

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

OA No.290/00335/2014 with
MA No.290/00364/2014

Pronounced on : 17.07.2019
(Reserved on : 09.07.2019)

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CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE SMT. ARCHANA NIGAM, MEMBER (A)

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Liyakat Khan, 2916 S/o Late Jaffar Khan, resident of Tabuto Ka Bas, Ishakiya Senior Secondary School, Jodhpur at present employed on the post of Sr. Assistant Loco Pilot, North Western Railway, Jodhpur.

...APPLICANT

BY ADVOCATE : Mr. K.K. Shah.

VERSUS

1. Union of India through General Manager, North Western Railway, Malviya Nagar, Near Jawahar Circle, Jaipur.
2. Chief Operating Manager, North Western Railway, Jaipur.
3. Additional Divisional Railway Manager, North Western Railway, Jodhpur Division, Jodhpur.
4. Sr. Divisional Mechanical Engineer (P), North Western Railway, Jodhpur Division, Jodhpur.
5. Assistant Divisional Mechanical Engineer (P), North Western Railway, Jodhpur Division, Jodhpur.

RESPONDENTS

BY ADVOCATE: Mr. Salil Trivedi for R1 to R5.

ORDER

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Hon'ble Smt. Archana Nigam, Member (A):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant is seeking the following reliefs:

- "i) That impugned Charge sheet dated 29.03.2010 (Annexure A1), Penalty order dated 05.08.2011 (Annexure A2), Appellate

order dated 28.02.2012 (Annexure A3) and Revising order dated 20.06.2013 (Annexure A4) may be declared illegal and the same may be quashed. The respondents may be directed to allow the applicant with all consequential benefits including arrears of difference of pay along with market rate of interest.

- ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- iii) That the cost of this application may be awarded."

2. This OA has been made against the Order No.100 T/10/M-1/Liyakat 2916//Ashakchham/63, dated 29.03.2010 (Annexure A1) issued by 5th respondent, Order No.100 T/10/M-1/Liyakat 2916/Ashakchham/63, dated 05.08.2011 (Annexure A2) passed by 4th respondent, Order No. 100 T/10/M-1/Liyakat 2916//Ashakchham/63, dated 28.02.2012 (Annexure A3) passed by 3rd respondent and Order No.177/E/1/Operating/Jodhpur/Liyakat/HQ dated 20.06.2013 (Annexure A4), passed by 2nd respondent.

3. The factual matrix of the present case as narrated by the applicant in the OA are that the applicant was initially engaged as casual labour in the year 1975 and his services were regularized in the year 1986. He was promoted to the post of Cleaner in the year 1988. He was further promoted to the post of Assistant Loco Pilot and thereafter to the post of Sr. Assistant Loco Pilot in the pay scale of Rs.4000-6000. Thereafter, he got his next promotion as Loco Pilot Shunter Grade-II after passing the requisite course in the same pay scale of Rs.4000-6000 vide order dated 13.01.2006 (Annexure A5). He got further promotion to the post of Loco Pilot Shunter Grade-I in the pay scale of Rs.5000-8000 / 9300-34800 + GP 4200 vide order dated 18.04.2006 (Annexure A6). It is further stated that the applicant appeared in the written test held for selection for promotion to the post of Loco Pilot (Goods-II) Grade in the pay scale of Rs.5000-8000/9300-34800 + 4200 and after declared as passed in the

written test and after paper screening he was selected. His name was placed on the selection panel vide order dated 07.12.2006 (Annexure A7). However, he was allowed to join on the post of Loco Pilot Goods-II Grade in the pay scale of Rs.5000-8000/9300-34800+4200 GP, vide his pay fixation order dated 06.06.2007. He was sent for 100 mile test but he was not given competency certificate and an adverse report was given because he could not fulfill the undue/illegal demand made by them. However, he was allowed to perform the duties of Loco Pilot Shunter Grade-I in the pay scale till imposition of punishment of Reduction, vide impugned penalty order dated 05.08.2011.

4. The applicant was issued with a charge sheet (SF-5) for major penalty under Railway Servant (Discipline & Appeal) Rules, 1968 (for brevity The Rule 1968), by the 5th respondent vide memo dated 29.03.2010 (Annexure A1) on the allegation that he has been declared as incompetent in competency test by the different Loco Inspectors to drive the Goods Train independently. The charge has been leveled on the basis of report submitted in the year 2007. It would be relevant to mention here that the report dated 22.05.2008 in Article-III and attached with the charge sheet is false and fabricated as the said Loco Inspector Shri Pukhraj never conducted the 100 mile test of the applicant. The fabrication of the same is apparent as prior to this report said Shri Baldeo Singh Loco Inspector had already submitted his report vide letter dated 17.07.2007. The applicant submitted reply to the said charge sheet vide letter dated 29.06.2010 and denied the charge leveled against him and requested to drop the charges. Respondent no.5 appointed one Shri Ashok Jain Loco Inspector as Inquiry officer vide order dated 05.05.2010. No Presenting Officer was appointed for representing the case and no reason was given for the same. The applicant has submitted an application dated 19.06.2010 to respondent no.5 to change the Inquiry Officer, but

respondent no.5 did not forward the same to higher authority and himself rejected the request of the applicant without any reason vide order dated 30.06.2010 (Annexure A10). The applicant realized that the rejection of the request of the applicant for change of I.O. by the 5th respondent is violation of rules on the subject issued by the Railway Board but did nothing and proceeded to conduct the enquiry. The I.O. conducted the cross examination of the applicant in a very peculiar manner and the enquiry was closed after asking some questions. The applicant was supplied with a copy of enquiry report by the 5th respondent vide letter dated 24.01.2011 (Annexure A11). The charges have been held as proved on the basis of conjectures and surmises. Thereafter, the applicant submitted his representation against the enquiry report vide letter dated 11.03.2011 (Annexure A12). The 4th respondent vide order dated 05.08.2011 (Annexure A2) imposed the penalty of reduction to two lower posts/grade i.e. from Loco Pilot Goods 9300-34800+4200 to Sr. Assistant Loco Pilot 5200-20200+2400 permanently.

5. It is also stated that the applicant has submitted a detailed and self-contained appeal to the 3rd respondent vide letter dated 26.09.2011 (Annexure A13). The appellate authority did not consider his appeal according to rules and uphold the order of punishment vide its order dated 28.02.2012 (Annexure A3) and the appellate authority has not taken judicial notice of rule 22(2) of the rules. Thereafter, the applicant filed a revision petition under Rule 25 of the Rules, vide letter dated 17.04.2012 (Annexure A14). The revising authority also did not pass any speaking order and only affirmed the penalty without taking into consideration the points raised by the applicant in his revision petition and thus rejected the revision petition of the applicant. He has not followed the rule while affirming such harsh penalties. A copy of order dated 20.06.2013 passed

by the revising authority (served to the applicant in September, 2013 as evident from the noting on the top of the order itself) (Annexure A4).

6. It is further stated in the OA that all the impugned orders Annexure A2, A3 and A4 are non-speaking order and does not contain any reasons for its decision perhaps for the reason that the applicant has not committed any misconduct and charges against him firstly has not constitute the misconduct and secondly the same has not been proved during the enquiry. No rules of procedure prescribed under the law have been followed by the IO. The defence of the applicant has been seriously prejudiced. He clearly pointed out regarding un-explained delay in issuing the charge sheet, charge of IO, fabrication of report dated 22.05.2008, not mentioning of sleeping during the driving in the report of PQW-2 and other relevant contradiction on the main issue. He further pointed out that not passing a test/examination is not misconduct. He has not violated any rule of conduct. Even the Assistant Loco Pilot of the crew at the time of 100 mile test was not examined as witness. He is the independent witness in the case but deliberately his name is not mentioned as witness. This conduct of the Loco Inspectors show the malafide and ill motive on their part. The applicant replied the correct answer to the questions asked by the Loco Inspector at the time of 100 mile test but he was declared unfit for extraneous reasons. Even the IO demanded bribe in presence of his defence counsel to exonerate him but he did not fulfill the demand therefore charge has been held as proved by taking into consideration the extraneous material which was not part of the charge sheet. The applicant is faced with humiliation and frustration and his service career is going to be jeopardized for none of his rules.

7. The applicant has also filed a Miscellaneous Application No.290/00364/2014 under Section 21 of Administrative Tribunal Act, 1985

read with Article 215 of Constitution of India for condonation of delay in filing the present Original Application.

8. In the written statement filed on behalf of the respondents wherein it has been stated that the answering respondents have passed orders in accordance with law and this Tribunal would not interfere in the finding of facts arrived at by the learned Disciplinary Authority. The appeal had already been decided in the year 2012 and thereafter the applicant filed the revision petition before the competent authority and the same has been decided vide order dated 06.02.2013. Now the applicant has filed the OA in the year 2014 after a delay of almost one and half year. The MA filed for condonation of delay as there is no reasonable explanation for filing the OA after a period of one and half year from the date of passing of the order by the Revisional Authority. It is stated that the applicant is seeking of the quashing and set aside the order passed by the Disciplinary Authority as well as the Appellate Authority and the Revisional Authority whereas the penalty order has been passed and imposed the major penalty on the applicant i.e. reduction to lower post/grade i.e. from Loco Pilot, Goods Grade Rs.9300-34800+4200 to the post of Sr. Assistant Loco Pilot Grade Rs.5200-20200+2400 permanently. It is further stated that selection on the post of Loco Pilot, the certificate issued by the Loco Inspector is necessary for the post of Loco Pilot Goods-II. But, for the said post, the applicant has not having clearance certificate issued by the competent authority. First time when he was eligible for the post of Loco Pilot Goods-II, he did not able to get the clearance certificate by the competent authority, therefore, he was again given a chance for the clear the requisite requirement for the post of Loco Pilot Goods-II. Once the applicant did not clear the requisite certificate, therefore, he declared unsuccessful for the post of Loco Pilot Goods-II. The circular has been referred by the applicant is not applicable in this case because the penalty

order has been issued by the Sr. Divisional Mechanical Engineer (Power). In this regard, the Divisional Personnel officer replied in the reference of letter dated 11.11.2009 and stated that delinquent employee was accepted the charge on 10.02.2007. He was working on the said post and completed two years and ten months on that post. Therefore, the action has to be taken into considering the disciplinary appeal rules and charge the same as per rules. The disciplinary authorities while imposing the penalty upon the applicant all evidence has been considered and passed the appropriate order and against the penalty order appeal preferred by the applicant, the same has been considered the Appellate authority and examined all the grounds raised by the applicant in his memo of appeal, thereafter the penalty order has been upheld by the Appellate authority, therefore, no consequence to interfere with the disciplinary matter by this Tribunal and the present OA filed by the applicant may be dismissed with exemplary costs.

9. Rejoinder has been filed on behalf of the applicant wherein it has been stated that the charge sheet was not issued by the Senior Divisional Mechanical Engineer (Power) but by a lower authority which is illegal. There as been gross delay after conduct of test in the year 2007 for issuance of proceedings. If the applicant failed in the promotional post of Loco Pilot (Goods) then the promotion can be taken back and the person should remain at the post which he was holding prior to being promoted. It is not understood how a major penalty has been imposed on the applicant and he has been not only reverted to the post of Loco Pilot Shunter Grade-I but reverted by two lower post/grade as Senior Assistant Loco Pilot in the grade pay of Rs.2400/- whereas he was in the grade pay of Rs.4200/- prior to his promotion. The basic question was whether the applicant was fit on promotional post or not. If the respondents found him unfit, where was the requirement of holding any disciplinary proceedings

against him as he has not committed any crime. After passing the requisite examination he has been promoted as Loco Pilot (Goods). Further if he failed to continue as Loco Pilot (Goods) he should have been reverted to his previous post held by him prior to his promotion. There was no occasion for initiation of any inquiry. This important aspect was not considered at the time of issuance of charge sheet since the failure in the test did not amount to any misconduct. It is further stated that a person who is unfit as Loco Pilot (Goods) cannot be permitted to continue at the post, is correct. But if he was not fit to hold the post of Loco Pilot (Goods), he has been found fully fit to hold the post of Loco Pilot Shunter Grade-I and under no circumstances he could have been removed from this post.

10. Heard the submissions made by both the counsels and perused the documents placed on record.

11. The key issue before us is whether the penalty awarded to the applicant i.e. reduction to lower post/grade i.e. from Loco Pilot, Goods Grade Rs.9300-34800+4200 to the post of Sr. Assistant Loco Pilot Grade Rs.5200-20200+2400 permanently is justified in the given circumstances and whether the quantum of punishment given by this penalty is appropriate.

12. In brief that the facts are that the applicant appeared in the written test held for selection for promotion to the post of Loco Pilot Goods-II Grade in the pay scale of Rs.5000-8000/9300-34800 + 4200 and after he was declared as passed in the written test and paper screening and his name was placed in the select panel drawn up vide order dated 07.12.2006 (Annexure A7). After this, he was allowed to join on the post of Loco Pilot (Goods-II) in the pay scale of Rs.5000-8000/9300-34800+4200 grade pay and his pay was fixed.

13. In compliance of the requirements for competency test Shri Liyakat Khan was sent for 100 mile test under the supervision of the Loco Inspector on three different occasions but was not awarded the competency certificate; in fact, an adverse report was issued to him for his inability to fulfill the competency required for the skills for Loco Pilot (Goods-II). Subsequently, on 29.03.2010 petitioner was issued with the charge sheet for major penalty under the Railway Servant (Discipline & Appeal) Rules, 1968 (for brevity The Rule 1968) by 5th respondent vide memo dated 29.03.2010 (Annexure A1). The charge sheet alleged that Shri Liyakat Khan was declared incompetent by three different Loco Inspectors to drive the Goods train independently.

14. Thereafter, the applicant submitted a representation against the enquiry report regarding the enquiry in the matter vide his letter dated 11.03.2011 (Annexure A12). Subsequently, the 4th respondent vide order dated 05.08.2011 imposed the penalty of Shri Liyakat Khan to two lower post/grade i.e. from Loco Pilot Goods 9300-34800+4200 to Sr. Assistant Loco Pilot 5200-20200+2400 permanently.

15. During final hearing in the case, the key submissions made by the petitioner were that the application of Rule 3 of the Conduct rules was inappropriate; even if it is considered that the petitioner had not attained the requisite competency bench mark required for the post. It does not appear to be the case fit to be dealt with under Rule 3 which talks of "integrity and conduct of the petitioner". The petitioner also made the submissions that there were no grounds for the issue of major penalty of reduction to two lower posts i.e. from Loco Pilot Goods 9300-34800+4200 to Sr. Assistant Loco Pilot 5200-20200+2400 on permanent basis. Per contra, the respondent stated that the post of a Loco Driver in the post utmost responsibility and carries within the requirement of meeting the

competency bench mark which are essential for safety in the driving of the trains. He also stated that the enquiry had been conducted in terms of the relevant rules and there were no procedural violation in the manner in which the enquiry was conducted.

16. The respondents counsel also stated that no merely enquiry conducted but that the petitioner's representations both at the Appellate and Revisional level had been given due consideration and in view of the fact that three Loco Inspectors who had carried out the 100 mile tests reiterated that the petitioner was found to fall sleep. It was opined that Shri Liyakat Khan, Loco Pilot was not fit to observation the traffic signals in the matter of speed of the train that he was driving. This had been stated by the Loco Inspector during the enquiry conducted in the matter as well. The counsel for the respondent also mentioned that this was not first occasion on which Shri Liyakat Khan has been found sleeping that he had also been reprimand for the same on earlier occasion as well. After the enquiry Shri Liyakat Khan had also been awarded penalty of 10.11.2006. Based on the written report of the Loco Inspectors, the penalty had been awarded by the Sr. Divisional Mechanical Engineer (Power). It has also been stated in the enquiry officers report that Shri Liyakat Khan had tried to mislead the Loco Inspector by withholding the information regarding the earlier penalties about it. The report of Shri Liyakat Khan (Annexure A12 and Annexure A13) were considered by the Appellate Authority and Revisional Authority as well. The Revisional Authority vide his order at Annexure A4 has stated that Shri Liyakat Khan has been advised repeatedly to be more careful and devoted to his duties as well as to improve his knowledge of safety procedures and technicalities. However, since Shri Liyakat Khan has been unable to do so, the penalties have been rightly imposed. Accordingly, the penalty of reduction to two lower posts/grade i.e. from Loco Pilot Goods in the pay scale 9300-34800+4200

to Sr. Assistant Loco Pilot in the pay scale 5200-20200+2400 permanently has been approved by the Revisional Authority as well.

17. That the Railway Servant (Discipline & Appeal) Rules, 1968 (for brevity The Rule 1968) provided for the following major penalties:

- i) Reduction to lower stage.
- ii) Reduction to lower time scale, grade, post or service.
- iii) Compulsory retirement.
- iv) Removal.
- v) Dismissal.

It is pertinent to note that reversion to lower post grade of service when petitioner was found answer to do after promotion is not considered the major penalty under the DA Rules, 1968. It is also important to note that the submissions made by the petitioner regarding the manner in which the enquiry has been conducted cannot be reopened. There are very large number of judicial pronouncements to the fact that the re-appreciation of evidence by the High Court or the other Courts is not permissible. This has been reiterated by the Hon'ble Supreme Court in the case of Government of Tamil Nadu vs. A. Rajapandian reported in 1995 (1) SCC 216, wherein it was held as under:-

"4. The Administrative Tribunal set aside the order of dismissal solely on re-appreciation of the evidence recorded by the inquiring authority and reaching the conclusion that the evidence was not sufficient to prove the charges against the respondent. We have no hesitation in holding at the outset that the Administrative Tribunal fell into patent error in reappreciating and going into the sufficiency of evidence. It has been authoritatively settled by string of authorities of this Court that the Administrative Tribunal cannot sit as a Court of Appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably support the conclusion reached by the disciplinary authority, it is not the function of the Administrative Tribunal to review the same and reach different

finding than that of the disciplinary authority. The Administrative Tribunal, in this case, has found no fault with the proceedings held by the inquiring authority. It has quashed the dismissal order by reappreciating the evidence and reaching a finding different than that of the inquiring authority.

8. The Tribunal fell into patent error and acted wholly beyond its jurisdiction. It is not necessary for us to go into the merits of appreciation of evidence by the two authorities because we are of the view that the Administrative Tribunal had no jurisdiction to sit as an appellate authority over the findings of the inquiring authority.

This has also been reiterated in the later cases by the Hon'ble Apex Court in the case of Regional Manager, U.P.S.R.T.C. Etawah & Ors. Vs. Hoti Lal & Another (2003(2) J.T. 27.

18. The Hon'ble Apex Court in the case of S.R.Tewari versus Union of India (2013(7) SCC Page 417) has reiterated that The role of the court in the matter of departmental proceedings is very limited and the Court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the Court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.

19. Given the facts of relevant particulars of this case, as discussed in the preceding paragraphs, we are not inclined to intervene in this matter. In our view, the action taken against the petitioner is a matter of operational safety and therefore fitness for promotion can be given only after due consideration of the competency of the petitioner as certified during the inspections in the 100 mile test or the competency test. As has been established in the enquiry, the

petitioner was unable to meet this competency bench mark and was therefore found unfit as Loco Pilot Goods wherein he was accepted to operate independently and therefore the petitioner on 29.03.2010 was issued with the charge sheet for major penalty under the Railway Servants (Discipline & Appeal) Rules, 1968. It has been argued by the petitioner that while it is correct to state that a person who was unfit as Loco Pilot Goods cannot be permitted to continue at that post, if the applicant failed in the promotional post of Loco Pilot Goods then the promotion can be taken back and the person should be remained at the post which he was holding prior to being promoted.

20. Per contra, the respondents Railways had stated that on earlier occasions as well Shri Liyakat Khan had been advised repeatedly to be more careful and devoted to his duties as well as to improve his knowledge of safety procedures and technicalities.

21. In this view of the matter, the punishment imposed by the Disciplinary Authority does not appear to be "shocking to the conscience of the court", cannot be subjected to judicial review.

22. During final hearing in the case, the key submissions made by the petitioner were that the application of Rule 3 of the Conduct rules was in appropriate; even if it is considered that the petitioner had not attained the requisite competency bench mark required for the post. It does not appear to be the case fit to be dealt with under Rule 3 which talks of "integrity and conduct of the petitioner". The petitioner also made the submissions that there were no grounds for the issue of major penalty of reduction to two lower posts i.e. from Loco Pilot Goods 9300-34800+4200

to Sr. Assistant Loco Pilot 5200-20200+2400 on permanent basis. Per contra, the respondent stated that the post of a Loco Driver in the post utmost responsibility and carries within the requirement of meeting the competency bench mark which are essential for safety in the driving of the trains. He also stated that the enquiry had been conducted in terms of the relevant rules and there were no procedural violation in the manner in which the enquiry was conducted.

23. While it is opened to the Railways to laid down clear guidelines and rules in the matter regarding operational efficiency so that the Conduct Rules are not required to be invoked for the issue of penalty in the matter of operational safety, at this point in time, the Disciplinary Authority while imposing penalty have considered all the fitness and passed appropriate orders against the penalty order, Appeal preferred by the applicant which has also been considered by both the Appellate Authority and the Revisional Authority. There is therefore no ground to interfere with the Disciplinary matter by this Tribunal.

24. In view of the factual matrix as above, it is immediately apparent that the reliefs sought for by the applicant are not maintainable and the OA lacks merit and deserves to be dismissed. Accordingly, the OA is dismissed and MA No.290/00364/2014 also does not survive. No order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

Dated: 17.07.2019
Place: Jodhpur

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