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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.28/2003

This the 2nd day of February 2005.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

N.S.Negi,
Senior Booking Clerk,
Railway Station,
Meerut Cantt.

... Applicant

(By Shri B.S.Mainee with Ms. Meenu Mainee, Advocates)

versus

1. Union of India through
General Manager, Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway, State Entry Road,
New Delhi.
3. Sr. Divisional Commercial Manager,
Northern Railway,
New Delhi. ... Respondents

(By Shri H.K.Gangwani with Shri R.L.Malhotra, Advocates)

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, Vice-Chairman (A) :

The following orders of the respondents passed in disciplinary proceedings against him have been challenged by applicant:

- (1) Annexure A-1 order dated 9.10.2000 whereby penalty of reduction in his pay has been ordered from the stage of Rs.4400/- to Rs.4100/- in grade Rs.4000-6000 for a period of five years with cumulative effect;



(2) Annexure A-2 order dated 21.8.2001 enhancing the punishment to that of reduction to the scale of Rs.3200-4900 for a period of ten years with cumulative effect stipulating that during the currency of the punishment applicant would draw his substantive pay in the lower grade of Rs.3200-4900; and

(3) Annexure A-3 order dated 22.11.2001 upholding the enhanced punishment imposed vide Annexure A-2. These punishments have been awarded to applicant in disciplinary proceedings against him.

2. At the outset, the learned counsel of respondents pointed out that applicant has challenged orders Annexure A-3 dated 22.11.2001 passed by the Additional Divisional Railway Manager (Operations), Northern Railway by the present OA filed on 30.12.2002. This OA is barred by limitation. He further pointed out that no application for condonation of delay has also been filed on behalf of applicant.

3. On the other hand, the learned counsel of applicant stated that while a short delay of one month and eight days has been caused in filing the OA, respondents have not indicated when the impugned order dated 22.11.2001 was served on the applicant. Thus, respondents would not be able to establish how much delay has been caused in filing the OA. He pointed out that these orders (Annexure A-3) were served on the applicant through SM/DLI and not directly. There is nothing to establish when these orders were served on applicant. The learned counsel further submitted that there is substantial merit in the case and as such, the delay must be condoned. He further stated that even if the application for condonation of delay has not been submitted along with the OA, request for condonation of delay could be made even verbally and at any point of time. The learned counsel further submitted that while respondents have not established the



date of service of orders dated 22.11.2001 upon applicant, the slight delay in filing this OA has occurred due to the fault of the counsel for which applicant should not be made to suffer.

4. We find that respondents have not submitted any proof regarding exact date of service of their orders dated 22.11.2001 on applicant. The delay in filing the OA has not been very long. There appears to be substantial merit in the OA and we agree with the learned counsel of applicant that the sin of the counsel should not visit upon the applicant. In this view of the matter, even though application for condonation of delay has not been submitted along with the OA, we find sufficient cause for condoning the delay. The delay in filing this OA is condoned accordingly.

5. Next, the learned counsel of respondents stated that applicant has not submitted any appeal against the enhanced penalty. He stated that applicant's representation dated 5.10.2001 (Annexure A-10) is simply a copy of the earlier appeal dated 8.6.2001 which had already been disposed of vide Annexure A-2. Thus, the learned counsel maintained that applicant has not exhausted the remedy of appeal and as such, this OA is not maintainable. The learned counsel of applicant stated that on the one hand, respondents have disposed of applicant's representation Annexure A-10 as an appeal vide their order dated 22.11.2001, in the same breath it is now being contended that applicant has filed no appeal. He maintained that the Additional Divisional Railway Manager (ADRM) vide Annexure A-3 dated 22.11.2001 has rejected applicant's appeal, as is clear from the subject of Annexure A-3, "Appeal against the orders of penalty of reduction in pay imposed by CM/NDLS". In view of respondents' orders dated 22.11.2001 treating applicant's representation as an appeal, they cannot be allowed to turn around and state that applicant has not exhausted the available remedy. This contention of respondents too is rejected.



6. Then the learned counsel of respondents stated that applicant has suppressed the material fact of filing an earlier OA No.1130/2001. In this connection, the learned counsel of applicant stated that applicant has mentioned about his earlier OA in Annexure A-9 dated 8.6.2001 as also in Annexure A-10 dated 5.10.2001. It is true that in paragraph 7 of the OA applicant has not mentioned about the earlier OA, however, documents Annexures A-9 and A-10 being on record would not establish suppression of any material fact on behalf of applicant, as alleged on behalf of respondents. Respondents' objection regarding suppression of material facts in this OA is also rejected, therefore.

8. The learned counsel of applicant contended that the Senior Divisional Commercial Manager (SDCM) who was the appellate authority had initiated revision action against applicant although he has no powers to review the case of applicant under rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968 (hereinafter referred to as the 1968 rules). The learned counsel relied on Full Bench order dated 10.8.2001 (CAT, Hyderabad) in *P. Narayana & Others v Additional Divisional Railway Manager, Guntakal & Others*, 2001 (3) ATJ 282. He further submitted that the disciplinary authority did not give any tenable reasons to disagree with the enquiry officer and issue the show cause notice.

9. The learned counsel of respondents contended that respondents have not violated any rules in undertaking the revision proceedings as also the show cause notice on disagreement by the disciplinary authority.

10. We have considered the contentions made on behalf of both sides on merits as also perused the material on record.

11. Admittedly, the Senior Divisional Commercial Manager is the appellate authority. He has issued notice Annexure A-8 dated 20.4.2001 for conducting revision under rule 25 of the 1968 rules. Annexure A-8 dated

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20.4.2001 is the show cause notice issued to the applicant for enhancement of punishment to reduction to the scale of Booking Clerk grade Rs.3200-4900 for a period of ten years. Admittedly the Sr.DCM is the appellate authority of applicant. This show cause notice relates to orders passed by the disciplinary authority, i.e., DTM/NDLS on 10.10.2000 (Annexure A-1). Rule 25 *ibid* deals with the provision relating to revision. It clearly states that the appellate authority not below the rank of a Divisional Railway Manager where no appeal has been preferred, can undertake revision. However, no power of revision is exercisable under this rule by a revising authority unless it is higher than the appellate authority where an appeal has been preferred or where no appeal has been preferred and the time limit laid down for revision by the appellate authority has expired. When no appeal had been filed against the orders of the disciplinary authority, the revising authority has to be higher than the appellate authority. Sr. DCM, who issued the show cause notice and passed orders Annexure A-2 is the appellate authority and could not function as revising authority, appeal having not been preferred and he was not higher in rank than the appellate authority. In the case of *P.Narayana* (supra) it has been held that only the higher authority than the appellate authority has the jurisdiction to exercise powers of review under rule 25(1)(iv) of the 1968 rules. In this light, the show cause notice Annexure A-8 dated 20.4.2001 as well as Annexure A-2 dated 22.11.2001 are certainly illegal and against the provisions discussed above. Order dated 19.10.2000 (Annexure A-1) was passed after issuing a disagreement note by the disciplinary authority and comments offered by the applicant on the disagreement note. Annexure A-7 dated 17.8.2000 is the disagreement note. In this note the DTM has recorded a finding, "I find you guilty of the charges leveled against you". Obviously, the disciplinary authority had pre-determined the guilt of the applicant before any representation had been made by him on the disagreement note. Such a course has



been held to be illegal in *Yoginath D. Bagde v State of Maharashtra*, 1999 (7) SCC 739. In this light, the show cause notice, as in the present case, did not meet the requirement of the law because the final decision to disagree with the enquiry officer had already been taken before issuing the show cause notice. The course adopted in the present case amounted to a post-decisional hearing, which is impermissible under the law and the related rules.

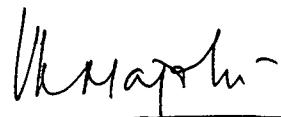
12. Having regard to the facts and circumstances of the case and discussion made above, Annexures A-1, A-2 and A-3 are quashed and set aside with consequential benefits of restoration of applicant to his original position and refund of the amount recovered from him in pursuance of the impugned orders. Respondents are directed to implement these orders within a period of one month from the date of communication of these orders.

13. OA is allowed in the above terms.



(Shanker Raju)
Member (J)

/as/



(V. K. Majotra)
Vice-Chairman (A)

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