

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 182/2016

Reserved on: 17.09.2019
Pronounced on: 24.09.2019

Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhaya, Member (A)

Khem Chand Nagar son of Shri Mathura Lal Nagar, aged about 54 years, resident of Plot No.71, Keshar Bag Colony, Police Line, Kota. Last employed on the post of Chief Booking Clerk/Chief Telephone Operator, West Central Railway, Kota Division, Kota.

...Applicant.

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India, through General Manager, West Central Zone, West Central Railway, Jabalpur.
2. Chief Signal & Telecom Engineer, West Central Zone, West Central Railway, Head Quartered Office Jabalpur.
3. Additional Divisional Railway Manager, West Central Railway, Kota Division, Kota.
4. Senior Divisional Commercial Manager, West Central Railway, Kota Division, Kota.
5. Senior Divisional Signal & Telecom Engineer, West Central Railway, Kota Division, Kota.

...Respondents.

(By Advocate: Shri Anupam Agarwal)

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ORDER**Per: A. Mukhopadhaya, Member (A):**

The salient facts in this Original Application, (OA), are that the applicant, who was serving as Wireless Traffic Inspector, (WTI), with the respondent Railways underwent a periodical medical examination on 09.07.2007, (Annexure A/7), and was consequently declared medically decategorised and screened for being placed in some alternative post; (Annexure A/9 dated 07.07.2008). After this, he was found fit to be posted as Assistant Commercial Clerk, (Annexure A/10 dated 03.08.2009 refers), and sent for training for the same. He also underwent practical training for being posted as Chief Booking Clerk, (CBC), with the Commercial Department of the respondents; (Annexure A/11 dated 15.10.2009 refers). The applicant contends that he continued to work in the Commercial Department, receiving training from time to time for different functions related to his new role. Vide their letter of 31.12.2009, (Annexure A/15), the respondents confirmed to the applicant that he had been found fit for the post of CBC and that he had become surplus from the post of WTI earlier occupied by him as a result that post being transferred from Kota Division to Agra Division. The applicant further contends that he was serving in the Commercial Department of the respondent Railways when, vide their office

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order No.27/2011 dated 12.01.2011, (Annexure A/25), the respondents treated him as surplus and posted him as Chief Telephone Operator, (CTO), despite his being posted already as CBC with the Commercial Department and also having been trained to perform this job. The applicant thereupon represented against this on 13.01.2011, (Annexure A/26), but his representation was rejected by the respondents vide their letter dated 07.02.2011, (Annexure A/27), stating that he had been declared surplus as he was the junior employee in his earlier capacity as WTI and consequently, with the transfer of one post of WTI to Agra Division, he had been rendered surplus. In this letter, the respondents, referring to their earlier office order No.27/2011 dated 12.01.2011, (Annexure A/25), reiterated that he had been adjusted as CTO by the Screening Committee and that this arrangement had been approved by the competent authority, i.e. Additional Divisional Railway Manager; (ADRM). Thereafter, the applicant contends that despite bringing it to the respondents' notice that he had not been relieved from the Commercial Department and was consequently serving as CBC with them as earlier, the respondents issued him a warning on 08.06.2011, (Annexure A/29), asking him to join duties immediately as CTO. At this, the applicant states that he again tried to clarify the entire position to the respondents as evidenced by his representation dated 28.07.2011, (Annexure A/30), but the respondents ignored his plea and chargesheeted him on

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29.07.2011, (Annexure A/31), for being absent from duty unauthorisedly. The applicant states that he represented to the respondents yet again requesting withdrawal of this chargesheet, (Annexure A/32), but this was to no avail and the DE instituted against him continued, culminating in a penalty of removal from service; (Annexure A/4 refers). The applicant's appeal against this penalty was rejected by the appellate authority as being time barred vide order dated 26.07.2013; (Annexure A/38). At this, he approached this Tribunal vide OA No.715/2013. This OA was decided by the Tribunal's order dated 17.04.2015, (Annexure A/5), in which the appellate authority's order of 26.07.2013, (Annexure A/38), was set aside and that authority was asked to consider any application for condonation of delay in filing the appeal, if made by the applicant, and further directed that in the event of the delay being condoned, the appeal of the applicant be decided "**on merit**".

2. After this, the applicant again represented to the respondents in appeal; (Annexure A/39 dated 26.04.2015). This time, the appellate authority, while condoning the delay in filing the appeal, converted the earlier penalty of removal from service into one of compulsory retirement with effect from 25.07.2015; (Annexure A/41 dated 12.08.2015). This penalty was later modified vide order dated 19.08.2015, (Annexure A/42), so as to take effect from his date of removal from service. A revision

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petition filed against this order was rejected by the respondents vide order dated 10.02.2016 impugned in this OA; (Annexure A/1). The applicant has now approached this Tribunal seeking the following relief:-

(i) That entire record relating to the case be called for and after perusing the same order of revising authority dated 10.02.2016 (Annexure A/1) with the appellate authority order dated 22.07.2015 (Annexure A/3) with the punishment order dated 28.09.2012 (Annexure A/4) be quashed and set aside and applicant be reinstated in service in commercial department with all consequential benefits.

(ii) That order dated 12.01.2011 (Annexure A/25) with the letter dated 08.06.2011 (Annexure A/29) be quashed and set aside with the direction to respondents to treat the applicant employee of Commercial Department with all consequential benefits.

(iii) That charge memo dated 29.07.2011 (Annexure A/31) with the inquiry report dated 29.03.2012 (Annexure A/33) be quashed, as the same is not justified as per facts and circumstances with the further orders passed with all consequential benefits.

(iv) Any other order/directions or relief which are deemed just and proper under the facts and circumstances of the case be passed in favour of the applicant.

(v) Cost of this application be awarded.

3. In support of his OA, the applicant contends that the charge sheet issued to him by respondent No.5 – Senior Divisional Signal & Telecom Engineer, (SDSTE), was not issued by competent authority as he was serving with the Commercial Department of the respondents as CBC and did not come under the

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administrative jurisdiction of respondent No.5. He also contends that the entire matter was processed and decided against the facts and circumstances of the case in that he could not possibly join as CTO without being relieved from the post of CBC in the Commercial Department; [para 5(H) of OA refers]. He contends that this Tribunal's order in OA No.715/2013 for consideration of his case on merit was not complied with in true letter and spirit by the appellate authority and also that the revision petition was decided in a mechanical manner taking note of the earlier orders of the respondents but not of the grounds raised by the applicant. Finally, he contends that in the facts and circumstances of the case, not only the penalty of removal from service earlier visited upon him but even the revised penalty of compulsory retirement, is disproportionate to his alleged misdemeanour as the applicant had tried throughout to bring the true facts and circumstances of the case to the knowledge of the respondent authorities, but all his pleas in this regard had been ignored.

4. In their reply to the OA, the respondents aver that since there were two posts of WTI at Kota Division, one of which was abolished while the other was transferred to Agra Division, the applicant, being junior most in this cadre, became surplus; [para 4(ii) of reply to OA refers). They state that he was accordingly sent for medical examination to adjudge his suitability for some other post. The medical report of this examination dated

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09.07.2007, (Annexure A/7), was however interpreted **“erroneously treating him to be medically de-categorised”**, [para 4(ii) of reply to OA refers), and this resulted in his being held suitable for placement as CBC with the Commercial Department. The respondents aver in this para of the reply that the applicant was sent twice for training for the post of CBC but failed to qualify for the same; (Annexure R/1 refers). After this, on a representation being received from the applicant, he was specifically informed of the abovementioned facts pertaining to his case vide respondents’ letter of 20.04.2011, (Annexure R/2), which was duly received and signed for by the applicant on 25.04.2011. The respondents aver that despite the entire position in the matter having been made clear to him, the applicant did not join duties either with the Commercial Department as CBC or as CTO. Thereupon, he was issued a warning vide letter dated 08.06.2011; (Annexure A/29). As he still did not comply with the orders to posting him as CTO, (office order No.27/2011 dated 12.01.2011 - Annexure A/25), he was finally served with a chargesheet, (Annexure A/31), for absence from duty and non-compliance of orders. The respondents point out that in his earlier OA No.715/2013, the applicant, while challenging the penalty order of removal from service dated 28.09.2012 as well as the rejection of his appeal vide order dated 26.07.2013, had also challenged the respondents’ order of 12.01.2012; (Annexure A/25). Consequently, since no relief was

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given to him on any of these counts except for the 26.07.2013 order, the applicant could not be allowed to raise these issues again. The respondents contend that respondent No.5 correctly issued the chargesheet in this case as he was the authority related to the substantive posting of the applicant when he became surplus and that the punishment of removal from service inflicted upon the applicant was commensurate with his misdemeanour in being absent from duty for a long period of about six months. The respondents further state that in any case, in compliance of the Tribunal's order in OA No.715/2013, the penalty of removal from service was reduced to that of compulsory retirement and therefore this could not be said to be disproportionate and therefore the OA be dismissed.

5. Learned counsels for the applicant and the respondents were heard and the entire material available on record was perused. The personal file of the applicant was produced by the respondents for inspection. A perusal of this record, (Note at page 48 of the file in particular), confirms the respondents' version and rationale of events in this matter. The applicant has not been able to either counter or explain the averments of the respondents to the effect that despite intimation of the facts pertaining to his case vide respondents' letter of 20.04.2011, (Annexure R/2), and the issue of a subsequent warning by them, (Annexure A/29 dated 08.06.2011), he not only failed to comply

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with the respondents' order of 12.01.2011, (Annexure A/25), posting him as CTO nor did he join his duty as CBC in the Commercial Department where he was working by his own account. Given these facts and circumstances, we find no force or merit in the applicant's contentions in this OA and also no factual or legal infirmities in the action taken by the respondents in this entire matter.

6. Accordingly, the OA is dismissed. There will be no order on costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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