

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 621/2016

Reserved on: 10.07.2019
Pronounced on: 22.07.2019

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

Hari Singh Gurjar son of Shri Badri Prasad, aged about 31 years, resident of Village & Post Banetha, Tehsil Dausa, District Dausa and presently working as Gate Man, North Central Railway, Bandikui.

...Applicant.

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India, through General Manager, North Central Zone, North Central Railway, Allahabad (U.P).
2. Divisional Railway Manager, North Central Railway, Agra Division, Agra (U.P).
2. Assistant Divisional Engineer (Line), North Central Railway, Id-gah, Agra (U.P).
4. Section Engineer (Public Way) North Central Railway, Bandikui (Raj.)

...Respondents.

(By Advocate : Shri Anupam Agarwal)

ORDER

Per: A.Mukhopadhaya, Member (A):

This Original Application, (OA), arises from the penalty of stoppage of one annual increment without cumulative effect imposed upon the applicant on the allegations that he opened the

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gate of a level crossing without requisite permission; (chargesheet at Annexure A/3 and impugned penalty order at Annexure A/2 respectively). Thereafter, the applicant contends that on appeal this penalty was enhanced to stoppage of his annual increment for one and a half years vide impugned order at Annexure A/1 without giving him any show cause notice. The applicant contends that he was thus denied the opportunity to represent his case which related to action taken by him in an emergency.

2. Briefly, the relevant facts of the case as per the applicant are that on 09.10.2015, while working at gate LC-102, he opened this gate after the passage of a goods train in order to allow a jeep carrying a pregnant woman in labour to pass; (Annexure A/4 refers). He states that he had first attempted to contact the Station Master on phone to obtain the requisite permission for this, but since he received no response and the matter related to a medical emergency, he opened the gate as he had been taught during training that where there is an emergency, such as an ambulance or ill person waiting to cross the railway lines at the gate, then in the event of not being able to contact the Station Master, the Gateman, after taking such protective/preventive measures as necessary, is allowed to open the gate; (Annexure A/4 refers). The applicant further contends that the Disciplinary Authority, (DA), Senior Section Engineer, (Permanent Way), [SSE

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(PW)], who was present at the spot however, recorded on his reply to the charge memo itself, (Annexure A/4 refers), that there was no ambulance at the gate at that time and that the explanation/reply given by the applicant appeared to be one aiming to mislead the respondent Railway administration. He also recorded on the reply itself that the applicant should be punished with the penalty which was subsequently imposed on him by the very same DA vide Annexure A/3 on 15.10.2015. The grievance of the applicant was enhanced further on appeal, (Annexure A/5), when the Appellate Authority, (AA), enhanced the period of punishment from one year to one and a half years; (Annexure A/1 refers). This was done without giving the applicant any opportunity to represent his case, i.e. through a show cause notice and hearing. Aggrieved by the action of the respondents as detailed above, the applicant has sought the following relief from this Tribunal:-

- i). That the action of the respondents in initiation of departmental proceedings with the orders dated 27.05.2016 (Annexure A/1) and 11.12.2015 (Annexure A/2) be quashed and set-aside with all consequential benefits.
- ii). That the charge memo dated 15.10.2015 (Annexure A/3) be quashed and set-aside, as the same was against the procedure as well as against facts and circumstances and also not sustainable in the eyes of law.
- iii) Any other order, direction or relief which is deemed fit, just and proper under the facts and circumstances of the case be passed in favour of the applicant

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- iv) That the costs of this application be awarded.

3. In reply, the respondents aver that the applicant has admitted in the enquiry in question that he opened the level crossing gate without taking the requisite clearance from the Station Master. This is a gross violation of the safety rules and the applicant did not have the competence to carry out such an act even in an emergency; (para-4(ii) of reply refers). They further aver that the DA's order was passed after due consideration of facts and rules and was therefore correct and proper and in every respect. As regards the enhancement of the penalty by the AA, the respondents contend that the Railway Servants, Disciplinary and Appeal Rules, 1968, (hereafter called "**Rules**"), permits this. They therefore pray that the OA be dismissed.

4. Learned counsels for the parties were heard and the material available on record was perused.

5. In his arguments, apart from reiterating the pleadings in the OA, learned counsel for the applicant also drew attention to the fact that the DA, (Respondent No.4), being present on the spot became involved in the whole series of transactions, so much so that he took it upon himself to write on the applicant's reply to the charge memo served upon him, (Annexure A/4), that the

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applicant's explanation was unsatisfactory and that he, the DA, being present on the spot, could state that there was no ambulance at the site of the event at the time. Applicant's counsel pointed out that a plain reading of Annexure A/4 shows that the applicant had never stated that there was an ambulance carrying a pregnant woman on the spot but had specifically stated that she was in a jeep and was in pain. Thus, he contended that the DA's note on the reply, (Annexure A/4), rejecting applicant's explanation without even referring to the relevant and correct facts was indicative of his prejudice in the matter.

6. Applicant's counsel further referred to Rule 22 of the **"Rules"** which deals with how an appeal against the penalty order is to be considered and stated that since the punishment in question, i.e. withholding of increments of pay for a given period is one which is specified in clause (iv) of Rule 6 but is not within the scope of the provisions contained in sub rule (2) of Rule 11, then as per Rule 22(3) of the **"Rules"**, the Appellate Authority is required to consider all the circumstances of the case and make such orders as it may deem, just and equitable. Applicant's counsel pointed out in this context that Rule 22 (2) (v) of the **"Rules"** specifically mandates in this regard that no order imposing an enhanced penalty can be made in the category of cases into which this particular case falls without giving the

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affected person a **"reasonable opportunity"**, as far as may be in accordance with the provisions of Rule 11 of the **"Rules"**, of making a representation against such enhanced penalty. He states that it is undisputed that in the present case such opportunity through a show cause notice and subsequent consideration as per provisions of the **"Rules"**, was not followed in this case and therefore the AA's order is also totally illegal, unjustified and against the principles of natural justice apart from having no basis in the **"Rules"**.

7. In reply, learned counsel for the respondents while reiterating the points made in the reply to the OA, argued that the procedure prescribed under Rule 11 of the **"Rules"** for imposing a minor penalty has been faithfully followed in this case. He contended that since the DA was present at the spot, he was a witness to all that transpired and therefore did not consider any further inquiry necessary after receiving the applicant's reply to the charge memo. Referring to Rule 11 (1) (b), respondents' counsel argued that an inquiry is to be held in such a case, (relating to a minor penalty), only where the DA is of the opinion that such inquiry is necessary. As he had been present on the spot at the time of the event in question and had witnessed the same, the DA rightly did not consider any further inquiry necessary as the fact of violation of Rules by the applicant in opening the level crossing gate without obtaining the Station

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Master's clearance had been specifically admitted by him in his reply to the charge memo; (Annexure-A/4). Thus, he contends that since the applicant was given due opportunity to represent against the charge memo and the facts and circumstances as well as the "**Rules**" pertinent to the charges in question were duly considered by the DA, there was no illegality or irregularity in the penalty order passed by the DA; (Annexure-A/2). Finally, learned counsel for the respondents argued that the DA being present on the spot at the time of violation of "**Rules**" by the applicant in no way debars him from taking appropriate action in the matter as per "**Rules**" and that such action cannot be said to be arising out of prejudice.

8. On consideration of the record and the arguments made by the learned counsel for the parties, what emerges clearly in this case is that while the applicant's reply to the charge memo, (Annexure-A/4), clearly specifies that the medical emergency in question was that of a pregnant woman in labour waiting in a jeep at the level crossing, the DA's note on the same, (see Annexure-A/4) does not refer to the presence or absence of a jeep and instead states that there was no ambulance at the site. Thus, the DA's note does not specifically refute the applicant's assertion about the presence of a woman in labour in a jeep at the site, which circumstance compelled him to open the gate as a matter of medical emergency. The DA's penalty order at

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Annexure-A/2, which in substance is a repetition of his note appended to the applicant's reply to the charge memo, (Annexure-A/4), does not resolve the matter in terms of accepting or refuting either the applicant's version of the events or indeed his explanation of his behavior. While on the one hand, the applicant has not been able to substantiate his contention that in the kind of emergency that he has claimed, he, as the gateman, possessed the requisite competence to open the gate without getting prior clearance from the Station Master, on the other hand, neither the detailed facts and circumstances nor the **"Rules"** violated are specified in the impugned order of the DA. While the former may be considered necessary for assessing whether there were indeed any explanatory or extenuating circumstances for the alleged violation of the **"Rules"**, the latter, even by way of denial or negation of the applicant's contention, is a critical necessity for determining whether the penalty order has a basis in the **"Rules"**. Thus, the penalty order appears to be incurably defective.

9. Coming to the order passed by the AA, (Annexure-A/1), the grave procedural defect in passing this order without giving the applicant due opportunity to represent against the proposed enhanced punishment in terms of Rule 22 (2) (v) renders this order also unsustainable. Not only this, the decidedly peculiar enhancement of the penalty by way of withholding an annual

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increment by a further half year is confusing and impractical, to say the least, and also has no basis in the prescribed **"Rules"** as these envisage stoppage of annual increments for a whole number of years and not for part years. For these reasons, the order passed by the appellate authority, (Annexure-A/1), is also found to be incurably defective.

10. In the result, the impugned penalty order, (Annexure-A/2) dated 11/12/2015 and the order passed in appeal dated 25/02/2016, (Annexure A/1), are both set aside as being unsustainable in law. Looking to the fact however that a very serious safety issue is involved in the facts and circumstances of the case, the respondents shall be at liberty to pursue the matter as detailed in the charge memo of 15/10/2015 (Annexure-A/3), if so advised. However, it is made clear that this can only be done following the relevant provisions of the **"Rules"** both in letter and spirit.

11. There will be no order on costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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