

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.O.A.1097 OF 2012

Date of order :21.09.2015

Present : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Mr. R. Bandyopadhyay, Administrative Member

SONARAM MURMU
VS.
UNION OF INDIA & ORS.

For the applicant : Mr. C. Sinha, counsel
For the respondents : Mr. M.K. Bandyopadhyay, counsel

ORDERPer Mrs. B. Banerjee, J.M.

This application has been filed seeking the following reliefs:-

- "a) To set aside and quash the impugned—
- (i) Charge Memorandum dated 28.4.2011 issued by Dy. CPO(HQ)/GRC;
 - (ii) Punishment notice dated 13.7.2011 issued by Dy.CPO(HQ)/GRC;
 - (iii) Letter dated 9.9.2011 issued by General Manager, S.E. Rly., GRC(Revising Authority)
- (b) Any other order or orders as the Hon'ble Tribunal deems fit and proper."

2. Shorn of unnecessary details, the matter relates to a minor penalty proceedings initiated against an Office Superintendent of S&T, Staff Section of the Personnel Department, South Eastern Railway for alleged commission of gross misconduct inasmuch as he had dealt with the process for sanction of advance for purchase of Motor Cycle/Scooter in favour of 25 staff under CSTE/GRC but did not convey any intimation to the Bill Section about non submission of vouchers/documents as well as non-completion of purchase within one month by the respective staff of CSTE's

office who had taken the advance, which was mandatory. As a result, recoveries were initiated in instalments by the Bill Section instead of recovering the full advance money with accrued interest at a time as per the extant proviso of rules. The said minor penalty proceedings culminated into the penalty of reduction to a lower stage of pay from 18,830/- to 18,280/- (By one stage in the existing time scale of pay of Rs.9300 to 34800 with Grade Pay of Rs.4200/- for a period of three years with cumulative effect and not adversely affecting his pension w.e.f. 01.08.2011, as inflicted by the Deputy CPO, Headquarters, GRC on 13.07.2011. The Appellate Authority being the CPO, Administration, reduced the penalty of such reduction for a period of two years instead of three years^{pl}, vide order dated 09.09.2011. The General Manager being the Revising Authority, vide his order dated 29.02.2012 upheld the punishment inflicted by the Appellate Authority.

3. Ld. counsel for the applicant has submitted that while disposing of the appeal as well as the revision petition, the authorities have failed to consider the reply filed by the applicant, on 03.06.2011, against the charge sheet by the Deputy CPO, Headquarters wherein he had stated that non-utilisation or misutilisation of advances would attract disciplinary action for violation of Rule 3(i) and (iii) of Conduct Rules, 1968 and that it was the responsibility of the staff who had taken the advance, to submit Blue Book, cash receipts and insurance documents within one month. He has further submitted that the staff who had failed to submit the documents within one month were already penalized with recovery with penal interest and were given warning and their cases have been closed by the Vigilance Department. The Railway has not suffered any loss of revenue in granting advance to the staff but due to imposition of punishment the applicant

would suffer financial loss much greater than the principal amount sanctioned in favour of such staff.

4. Ld. counsel for the respondents on the contrary stood by the decisions taken by the respondent authorities and submitted that the decisions so take were justified and the authorities issued reasoned and speaking order while imposing penalty or modifying the same.

5. We have heard Id. counsel for the parties and perused the materials on record.

6. We note that the main thrust of argument hinges on the orders issued by the Appellate Authority as well as by the Revising Authority. Ld. counsel for the applicant argued that the appellate order is not in conformity with Rule 22 of Railway Servants (D&A) Rules which required the authority to pass an order upon ^{due} ~~new~~ consideration of the following factors:-

"(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider—

(a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders—

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case."

We further note that at the time of hearing given to the applicant at the Vigilance Office, GRC on 16.11.2010 he submitted the following :-

"Applications for scooter/Motor cycle advance are received from staff concerned. On receipt of the applications these are scrutinized. During scrutiny pay particulars as mentioned by the applicants are verified, eligibility criteria if the applicants are examined and other aspects as per rule are examined and verified. After completion of scrutiny proposal is prepared for obtaining of approval of HOD towards sanction of Scooter/Motor Cycle advance for the staff and proposal is put up to HOD(Controlling Officer). On getting the approval of HOD towards the sanction of Scooter/Motor Cycle advance memorandum (Office order) for payment of Scooter/Motor Cycle advance to staff is prepared and lastly memorandums are sent to bill section for payment.

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"After purchase of vehicle vouchers & others documents are to Staff section by the concerned staff and as a dealer I receive the vouchers and others documents. After receiving the vouchers from staff concerned these are sent respective bill section with necessary advice."

It has not come to the fore as to when the applicant had received the vouchers and referred the same to the Bill Section for the delay that had occurred in submitting the vouchers beyond the permissible limit of one month. Neither the penalty order dated 13.07.2011 nor the orders passed by the Appellate Authority make a mention of the amount of delay that had occurred in submitting the vouchers. Nothing could be deciphered from the said orders whether the advances were misutilised or non-utilised by the staff. On the contrary, we note that after purchase of vehicles, vouchers and other documents were submitted by the applicant to the appropriate authority. We further note that the respondents have disclosed a confidential letter dated 03.06.2011 issued by the then General Manager, South Eastern Railway in regard to mis-utilisation of motor car advance by N.G. staff under the control of CPO/S.E. Railway. By the said letter the General Manager has deprecated the practice of giving innocuous punishment to the staff who had misutilised the advance, with minor penalties of stoppage of pass, PTO or censure. Thus misutilised or non-

utilised advances would attract graver form of punishment in proven cases.

In view of the fact that the applicant had submitted the vouchers and documents due to which the authorities could initiate action at least to recover in instalments if not recovery of full advance money with accrued interest at a time, the misdemeanor of the applicant, if any, ought to have been looked upon with some lenience and lenity by the Administration.

7. In such view of the matter we quash the orders dated 09.09.2011 and 29.02.2012 issued by the Appellate Authority and Revising Authority and remand the matter back to the Appellate Authority to issue a reasoned and speaking order in view of the aforesaid observations. Let orders be issued within three months from the date of communication of this order.

8. The O.A. is disposed of. No cost.

(R. Bandyopadhyay)
Administrative Member

(Bidisha Banerjee)
Judicial Member

s.b