

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 2015/2003

NEW DELHI THIS. ^{June} 29th DAY OF ~~MAY~~ 2004

HON'BLE SHRI JUSTICE V S AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A SINGH, MEMBER (A)

J.J. Singh,
S/o Puran Singh,
Dy. Chief Operation Manager,
Freight Operation Information System,
CRIS Camp, Chankaya Puri,
New Delhi

Residential Address:

J.J. Singh,
Suite 'D', Railway Rest House,
Minto Bridge, New Delhi

.....Applicant

(By Shri G D Bhandari, Advocate)

VERSUS

1. Union of India, through
The Chairman,
Railway Board,
Rail Bhawan, New Delhi
2. The General Manager,
Northern Railway,
Baroda House, New Delhi
3. The Secretary,
UPSC, Shahjahan Road,
New Delhi.

.....Respondents

(By Shri Rajinder Khatter, Advocate)

O R D E R

BY HON'BLE SHRI S.A. SINGH, MEMBER (A)

The applicant is 1977 Batch IRTS Officer. A major penalty Charge- sheet was served on him on 2.11.1998 alleging that while working as Sr. DCM Ambala he renewed 33 vending contracts without obtaining and considering the recommendations of a screening committee as required in

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terms of Railway Board's Policy letter No.91/TG-III/600/15, dated 6.1.92 and also that vending contracts of M/s Naveen Chander and Sons were not extended and the file was willfully kept in his personal custody till 7.3.1994 even though he had been transferred from the post of Sr. DCM Ambala.

2. The applicant prays for quashing of penalty order dated 17.6.2002 (Annexure A-2) and the Presidential Order dated 25.7.2003 (Annexure A-4-a) which had converted the penalty of reduction by two stages in the same time scale of pay with cumulative effect, for a period of one year, into reduction of one stage in the same time scale of pay, for a period of one year without cumulative effect. He also prayed that he be promoted to SAG Grade from the date his juniors have been promoted.

3. He has challenge the penalty orders on the following grounds:

- a) that the applicant during the period 12.3.99 to 8.11.2001 was sick and this was not intimated to the Enquiry Officer, hence the enquiry was conducted behind his back;
- b) that enquiry officer relied upon certain documents which had not been supplied to the applicant thus had prejudiced his case;
- c) as is clear from the reading of the finding of the Enquiry officer that in the case of non renewal of vender licence of M/s Naveen Chander & Sons no evidence had been produced by the prosecution to prove that the file was so with-hold with a malafide intention to grant undue favour to the Contractor ; and



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- d) the order imposing the penalty was faulty as it has been signed by the Jt. Secretary (E) who is not competent to impose the penalty and as such the order was bad in law;

4. The learned counsel for respondents strongly contested the averments made by the applicant in OA as well as during oral submissions. The respondents contended that the applicant deliberately did not attend the enquiry even though notices were sent to him by registered post, which as per rules is sufficient to show that he had been informed of the dates of enquiry. In this regard the respondents relied upon the judgement passed by the Central Administrative Tribunal Mumbai Bench in OA 1010/96 in the case of Shashi A. Thakur Vs UOI & Ors. in which it is held that there is no reason to presume that letters sent by Registered Post by the respondents can be considered as not having been received by the applicant. In fact on 27.4.2000 Sr. CVI Northern Railway visited the residence of the applicant and he was not found available at his home, even though he reported to be sick. The applicant's wife reported that he had gone to Delhi. She was handed over copies of letters which had been sent through Registered post. Despite this, the applicant did not appear or take part in the enquiry. He has not submitted any medical certificate for the period of reported sickness.

5. The applicant had also contested that the General Manager was not competent to impose a major penalty and as such the orders needed to be quashed. On this point the respondents clarified that the GM, Northern Railway who was the disciplinary authority in case of minor penalty took the view that a major penalty was



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warranted and since this was beyond his competence he remitted the case to Railway Board who were the competent disciplinary Authority to impose major penalty in terms of Rule 10(1) Railway Servants (D & A) Rules 1968. The Railway Board agreed with the findings of enquiry officer and imposed a major penalty of reduction by two stages in the same time scale of pay with cumulative effect for a period of one year. The applicant preferred an appeal against this order to the President which was decided by the President in consultation with the UPSC and the appeal was partly allowed and the effect of the penalty was reduced by converting it into penalty of reduction by one stage in the same time scale of pay for a period of one year without cumulative effect. These orders have been passed after complying with the procedure laid down in the rules.

6. As regards the question of the non supply of documents relied upon to the applicant the respondents submitted that it was clearly mentioned in the Memorandum of major penalty that the applicant can inspect and take the extracts from the documents mentioned in Annexure-3 i.e. list of relied upon documents and that the photocopies of the RUDs were delivered to his son who was available at his residence in Ambala on 15.11.99 in presence of two witnesses and he was also requested to attend the office of GM/Vig. on 22.11.99 for inspection of original documents, which the applicant failed to do. The applicant in his representation to the President of India dated 22.7.2002 (Annexure A-4) under para 4 has himself accepted the receipt of documents on 15.11.99, the extract of which is as under:



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"It has been alleged in the chargesheet that the vigilance Branch of the Railways investigated the matter in the year 1994 and if any thing adverse against me, was there, then the Charge-sheet should have been served upon me by the Competent Authority within 3 months as stipulated above, but the same was served upon me on 28.01.1999, that too, without attaching the relied upon documents. On my above noted application, the relied upon documents were served upon me by the Vigilance on 15.11.1999."

Hence his contention that documents relied upon have not been supplied to him is without substance.

7. Having heard the counsel for the parties and gone through the documents placed on record. The main contention of the applicant is that the orders are vitiated on the ground that they have not been issued by the disciplinary authority competent to impose the penalty in terms of Rule 8(2) of the R.S. (D&A) Rules and that the Charge sheet was not issued by the Competent Authority i.e. Office of the Minister of Railways, as GM can only impose a minor penalty.

8. With regard to the question of initiation of disciplinary proceedings Rule 8(2) of RS (D&A) Rules and Conduct rules reads as under:

Rule -[8] Authority to institute proceedings:-[1] The President or any other authority empowered by him by general or special order may :-

(a) institute disciplinary proceedings against any railway servant;

(b) direct a disciplinary authority to institute disciplinary proceedings against any railway servant on whom that disciplinary authority is

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competent to impose under these rules any of the penalties specified in rule 6.

[2] A disciplinary authority competent under these rules to impose any of the penalties specified in clauses (i) to (iv) of Sub-rule (1) and clauses (i) and (ii) of Sub-rule (2), of Rule 6 may, subject to the provisions of clause (c) of Sub-rule (1) of Rule 2, institute disciplinary proceedings against any railway servant for the imposition of any of the penalties specified in clauses (v) to (ix) of Sub-rule (1) of Rule 6, notwithstanding that such disciplinary authority is not competent under these rules to impose any of the latter penalties.

9. From the above rule it is clear that disciplinary authority competent to impose penalties as specified in Rule 6(i) to (iv) i.e. minor penalty may institute disciplinary proceedings even for major penalties i.e. specified in said rule (v) to (ix), notwithstanding the authority is not competent to impose the later penalties. Therefore, initiation the disciplinary proceedings by the General Manager were in order.

10. The second contention of the applicant that the penalty has not been imposed by the Railway Board but by a Joint Secretary (E) is based on the contention that the order dated 17.6.2002 has been signed by the Joint Secretary (E) . Para 5 of this order reads as under:

"5. The General Manager, Northern Railway after careful consideration of the case remitted the case to the Railway Board as the penalty intended to be imposed by the General Manager, Northern Railway on Sh. J J Singh was not within his competence to impose. The Railway Board, as the competent Disciplinary Authority, after carefully considering the IO's report , proceedings of the inquiry Sh. J J Singh's representation on the IO's report and all



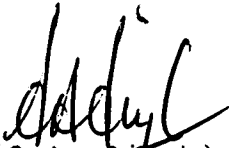
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other relevant records, aspects of the Disciplinary case has observed/ordered as under:"

11. From the above order it is clear that the Joint Secretary (E) is merely communicating the orders of the competent authority i.e. Railway Board and that the imposition of penalty as indicated in para 6 of the order is not that of the Joint Secretary (E) but of the disciplinary authority i.e. Railway Board.

12. It is also the contention of the applicant that though the Disciplinary Proceedings were started for a major penalty, however it has ended by imposition of minor penalty and on that ground the enquiry is not sustainable because as per rules the procedure for imposing minor penalty is different from the procedure for major penalty. Therefore, the minor penalty had been incorrectly imposed. The applicant was unable to show any rules or regulations wherein a minor penalty cannot be imposed by the disciplinary authority, if the disciplinary authority considers that to meet the ends of justice minor penalty is sufficient despite the fact that disciplinary proceedings had been initiated for a major penalty. Hence we find nothing objectionable in this regard.

13. In view of above, the OA being without merit is dismissed. No order as to costs.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

Patwal/