

Reserved
CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/865/2011

Jabalpur, this Friday, the 13th day of September, 2019

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

Smt. Usha Karunakaran
W/o Shri Karunakaran P.
Aged about 60 years
R/o Railway Quarter No.237/5
Near Railway Ground
Jabalpur (MP) 482001

-Applicant

(By Advocate –**Shri S.K. Nandy**)

V e r s u s

1. Union of India, Ministry of Railway Through General Manager West Central Railway Indira Market Jabalpur482001 (MP)
2. Divisional Personnel Officer, West Central Railway Jabalpur Division Jabalpur 482001 (Disciplinary Authority)
3. Sr. Divisional Personnel Officer, West Central Railway Jabalpur Division, Jabalpur 482001 (Appellate Authority)
4. Addl. Divisional Railway Manager, West Central Railway Jabalpur Division Jabalpur 482001 (Revising Authority) - **Respondents**

(By Advocate –**Shri N.S. Ruprah**)

(Date of reserving the order:31.01.2019)

O R D E R

By Navin Tandon, AM:-

The applicant is aggrieved by imposition of minor penalty of withholding of increment for a period of one year without cumulative effect.

2. The applicant has made following submission in her Original Application:-

2.1 She is working with the respondent-department and was on the post of Head Clerk in the year 2007.

2.2 She was issued minor penalty charge sheet under Rule 11 of Railway Servant (Disciplinary & Appeal) Rules, 1968 (for brevity '**D&A Rules**') on 10.12.2007 (Annexure A-4), wherein it has been alleged that she has wrongly prepared the muster roll and marked attendance of one Shri Dev Kumar, Station Porter.

2.3 She denied the charge sheet in toto. However, the disciplinary authority without accepting the defence imposed the penalty of withholding of one increment for a period of one year without cumulative effect vide order dated 02.03.2009 (Annexure A/1).

2.4 The entire story is concocted by the Vigilance Organization. The impugned charge sheet is a result of a vigilance check conducted in the office wherein the said irregularity was formed. Hence entire action has been initiated under the dictate and threat of vigilance, as is evident from the vigilance documents filed at Annexure A/5.

2.5 Her appeal dated 22.04.2009 (Annexure A/6) has been rejected on 27.11.2009 (Annexure A/2). Subsequently, her revision petition dated 03.12.2010 (Annexure A/7) has been rejected on 23.12.2011 (Annexure A/3).

2.6 She has superannuated on 31.03.2011.

3. The applicant has prayed for following relief:-

“8(i) Summon the entire relevant record from the respondents for its kind perusal.

8(ii) Quash and set aside the order dated 2.3.2009 Annexure A/1, order dated 27.11.2009 Annexure A/2 and the order dated 23.2.2011 Annexure A/3;

8(iii) Command to the respondents to provide all consequential benefits to the applicant as if the impugned orders aforesaid are never passed;

8(iv) Any other order/orders, which this Hon'ble Court deems fit proper.

8(v) Award cost of the litigation in favour of the applicant.”

4. The respondents have filed their reply and have submitted as under:-

4.1 The charge sheet, and subsequent punishment, was for careless working as Head Clerk in preparing the muster-cum-paysheet of the staff for the month of June-July 2007. This irregularity was detected by the

vigilance team during the preventive check of the office of Chief Yard Master, Jabalpur.

4.2 The applicant had made mistakes in preparing the muster-cum-paysheet of Shri Dev Kumar as detailed in the charge sheet and also in reply to Para 4.2 of O.A.

4.3 It is specifically denied that any concocted story was prepared by vigilance team. The applicant herself has admitted that certain records were checked by the vigilance team in the office of Chief Yard Master, Jabalpur including muster-cum-paysheet and irregularities pointed out by the vigilance team became the subject matter of the chargesheet. It is denied that the action against the applicant was due to any pressure or dictate from the vigilance.

4.4 The entire disciplinary proceedings have been conducted as per rules. Infact, the revision appeal

was submitted very late, still the same was considered and all the points raised in the revision were considered and replied.

5. Heard the learned counsel for both the parties and perused the pleading available on record.

6. Learned counsel for the applicant vehemently argued that the entire disciplinary proceedings are vitiated as the charges are factual in nature and no enquiry was conducted. Further the disciplinary, appellate and revisionary authorities have acted only as per the dictates of vigilance department.

6.1 He placed reliance on the orders dated 13.09.2002 of our coordinate Bench at Bangalore in the matters *of Shrishail Bhajantri vs. The Principal, Kendriya Vidyalaya No.2 Hubli and others* in O.A. 33/2002 [2003(2) ATJ 389] as well as order dated 28.03.2014 of this Bench passed in O.A. No.871/2010.

7. Learned counsel for the respondents avers that facts are undisputed and no enquiry is required. It is not necessary that the enquiry has to be conducted just because the same has been asked for by the delinquent employee. She has accepted her mistake during the vigilance check (Annexure A/5) and the Revisionary Authority in response to Para 6 of the revision appeal has given specific remarks that the delinquent employee has nowhere submitted that such mistakes have not been committed by her.

FINDINGS

8. It is undisputed that the vigilance department had conducted a preventive check in the office of Chief Yard Master, Jabalpur and found certain irregularities in preparing the combined muster roll and paysheet of June/July 2007 by the applicant. Based on the preventive check, a draft chargesheet was sent by vigilance department to the concerned authorities on 12.03.2007 (Annexure A/5).

9. The Parliament has enacted the Central Vigilance Commission Act, 2003 which inter alia defines the functions and powers of the Commission to exercise superintendence over the vigilance administration of the various Ministries of the Central Government. The Indian Railway Vigilance Manual states the functions and responsibilities of vigilance, which mention about carrying out preventive checks and follow up in cases of irregularities. So, the activity of the vigilance department in conducting preventive check in the office of Chief Yard Master, Jabalpur and subsequently, on finding irregularities to send draft charge sheet is certainly as per law.

10. Other than sending the draft charge sheet, the applicant has not demonstrated that the entire action has been on the dictates of vigilance department.

11. The next issue is regarding conduct of inquiry in case of minor penalty charge sheet. The relevant para of D & A Rules states:-

“11. Procedure for imposing minor penalties.-

(1) (b) holding an inquiry in the manner laid down in sub-rules (6) to (25) of Rule 9, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary.”

11.1 Perusal of this Rule 11 (1)(b) makes it clear that inquiry in cases of minor penalty is only to be carried out if the disciplinary authority finds it necessary.

12. The applicant has submitted in O.A. as under:-

“5.2 That, respondents authorities have failed to appreciated the circumstances under which entries were made due to oversight and which were subsequently rectified pursuant to which no financial loss has been caused to the railway administration or to the employee concerned namely Shri Dev Kumar, Station Porter. It is humbly submitted here that there was acute shortage of staff and the applicant was overburdened, thus, if any lapse has been committed it was not a deliberate action on the part of the applicant.

5.3 That, the respondents authorities have further failed to appreciated the fact that the entire information regarding attendance of the concerned employee was provided to the applicant by the office

of Station Manager and the applicant has acted upon the same and there was no deliberate negligence or motive on the part of the applicant in making entries in the muster roll pertaining to Shri Dev Kumar. The entire action taken by the disciplinary authority only due to threat and pressure of vigilance organization.”

12.1 Perusal of the grounds raised by applicant in Para 5.2 and 5.3 of the O.A. clearly indicates that she had committed the mistake due to oversight. The plea of acute shortage of staff and the applicant being overburdened has been controverted by the respondents in their reply.

12.2 As highlighted by learned counsel for the respondents, the revisionary authority has specifically mentioned in his order that nowhere in the revision appeal has the employee stated that the said mistakes have not been committed by her.

13. Reliance of learned counsel for the applicant in the two orders of this Tribunal will not be of any help as the two are easily distinguishable. In the case of ***Shrishail Bhajantri*** (supra), the respondent No.1 acted as witness as

well as the judge. Also no dates/times were mentioned in the charge sheet regarding the so called misconduct. None of this is applicable in instant Original Application.

13.1 This Bench in its order dated 28.03.2014 in matters of ***Usha Karunakaran vs. Union of India and others*** (O.A. No.871/2010) has set aside the penalty order because the minor penalty was imposed not on the basis of a regular enquiry but on the basis of fact finding enquiry. No such fact finding enquiry has been conducted by the respondents after issue of chargesheet.

14. From the above, we are not able to find any irregularity in the action of the respondents. Accordingly the O.A is dismissed. No costs.

**(Ramesh Singh Thakur)
Judicial Member**

**(Navin Tandon)
Administrative Member**

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