

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(a)

OA NO. 208/2003

New Delhi, this the 29th day of September, 2003

HON BLE SHRI SHANKER RAJU, MEMBER (j)

D.B. Malik s/o Sh. R.K. Malik,
Working as DSKP-II (now DMS-II)
N. Railway Printing Press,
Shakurbasti, New Delhi.

...Applicant

(By Shri Yogesh Sharma, Advocate)

Versus

1. Union of India
through the General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Controller of Stores,
Northern Railway,
Baroda House, New Delhi.

3. The Chief Material Manager,
Northern Railway,
Baroda House, New Delhi.

4. Dy. Controller of Stores,
Northern Railway Station,
Jagadhari Workshop,
Jagadhari (Har.).

...Respondents

(By Shri R.L. Dhawan, Advocate)

ORDER

Minor penalty withholding increments for three years with cumulative effect imposed by an order dated 26.4.1999, appellate order dated 2.5.2001 and the revisional order dated 6.6.2002 including earlier order of punishment dated 29.12.1998 as well as appellate order dated 21/22.01.1999 are assailed.

2. Applicant while working as DSKP-II in the depot, through a Memo dated 6.10.1998 has been proposed to be dealt



with under Rule 11 of the Railway Servants (Disciplinary & Appeal) Rules, 1968 for a major penalty with imputation served upon him alleging calling of a large group of outsiders without the permission of the competent authority and instigating the staff at duty to stop the railway work. The aforesaid was responded to by a reply resulting in imposition of a penalty of withholding of an increment permanently. The aforesaid was challenged in an appeal filed by the applicant which was turned down on 22.01.1999 by a speaking order.

3. By modification dated 26.4.1999 withdrawal of increment was made non-cumulative against which appeal preferred was turned down by order dated 2.5.2001.

4. Applicant, though the limitation for filing revision is 45 days, had preferred a revision petition on 5.12.2001 which was turned down being time barred vide order dated 5.7.2002 giving rise to the present OA.

5. Learned counsel for the applicant in so far as limitation is concerned filed an MA for condonation of delay stating that though the revision was delayed but the revisional authority intimated the orders only after a period of about two years which deprived the applicant to prefer the OA within time. It is further stated that after the aforesaid order the OA has been filed within one year as stipulated under Section 21 of the A.I. Act, 1985.



6. On merits as well learned counsel states that whereas the Deputy Controller of Stores who happened to be the complainant in the present case had issued the chargesheet and imposed the punishment acting as a judge in his own cause which cannot be countenanced.

7. It is further stated that in the order passed by the disciplinary authority apart from imputations certain other documents have been considered without serving a copy upon the applicant.

8. By referring to the order modifying the punishment it is stated that the same is non-speaking and the appellate order rejecting his appeal is also issued without application of mind.

9. Lastly, it is stated that in view of the decision of the Apex Court in Ram Chander vs. Union of India, 1986(2)SCC 103, appellate authority must afford opportunity of personal hearing which, according to the learned counsel Shri Yogesh Sharma, had been requested in his appeal Memo dated 26.5.1999. Further referring to Railway Board letter dated 21.12.1986, it is stated that as there is nothing in the appellate order indicating time limit to file revision, it is the discretion of the revisioning authority on sufficient cause to entertain revision which has to be exercised judiciously.

10. On the other hand respondents counsel Shri R.L. Dhawan objected to the MA for condonation of delay placing reliance of a decision of the Apex Court in R.C. Samantha vs.



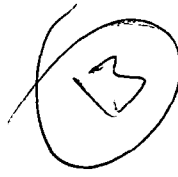
Union of India & Ors., JJ 1993(3)SC 418 contends that delay deprives a person's remedy. In this view of the matter it is stated that as the applicant receiving the appellate order on 11.5.2001 as per Section 21 of the Act ibid limitation expires on 20.11.2002 whereas the present OA is filed on 24.01.2003 beyond the period of limitation.

11. On merits as well it is stated that the disciplinary authority is not precluded to take cognizance of a misconduct and to proceed. In that event he would not become a complainant. The competent authority had himself seen the applicant instigating the depot staff to stop railway work and gathering of outsiders to disturb railway working. According to Shri Dhawan no document has been relied upon and the imputation is clear and specific against which applicant has been afforded a reasonable opportunity to defend.

12. Learned counsel states that once the order has been passed by recording reasons, in a judicial review this Tribunal cannot interfere in a judicial proceedings acting as an appellate authority.

13. I have carefully considered the rival contentions of the parties and perused the material on record.

14. In so far as plea of the applicant that the disciplinary authority acted as a complainant as well as a



judge cannot be countenanced as nothing on record has been brought to establish that he made any complaint. Nothing precludes the disciplinary authority to take cognizance of the facts attributing misconduct himself and taking a disciplinary action.

15. As regards supply of documents are concerned in a minor penalty chargesheet alongwith imputation, no documents have been referred to. The reference to the material and other papers in the order passed imposing punishment is only a causal one as the applicant himself not prayed for supply of any documents and has failed to establish and point out the documents as well as its relevance, this ground, therefore, fails.

16. As regards the contention that order passed modifying the punishment is a non-speaking is also unfounded, as earlier the penalty order contained reasons, which was in compliance of the rules as well as instructions. Order dated 26.4.1999, though inadvertently refers to filing of an appeal, which is in fact an order, modifying the punishment and as the reasons had already been recorded, it is not incumbent upon the respondents to record reasons, as contended.

17. As regards non-grant of personal hearing by the appellate authority which has been denied to the applicant being specifically prayed for is concerned, the decision in Ram Chander's case (supra) in all fours covers the issue.

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Compliance of the principle of natural justice as well as fair play, an effective hearing would be when a personal hearing is accorded to the Railway servant under Rule 22 as well as 24 of the Railway Servants(Disciplinary & Appeal) Rules, 1968. As personal hearing has not been accorded, appellate order cannot be sustained in law.

18. As regards limitation is concerned, Section 21 refers to Section 20 of the A.I. Act, 1985, the limitation is one year from the date of passing the final order. As the order has been passed on revision rejecting the revision as time barred, the limitation available to the applicant is to be reckoned from the aforesaid date. Moreover, as the case of the applicant is good on merit, I condone the delay by allowing the MA for condonation of delay.

19. In the result, for the foregoing reasons, OA is partly allowed. The appellate order dated 2.5.2001 is quashed and set aside. Respondents are directed to pass a reasoned order after according a personal hearing to the applicant within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)