

(2022) 12 CAT CK 0021

In the Central Administrative Tribunal

Case No : Original Application No. 330, 00615 Of 2021

Avnish Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 16-12-2022

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2022) 12 CAT CK 0021

Hon'ble Judges : Om Prakash VII, Member (J); Dr. Sanjiv Kumar, Member (A)

Bench : Division Bench

Advocate : P.K. Mishra, Rajesh Kumar, Rajni Kant Rai

Final Decision : Allowed

Judgement

1. The present O.A has been filed by the applicant under section 19 of Administrative Tribunal Act, 1985 seeking following reliefs:-

a) Issue an order or direction in the appropriate nature to quash and set aside the impugned orders dated 27.3.2019 (Disciplinary order) 11,6,2019 (Appellate Order) and 28.8.2020 (Revisionary order) and order dated 201.2021 passed by the respondents.

b) Issue an order or direction in the nature of mandamus directing the respondents to reinstate the applicant in service with back wages and other consequential benefits.

c) Issue any further order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

d) Award the suitable costs of the case in favour of the applicant.

2. The facts arising out of the pleadings are that on 14.11.2018, applicant was appointed on 24.10.2016 as Assistant Loco Pilot under the control of Senior Divisional Mechanical Engineer (L&F), North Central Railway, Prayagraj and while working in Train No. ARIK (Engine No. 12322 WDG-4) in Khurja Yard, passed /

overshoot the Sig. No. 9 which was in on position. A five member committee enquired the matter and submitted a joint note dated 15.11.2018 stating therein that "prime facie Shri Ashok Kumar, Loco Pilot/HQ-TDL and Shri Avanish Kumar, Assistant Loco Pilot are responsible, but no any loss of department." Statements of Loco Pilot, Assistant Loco Pilot and Chief Loco Inspector were recorded. Chief Crew Controller (Dsl) ,NCR Tundla submitted a report on 18.11.2018 before the Disciplinary Authority, under which he held that applicant is responsible for the incident. JA grade Officer committee was formed to prepare and submit his recommendations, who submitted its report. After acceptance of the JA grade officer recommendation, Divisional Railway Manager on 30.12.2018, Senior Divisional Safety Officer forwarded the report to Chief Safety Officer on 31.12.2018 with instruction to initiate disciplinary action against Shri Ashok Kumar, Loco Pilot and Shri Avanish Kumar Assistant Loco Pilot. Applicant was served a major penalty charge sheet on 4.2.2019. Applicant submitted reply to the charge sheet on 9.2.2019. Shri Hitendra Yadav , Chief Crew Controller (Dsl) was nominated as Enquiry Officer. Applicant submitted his consent vide letter dated 4.3.2019 for not requiring any inquiry. Thereafter, without conducting the inquiry, considering the statement of the applicant, Joint note, Loco Pilot statement, disciplinary authority arrived at the conclusion that applicant is responsible for the incident and passed the punishment order dated 27.3.2019 (Annexure No. 1 to the O.A.), by which applicant was removed from service. Appellate Authority vide order dated 11.6.2019 converted the punishment of removal from service into compulsory retirement. Revisionary authority rejected the revision vide order dated 28.8.2020.

3. Per contra, learned counsel for the respondents filed counter affidavit, in which it is stated that since the applicant has admitted his guilt in the matter and vide letter dated 4.3.2019 submitted his consent that he does not want any enquiry in the matter. Thereafter, enquiry officer submitted its report on 5.3.2019, by which he has proved the charges levllled against the applicant. On the basis of enquiry report, Disciplinary authority passed the punishment order dated 27.3.2019. Appellate Authority vide order dated 11.6.2019 converted the removal order into compulsory retirement. Revisionary Authority vide order dated 20.1.2021 rejected the revision.

4. Heard the learned counsel for the parties.

5. Learned counsel for the applicant argues that before issue of the charge sheet, Shri Hitendra Yadav submitted a report dated 18.11.2008 before the disciplinary authority, holding the applicant responsible for the incident, he cannot be nominated an Enquiry Officer. Thereafter, Senior Divisional Railway Engineer (O&F) , North Central Railway , Allahabad (respondent No. 3) was nominated as a single member JA Grade Officer Committee to prepare recommendation and in his recommendation, he held the applicant responsible for the incident, also acting as a Disciplinary Authority in the case of the applicant, which is against the rules. Learned counsel for the applicant has also argued that applicant was

working as Assistant Loco Pilot, Act for which punishment has been imposed upon him for the 1st instance should be as per Rule No. 2.0 of letter No.2017/Safety (A&R) /18/11 dated 8.1.2018 issued by the Ministry of Railway, Railway Board, New Delhi.

6. Learned counsel for the respondents argues that applicant accepted his guilt and given his consent that he does not want any inquiry. On the basis of inquiry report, disciplinary authority passed the order. Appellate authority by speaking order, converted the removal from service to compulsory retirement. There is no illegality in the same.

7. I have considered the rival submission and have gone through the entire record.

8. Rule 2 (f) and 2 (h) of Master Circular No. 67 of Government of India, Ministry of Railways, Railway Board dated 23.12.2019 are reproduced below:-

"2(f) If the Disciplinary Authority of a charged Officer is also involved in the same case then he should not act as the Disciplinary Authority in the said case. The authority who is next higher in the hierarchy should act as the Disciplinary Authority.

.....

2(h) Authority who has acted as a member or Chairman of a Fact Finding Inquiry or Accident Inquiry should not act as Disciplinary Authority because the Charged employee would apprehend that the officer having expressed earlier an opinion would not, as a Disciplinary Authority, depart from his own earlier finding. He may not thus get justice. However, if the report does not indicate a final opinion but only a view, prima facie, he can act as a Disciplinary Authority. A member or chairman of the Fact Finding Inquiry or Accident Inquiry cannot, however act as an Inquiry Officer in that case since the Inquiry Officer should be an authority who should not have prejudged the guilt, even provisionally at an early stage."

9. Rule No. 2.0 of letter No.2017/Safety (A&R) /18/11 dated 8.1.2018 is reproduced below:-

"2.0 In 1st instance of SPAD, for all cases other than item No. 1.1.1 and 1.3 in above table, punishment norms for ALP will be as follows:-

Any one of the major penalties will be awarded to ALP other than compulsory retirement/ removal /dismissal from service, as decided by the competent authority."

10. In the instant case, no doubt earlier before issue of the charge sheet, Shri Hitendra Yadav submitted a report dated 18.11.2008 before the disciplinary authority, holding the applicant responsible for the incident, and now nominated as Enquiry Officer. Similarly Senior Divisional Railway Engineer (O&F), North Central Railway , Allahabad (respondent No. 3) was nominated as a single member JA Grade Officer Committee to prepare recommendation and in his

recommendation, he found the applicant responsible for the incident now acting as a Disciplinary Authority in the case of the applicant, which is not tenable in the eyes of law as per Rule 2(f) and 2(h) of Master Circular No. 67. It is also pertinent to mention here that applicant is Assistant Loco Pilot and punishment compulsory retirement awarded to him is against the Rule 2.0 of letter dated 8.1.2018 and bad in the eyes of law.

10. Considering the facts and circumstances, we are of the view that O.A. deserves to be allowed. Accordingly, O.A. is allowed. Orders dated 27.3.2019, 11.6.2019, 28.8.2020 and 20.1.2021 are quashed. Respondents are directed to reinstate the applicant in service. However, respondents are at liberty to initiate fresh enquiry, if so desired by appointing another enquiry officer and disciplinary authority.

11. There shall be no order as to costs.