.4.2017 did not fix responsibility on the applicant. Further, quarterly safety bulletin No-2 issued in June 2017 and the bi-monthly safety bulletin for the month of March/April 2017 issued by the respondents do not report that the applicant was responsible for the derailment. Moreover, applicant claims that the quarterly inspection by the in charge SSE on 24.3.2017 has not pointed out any abnormality. Reply statement is silent on this aspect. Thus, the very imposition of penalty does not appear to be correct. Further, Respondents candidly admit that the penalty memo sent to the supervisor of the applicant for delivery was not delivered to the applicant. They do further state that the concerned clerk has failed to ensure delivery of the memo as per rules. Thus, from the above, it is evident that twin mistakes have been committed by the respondents, viz.,

(a) the fact finding committee did not find fault with the applicant as was repeatedly observed later in the bulletins referred to and yet, penalty was imposed and

(b) the memo imposing the penalty was not delivered to the applicant which prevented the applicant from availing of the statutory remedy by way of appeal against the penalty order.

II. The recommendations of the fact finding committee were obtained by the applicant through the medium of RTI and about the penalty he came to know of the same on receiving the pay slips for Sep & Oct 2018 (Annexure A-16). Hence respondents stating that the applicant has seen the memo and yet is misleading the Tribunal does not stand to reason. Applicant represented on 30.11.2018 and reminded about his grievance on 27.12.2018. Not disposing the representation is surprising and is the basic cause for the OA to emerge.

III) In regard to the allegation that the 4/5th respondent had malafide intention bears some substance since the delivery of the penalty memo was not effected. Being a responsible officer he has to ensure that issues which have adverse civil consequences are properly dealt with. Besides, applicant was not informed of the screening test for medical de-categorization though the Personnel Branch sent a message to the controlling officer of the applicant. Even when details in regard to nature of duties done by the applicant and similarly placed employee Mr. Manoj Kumar were sought by the medical branch to examine

offering an alternative post, the reports sent gives room to take a view that the 4/5th respondent has not been all that well disposed towards the applicant. Moreover, respondents in the reply statement at para 4.4 state that the applicant failed in keeping the gears intact and hence the penalty was imposed. However, the charge memo does not have a reference to this aspect. It is well settled law that material extraneous to the charges framed shall not be reckoned unless the charged official is put on notice in regard to the same.

IV) Lastly, applicant has to be necessarily given an opportunity to appeal to the appellate authority against the penalty. Denying this opportunity which is a statutory provision would tantamount to flagrant violation of rules. Respondents have admitted that the penalty memo was not served on the applicant. Also it cannot be said that the 4/5th respondent has been fair in dealing with the issue as he should have been. Nevertheless, it cannot be ignored that on the observation of the 2nd respondent after accepting the fact finding committee report to probe system failure, the charges were framed. Hence thrusting the entire blame on to the 4/5th respondent resulting in the penalty is stretching the argument beyond limits of elasticity.

V) In order to right the wrong committed by the respondents, and with a view to ensure that the applicant is afforded the opportunity of preferring an appeal against the penalty order he is permitted to make a comprehensive appeal to the appellate authority with all the relevant details, in addition to what has been stated in the representation to the

3rd respondent, for reinforcing his case. This has to be made within a period of two weeks from the date of receipt of this order. And, the appellate authority, on receipt of the appeal, shall consider the appeal in accordance with law and dispose the same within 4 weeks from the date of receipt of the appeal. Till the appeal is disposed penalty imposed is suspended. The difference of the amount between salary to be drawn and actually drawn consequent to the execution of penalty since September 2018 shall be refunded to the applicant within 2 weeks of receipt of this order. Ordered accordingly.

VI) With the above direction the OA is disposed of, with no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 29th day of July, 2019

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