

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00982/2015

Jabalpur, this Friday, the 27th day of September, 2019

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

S.K.J. Haque S/o Late S.K. Tajamul Haque, Aged about 46 years, R/o C/o Mustari Begum Satsang Mandir Road, Near L. Paul House, Penchsheel Nagar West, BMY Charoda Dist-Durg (CG) PIN No.490025 Ex-Locho Pilot

-Applicant

(By Advocate –**Shri Anoop Nair**)

V e r s u s

1. Union of India, Through General Manager SECR, (G.M. Complex) Bilaspur at post Bilaspur (R.S.) Disst. Bilaspur CG

2. Divisional Railway Manager, Raipur SECR (DRM Complex) in Front of R.V.H. Colony Khamtarai Over Bridge P/O Raipur C.G. 492008

3. Additional Divisional Railway Manager Raipur SECR (DRM Complex) in front of R.V.H. Colony Khamtarai Over Bridge p/o Raipur C.G. 492008

4. Sr. Divisional Electric Engineer (OP) SECR Raipur (DRM Complex) in front of R.V.H. Colony Khamtarai Over Bridge P/o Raipur C.G. 492008 - **Respondents**

(By Advocate –**Shri Vijay Tripathi**)

O R D E R (Oral)

By Ramesh Singh Thakur, JM:-

This Original Application has been filed by the applicant against the order dated 25.08.2015 (Annexure A/1) wherein the appellate authority has upheld the punishment order dated 10.07.2014 (Annexure A/2) of removal from service of the disciplinary authority.

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

“8(i) Summon the entire relevant records from the Respondents for kind perusal,

8(ii) Quash impugned punishment orders dt.10.7.2014 Annexure A/2 and the Appellate Order dt. 25.08.2015 Annexure A/1.

8(iii) Reinstate the applicant in service with all consequential benefits, as if no punishment is awarded to applicant.

8(iii) To pay cost of this Application.

8(iv) To order any other relief as deemed fit and proper on the facts and circumstances of the case.”

3. The case of the applicant is that the applicant was initially appointed on 04.06.1992 in the post of K.S.I. (Khalasi) and was posted as Electric Loco Shed Bhilai. Later on the applicant was promoted to the post of

Assistant Electric Loco Pilot w.e.f. 24.10.2000 and, was further promoted to the post of Loco Pilot w.e.f.21.2.2008. While working as Loco Pilot at Bhilai Marshalling Yard the applicant was served with charge sheet dated 06.12.2013 (Annexure A/4) alleging misconduct under Rule 3(1)(II), 3(i)(ii) and Rule 26 of the Railway Conduct Rules 1966 r/w Rule 3.78 I(a) and 3.83 of Indian Railway (Open Line General Rules, 1976. On receipt of charge sheet, the applicant filed his reply dated 21.12.2013 (Annexure A/5), denying all the charges leveled against him. The applicant made a written request to correct the charge sheet and to provide specific details with regard to the alleged incident. The disciplinary authority without considering the reply as well as the objection filed by the applicant, has appointed Shri B.P. Sahu as Enquiry Officer vide order dated 26.12.2013 (Annexure A/6). No presenting officer was appointed. The enquiry proceedings were initiated and witnesses were examined. After recording the evidence of both the parties, the enquiry

officer submitted his inquiry report dated 14.06.2014 (Annexure A/8) holding the applicant guilty of charges leveled against him. The applicant gave his final defence statement to the disciplinary authority on 21.06.2014 (Annexure A/8). The disciplinary authority, without considering the applicant's defence to the enquiry report, imposed the punishment of removal from service with immediate effect vide order dated 10.07.2014 (Annexure A/2). The applicant filed his appeal dated 19.08.2014 (Annexure A/9) to the appellate authority against the punishment order of the disciplinary authority which was rejected vide order dated 25.08.2015 (Annexure A/1).

4. The respondents have filed their reply wherein it has been submitted that the applicant has approached this Tribunal after appeal was decided by the appellate authority. The applicant should have preferred revision petition to revisionary authority before approaching this Tribunal. It has been specifically submitted by the respondents that in Indian Railways the post of Loco Pilot

is highly sensitive and safety category therefore their alertness and promptness as well as follow up signals during working are ensured with 100% accuracy. Minor mistake or violation of signal and safety rules during their working many endanger not only to the public life which cannot be compensated with any cost but also cause huge loss of revenue to the nation. Taking into consideration of all the aspects the Railway Board has issued certain guidelines for fixing primary and secondary responsibility including imposition of minimum punishment against such erring irresponsible Loco Pilots and staff held responsible for violation of signal and occurrence of accident. Copy of the Board letter of fixing responsibility in accident case is annexed at Annexure R/3. In pursuant to the Senior Administrative Grade (for short '**SAG**') inquiry report the applicant being Loco Pilot along with his Assistant Loco Pilot were taken up under DAR proceedings. Though facts and incidents are common but the inquiry proceedings were initiated against both i.e. the applicant

and his Assistant Loco Pilot independently and separately. The charge memorandum the designated officials as Enquiry officers and the authority designated as disciplinary authority on both the cases were different person. The case of the applicant and the cases of Assistant Loco Pilot were proceeded and concluded according to their own merits and as per DAR rule. The applicant and the Assistant Loco Pilot were designated as witness against each others in their DAR proceedings. The applicant was put under suspension contemplating disciplinary against him on 08.10.2013. On 06.12.2013 a charge memorandum under Rule 9 of DAR 1968 was served to the applicant. During enquiry the applicant represented for change of the enquiry officer and his request was not considered by the competent authority as per the DAR rules as it was not found genuine. During enquiry the applicant was responded all the points suitably and satisfactorily by the prosecution in presence of enquiry officer. Ultimately the inquiry officer submitted his report

dated 14.06.2014 (Annexure R/4) with the finding that the allegation of misconduct is proved. The disciplinary authority after considering the facts and circumstances and going through the enquiry report and its findings and all relevant records, has imposed the punishment of removal from service along with 2/3rd pension vide order dated 10.07.2014 (Annexure A/2). It has been submitted by the respondents that though the applicant has filed an appeal but the same was also rejected by the appellate authority.

5. The applicant has filed his rejoinder to the reply filed by the respondents and has reiterated its earlier stand taken in the Original Application.

6. We have heard the learned counsel for both the parties and have also perused the documents annexed with the pleadings.

7. At the outset, it is pleaded by the learned counsel for the respondents that the respondents have raised the preliminary objections regarding the maintainability of this Original Application on the ground that the applicant has

not approached the revisionary authority as per the rules of the Railway Servants (Discipline and Appeal) Rules, 1968 before coming this Tribunal.

8. From the facts itself it is clear that the disciplinary authority has passed the order dated 10.07.2014 (Annexure A/2) and has imposed punishment of removal from service. The applicant filed the appeal before the appellate authority dated 25.05.2015, which was rejected by the appellate authority vide order dated 25.08.2015 (Annexure A/1). It is also not disputed by the applicant that no revision petition has been filed by the applicant and has straightaway approached this Tribunal by way of this Original Application. The relevant rules in filing the revision against the order of appellate authority under Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968 under heading “Revision and Review”, which reads as under:-

“25. Revision –

(1) Notwithstanding anything contained in these rules - (i) the President, or

(ii) the Railway Board, or

(iii) the General Manager of a Railway Administration or an authority of that status in the case of a Railway servant serving under his control, or

(iv) the appellate authority not below the rank of a Divisional Railway Manager in cases where no appeal has been preferred, or

(v) any other authority not below the rank of Deputy Head of Department in the case of a Railway servant serving under his control - may at any time, either on his or its own motion or otherwise, call for the records of any inquiry and revise any order made under these rules or under the rules repealed by Rule 29, after consultation with the Commission, where such consultation is necessary, and may –

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or

(d) pass such orders as it may deem fit:

Provided that –

(a) no order imposing or enhancing any penalty shall be made by any revising authority unless the Railway servant concerned has been given a reasonable

opportunity of making a representation against the penalty proposed;

(b) subject to the provisions of Rule 14, where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of Rule 6 or the penalty specified in clause (iv) of Rule 6 which falls within the scope of the provisions contained in sub-rule (2) of Rule 11 or to enhance the penalty imposed by the order under revision to any of the penalties specified in this sub-clause, no such penalty shall be imposed except after following the procedure for inquiry in the manner laid down in Rule 9, unless such inquiry has already been held, and also except after consultation with the Commission, where such consultation is necessary.

(2) No proceeding for revision shall be commenced until after –

(i) the expiry of the period of limitation for appeal; or

(ii) the disposal of the appeal where any such appeal has been preferred:

Provided that the provisions of this sub-rule shall not apply to the revision of punishment in case of Railway accidents.

(3) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules.

(4) No power of revision shall be exercised under this rule –

(i) by the appellate or revising authority where it has already considered the appeal or the case and passed orders thereon; and

(ii) by a revising authority unless it is higher than the appellate authority where an appeal has been preferred or where no appeal has been preferred and the time limit laid down for revision by the appellate authority, has expired.

Provided that nothing contained in clauses (i) and (ii) above, shall apply to revision by the President.

(5) No action under this rule shall be initiated by –

(a) an appellate authority other than the President; or

(b) the revising authorities mentioned in item (v) of sub-rule (1) –

after more than six months from the date of the order to be revised in cases where it is proposed to impose or enhance a penalty or modify the order to the detriment of the Railway servant; or more than one year after the date of the order to be revised in cases where it is proposed to reduce or cancel the penalty imposed or modify the order in favour of the Railway servant.

Provided that when revision is undertaken by the Railway Board or the General Manager of a Zonal Railway or an authority of the status of a General Manager in any other Railway Unit or Administration when they are higher than the appellate Authority, and by the President even when he is the appellate authority, this can be done without restriction of any time limit.

Explanation- For the purposes of this sub-rule the time limits for revision of cases shall be reckoned from the date of issue of the orders proposed to be revised. In cases where original order has been upheld by the appellate authority, the time limit shall be reckoned from the date of issue of the appellate orders”.

Note:- Time limit for revision petition is 45 days from the date of delivery of the order sought to be revised. Where no appeal has been preferred against the order of the disciplinary authority, the time limit of 45 days will be reckoned from the date of expiry of the period of limitation for submission of appeal [E(D& A) 84 RG 6-44 of 2.12.86 W.R.No.188/86], the authority may entertain petition after expiry of period if it is satisfied that the petitioner had sufficient cause for delay (ibid).”

9. From this provision it is very clear that the application for revision shall be dealt with in the same manner as if it were an appeal under these rules. In explanation for the purposes of this sub-rule, the time limits for revision of cases shall be reckoned from the date of delivery of the orders proposed to be revised. In note with this provision, it is also clear that time limit for revision petition is 45 days from the date of delivery of the order sought to be revised.

10. The counsel for the respondents has relied upon the judgment passed by this Tribunal in O.A. No.520/2011 (Sandeep Shrivastava vs. The General Manager and others) decided on 04.08.2011 whereby the O.A. was dismissed for not availing the alternate remedy of revision under Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968.

11. On the other side the applicant has relied upon the judgment passed by the Hon'ble Apex Court in the matter of Hirday Narain vs Income Tax Officer, Bareilly 1970 (2) SCC 355.

12. The counsel for the applicant has relied upon the judgment passed by Hon'ble High Court of Madhya Pradesh in *Premlal Dwivedi* vs. *M.P.S.E.B.* 2013 (3) MPLJ 169. He further relied upon the judgment passed by the Hon'ble High Court of Madhya Pradesh in *Chambal Ghati Shiksha Prasar Samiti* vs. *State of M.P. and others* 1995 MPLJ 969.

13. Regarding the arguments put forth by the learned counsel for the applicant in the matter of *Hirday Narain* (supra) in para 13 it has been specifically held by the Hon'ble Apex Court that it is imperative upon the authority to do an act in a specified set of circumstances and it has been further held by the Hon'ble Apex Court that the authority as to act in an appropriate manner of the case in a particular manner which has prescribed in the statute itself. So we are of the considered view that the particular manner has been prescribed under Rule 25 of the Railway Servant (Discipline and Appeal) Rules, 1968 as already discussed in para (supra). So it is incumbent on the applicant to file revision petition before the appropriate authority before approaching this Tribunal. Regarding the judgment relied upon the counsel for the applicant in the matter of *Premal Dwivedi* (supra) it has been held in Para 5 that if there is an alternate remedy so it is for the applicant to seek his alternate remedy but in the instant case specific provision has been prescribed under Rule 25

of the Railway Servant (Discipline and Appeal) Rules, 1968 so this judgment is not relevant for the instant O.A. Regarding the judgment relied upon by the learned counsel for the applicant in the matter of ***Chambal Ghati Shiksha Prasar Samiti*** (surpa) wherein the judgment of Hon'ble Apex Court of ***Hirday Narain*** (supra) has been relied upon. In our view that this judgment is of no help to the applicant.

14. On the other hand, the counsel for the respondents has relied upon the order passed by this Tribunal in the case ***Sandeep Shrivastava*** (supra), the specific issue of maintainability without availing /invoking the Rule 25 of the Railway Servant (Discipline and Appeal) Rules, 1968, has been discussed and the law has been settled by this Bench. So in our considered opinion this Original Application is fully covered by this judgment/order.

15. In view of the above, we find that the instant OA is liable to be dismissed for not availing of alternate remedy of revision under Rule 25 ibid and thus the OA is

dismissed, with a liberty to the Applicant that if he, so advised, can file a Revision Petition within a period of 15 days from the receipt of this order and if such a revision is filed, within the above stipulated period then the Revisionary Authority should not dismiss the Revision on the ground of limitation and should deal with the Revision on merits and pass a reasoned order within a period of 45 days from the receipt of such a revision petition. Needless to say that the applicant shall be given the order so passed by the revisionary authority. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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