CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00022/2016

Date of Order: 05.11.2019

C O R A M
HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Prabhanjan Kumar Gupta, Son of Shri Lakshmi Narayan Sao, Resident of Village- Bahelia Bigha near Police Adda, PO- Tekari, PS- Tekari, District- Gaya (Bihar).

…. Applicant.

By Advocate: - Mr. G. Saha

-Versus-

1. The Union of India through the General Manager, East Central Railway, Hajipur, Vaishali.
2. Divisional Railway Manager, Mugalsarai Division, East Central Railway, Mugalsarai.
3. Additional Divisional Railway Manager, Mugalsarai Division, East Central Railway, Mugalsarai.
4. Senior Divisional Personnel Officer, Mugalsarai Division, East Central Railway, Mugalsarai.
5. Divisional Mechanical Engineer (Power), Mugalsarai Division, East Central Railway, Mugalsarai.
6. Chief Yard Master, Tower, Mugalsarai Division, East Central Railway, Mugalsarai.
7. Deputy Chief Yard Master, Down Yard, Mugalsarai Division, East Central Railway, Mugalsarai.
8. Chief Crew Controller (Diesel), Mugalsarai Division, East Central Railway, Mugalsarai.
9. Office Superintendent (Pay Bill Section), O/o Senior Divisional Personnel Officer, Mugalsarai Division, East Central Railway, Mugalsarai.

…. Respondents.

By Advocate: - Mr. B.K. Choudhary

O R D E R

Per Dinesh Sharma, A.M:- In the instant OA, the applicant has prayed for quashing the punishment order dated 06.05.2015 (Annexure A/1) by

which his increment has been stopped for two years with non-cumulative effect. He has also prayed for quashing the order passed in appeal on this matter on 18.09.2015 (Annexure A/2) and also for quashing the Memorandum/Chargesheet dated 13.04.2015 (Anenxure A/3) which resulted in the imposition of punishment sought to be quashed under this OA.

2. According to the applicant, the charges levelled by Annexure A/3 are totally false and are based on alleged facts which do not constitute misconduct or misbehaviour. No documents have been enclosed with the chargesheet. The mentioning of all three clauses of Rule 3(1) of the Railway Services (Conduct) Rules in the concluding portion of the chargesheet shows the closed mind of respondent no. 5. The order of punishment and the appellate order are apparently illegal and arbitrary on the face of record itself. No witnesses were examined nor any enquiry done or copy of the enquiry report provided to him. On all these grounds the applicant has prayed for quashing the entire disciplinary proceeding and for grant of consequential reliefs.

3. The respondents have filed a written statement in which they have stated that on account of negligence of applicant, while performing shunting duty, derailment took place and wagons were dragged for approximately 500 metres. Following a report from the Supervisors, a memo of charges was issued. The Disciplinary Authority, after going through the reply of the applicant and after finding the same as unsatisfactory, imposed the punishment of stoppage of annual increment for two years.

The applicant filed an appeal against this order which the Appellate Authority, after due consideration, rejected. The respondents have also produced Annexure R/1, a copy of the joint note giving details of derailment incident signed by five Senior Supervisors. The respondents have stated that the minor punishment imposed on the applicant, after following due procedure, is as per the punishment norms in accident cases, and is proportionate. They have also stated that the procedure mentioned in RBE 22/2009 (which is cited by the applicant in his OA) is applicable only in cases of major penalty and not in the present case.

4. The applicant has filed a rejoinder in which he has questioned the signing of the written statement by a Group B Non-Gazetted officer. He has also stated that the joint note was not enclosed with the impugned chargesheet nor any reference to the same has been made in the impugned punishment order or the Appellate Order and thus the alleged joint note is an afterthought and has been subsequently prepared. The applicant has also questioned punishing only him for the alleged act and not taking action against any other shunting staff. The applicant has reiterated paragraphs of original application giving details of how the alleged incident had happened and how there was no fault of his since it was not possible to pull the derailed wagons for 500 metres since “there would have been much fluctuation in the load metre and slipping of wheels on the rail attracting the attention of applicant and pilot porter.” The rejoinder also reiterates many other paragraphs of the OA to stress the arguments raised by the applicant in the OA.

5. We have gone through the pleadings and heard the arguments of learned counsels of both the parties. The crux of the matter is that the applicant has been punished with stoppage of two increments (NC) after charging him for negligently dragging two derailed wagons for 500 metres. The applicant has denied this charge and given his detailed explanation. The Disciplinary Authority has not found the reasoning given by him satisfactory and imposed the minor punishment of stoppage of two increments without cumulative effect. The Appellate Authority has sustained this punishment stating that the applicant has mentioned the same points in his appeal which he had earlier mentioned (in his reply to the chargesheet) before the Disciplinary Authority. The Appellate Authority has found the punishment appropriate when looked against the charges. The applicant has challenged the chargesheet and punishment, inter alia, is on grounds that no enquiry was conducted or witnesses examined. The respondents have replied by saying that such enquiry is not necessary for minor punishment. The applicant has alleged non application of mind and arbitrariness since the charge memo mentions violation of sub-rule (i), (ii) and (iii) of Rule-3 Railway Services (Conduct) Rules, 1966. This may be a technical violation of RBE No. 22/2009. However, since the charge mentioned against the applicant is very clear this does not appear to have caused any prejudice against the employee or hampered his ability to respond to the charge. Another major ground on which the applicant has objected to the punishment is the failure to supply any report on which the charge is allegedly based. The learned counsel for the respondents argued that the

note on the basis of which the chargesheet was given was supplied along with the chargesheet. However, we do not find any reference in the charge memo or in the decision of the Disciplinary Authority or the Appellate Authority to such joint note. Hence, we do not think that such a note would have been given to the applicant along with the chargesheet. However, we do find that the charge against the applicant of dragging two derailed wagons for 500 metres, was very clear. The explanation given by him for such dragging was not found satisfactory by the Disciplinary Authority. Since neither the charge nor the Disciplinary Authority's dis-satisfaction about the explanation is, apparently, based on this joint note, it cannot be said that any prejudice is caused against the applicant because of not supplying of this joint note. The explanation given by the applicant to the charge memo only points out impossibility of the derailed wagon getting dragged for 500 metres without certain other alarms being raised. It is not for this Tribunal to come to a different judgment on this issue other than that of the supervisory technical officer in the respondent's department, who found this explanation totally unsatisfactory. It is clear that the Disciplinary Authority and the Appellate Authority have gone through the explanation given by the applicant. Having apparently no bias against him they have come to the conclusion that his explanation was not sufficient.

6. During the course of arguments, the learned counsel for the applicant cited the judgments of the Hon'ble Supreme Court as reported in (i) 1991(1) SCC 588 (**Union of India Vs. Md. Ramjan Khan**, (ii) 2006(11) SCC 147 [**Director (Marketing) , IOC Ltd. & Ors. Vs. Santosh Kumar**, (iii) 1999(8)

SCC 582 (**Hardwari Lal Vs. State of U.P. & Ors**., (iv) 2009(2) SCC 570 (**Roop Singh Negi Vs. PNB & Ors**. & (v) 2006(5) SCC 94 (**M.V. Bijlani Vs. UOI & Ors**.) to support his argument that the guilt of the applicant is not established in a properly conducted inquiry and the orders of Disciplinary Authority and Appellate Authority are not reasoned. Having gone through these decisions, we find that these are all in the context of disciplinary proceeding involving major penalties, where a detailed inquiry by an Inquiry Officer is mandated by Rules. Such inquiry is not required for imposition of minor penalty as has been done in the present case. The orders of the Disciplinary Authority and the Appellate Authority also, prima facie, show sufficient application of mind, going by the circumstances of this case. The imposition of minor punishment for a prima facie negligent conduct, after following due procedure, does not appear to be violative of any rule and therefore there is no reason for this Tribunal to interfere with it. The OA is, therefore, dismissed. No order as to costs.

[Dinesh Sharma]
Administrative Member

[Jayesh V. Bhairavia]
Judicial Member

Srk.