

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.210/00520/2015

Dated this Monday, the 16th day of September, 2019

**CORAM : R.VIJAYKUMUMAR, MEMBER (A)
R.N.SINGH, MEMBER (J)**

K.C. Pal, (son of Shri Sukh Deen Pal)
Date of Birth : 03.07.1972, Age : 43 years,
Working as : Loco Pilot (Goods) (Group "C" Post)
in the office of Chief Traction Crew Controller, Nandurbar,
Western Railway, and Residing at: Plot No.21-A,
Jamnadas Park, Korit Road, Nandurbar,
State of Maharashtra 425 412. - Applicant
(By Advocate Shri R.G.Walia)

Versus

1. Union of India, Through : The General Manager,
Headquarters' Office, Western Railway,
Churchgate, Mumbai 400 020.
2. DRM (Divisional Railway Manager)/
ADRM (Additional Divisional Railway Manager),
DRM's Office, BCT, Western Railway,
Bombay Central, Mumbai 400 008.
3. Sr. D.E.E.(o) (Sr. Divisional Electrical Division)
(Operation), DRM's Office, Western Railway,
Mumbai Central, Mumbai 400 008.
4. Regional Labour Commissioner (Central),
Office of the Dy. Chief Labour Commissioner (C),
Shramraksha Bhavan, Shivshrushti Marg,
Sion (East), Mumbai 400 022. - Respondents
(By Advocate Shri V.D.Vadhavkar)

ORAL ORDER

Per : R.Vijaykumar, Member (A)

Heard Shri R.G.Walia, learned counsel
for the applicant and Shri V.D.Vadhavkar,
learned counsel for the respondents.

2. This application has been filed on

14.09.2015 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :-

"8(a). This Hon'ble Tribunal will be pleased to call for the records which led to the passing of the impugned Punishment Orders dated 09.09.2015 (i.e. Annexure "A1" hereto) and chargesheet dated 14.03.2014 (i.e. Annexure "A2" hereto) and after going through its propriety, legality and constitutional validity be pleased to quash and set aside the same.

8(b). This Hon'ble Tribunal will be pleased to order and direct the Respondents to allow the loco pilots/ Applicant to avail proper rest of 16 hours at HQ after total duty of 8 hours or more and which should exclude 2 hours preparatory time.

8(c). This Hon'ble Tribunal will be pleased to order and direct the Respondents to allow the loco pilots/ Applicant to avail proper rest of 12 hours at HQ after duty of less than 8 hours and which should exclude 2 hours preparatory time.

8(d). This Hon'ble Tribunal will be pleased to direct Respondent No.4 to complete the inquiry in case pending before him of the Applicant under letter No.B/52(01)2014(RLC)/B.1 dated 12.11.2014 as early as possible.

8(e). Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case.

8(f). Cost of this Original Application may be provided for."

3. Reply, rejoinder, sur-rejoinder and further additional rejoinder have been filed by the parties. The applicant admittedly has not filed any statutory appeal as provided under the Rules against the orders passed by the Disciplinary Authority.

4. The main ground argued by the learned counsel for the applicant is that the orders in the disciplinary case by which the applicant has been compulsory retired has not been passed by the Competent Authority and that the charge as framed does not indicate any misconduct. Both these issues are salient to any representation that would need to be considered by the statutory Appellate Authority.

5. Be that as it may, the learned counsel for the applicant submits that in view of this position, it is necessary to overlook the aspect of the applicant having not filed a statutory appeal that could have been considered and adjudicated by this Tribunal.

6. The learned counsel for the respondents presses his arguments on both contentions and apart from vehemently arguing requesting vacation of the interim stay already granted by this Tribunal, he insists that the applicant had not availed the opportunity to file a statutory appeal and has instead rushed to the Tribunal without exhausting his statutory remedy.

7. The learned counsels for the parties have been heard. Considering that the applicant has the opportunity to exhaust his statutory remedy prior to approaching this Tribunal, we dispose of this OA with liberty to the applicant to file a statutory appeal and the respondents shall consider it on merits and shall treat the applicant as having filed his appeal within limitation if the same is preferred by the applicant within the time stipulated in these order before the competent Appellate Authority. In such appeal, the applicant may raise all his grievances and tender it within two weeks from the date of receipt of a certified copy of these orders. On receipt of such appeal, the Competent Appellate Authority shall considered the same by passing a appropriate reasoned and speaking order and without being influenced by the pleadings filed in this OA.

8. As there are interim orders passed by this Tribunal against the disciplinary proceedings, we are of the considered view that until the Appellate Authority passes

orders, the interim order passed by this Tribunal shall continue until the orders of the Appellate Authority are served upon the applicant.

9. In the facts and circumstances, no order as to costs.

(R.N. Singh)
Member (Judicial)

(R. Vijaykumar)
Member (Administrative)

kmg*

JD
19/9/19

