
(2024) 10 CAT CK 0023
In the Central Administrative Tribunal
Case No : Original Application No. 636 Of 2016

Mansha Ram

APPELLANT

Vs

General Manager, North Central Railway, Allahabad & Ors.

RESPONDENT

Date of Decision : 22-10-2024

Acts Referred:

Railway Servants (Discipline And Appeal) Rules, 1968 — Rule 9.21

Citation : (2024) 10 CAT CK 0023

Hon'ble Judges : Om Prakash VII, Member (J); Mohan Pyare, Member (A)

Bench : Division Bench

Advocate : Arvind Kumar Rai, Rajpal Singh

Final Decision : Allowed

Judgement

Om Prakash VII, Member (J)

1. Shri Arvind Kumar Rai, learned counsel for the applicant and Shri Rajpal Singh, learned counsel for the respondents, were present at the time of hearing.

2. The instant original application has been filed seeking following relief:

"A. That Hon'ble Tribunal may graciously be pleased to quash the order dated 22.12.2015 passed by Sr. Divisional Engineer V North Central Railway, Allahabad and also order dated 03.07.2015 passed by Sr. Assistant Divisional Engineer, Aligarh.

B. That the Hon'ble Tribunal may further be pleased to reinstate the applicant and give all consequential benefits.

C. That the Hon'ble Tribunal may also be graciously pleased to pass any other or further order as may be deemed fit and proper on the facts and circumstances of the case.

D. That the Hon'ble Tribunal may further be graciously pleased to grant costs against the respondents and in favour of the applicant."

3. A compendium of the facts as have been narrated in the present original application is that the applicant is aggrieved by the impugned orders dated 22.12.2015 passed by the Sr. Divisional Engineer Vth North Central Railway, Allahabad and dated 03.07.2015 passed by the Sr. Assistant Divisional Engineer, Aligarh. By way of the order dated 03.07.2015, the applicant was served with the penalty of compulsory retirement against which he submitted an appeal but the said appeal was also dismissed vide order dated 22.12.2015. Terming the aforesaid impugned orders as illegal and arbitrary, the applicant has prayed for the quashing of the same and thereby seeking a direction to the respondents to reinstate him with all the consequential benefits.

4. We have heard learned counsels for the parties and perused the documents on record.

5. Disclosing a brief history of the case, learned counsel for the applicant submitted that applicant was appointed as Gangman in the year 1987 and had been working since then to the satisfaction of the competent authority of the department. However, no promotion was given to him nor the benefit of first financial upgradation after 12 years of service and subsequent upgradations after rendering further service was given to him. While working as a Trackman, a memorandum of charge sheet for major penalty dated 06.09.2014 was served upon him alleging that he was on unauthorized absence without permission from 16.04.2014 to 02.09.2014.

6. Learned counsel for the applicant further argued that the aforesaid charge was absolutely wrong as the applicant remained absent on account of his inability to attend duties due to sickness. During that period of time, even the applicant's wife fell seriously ill and received treatment. Respondents held an inquiry against the applicant and appointed an inquiry officer in this regard. However, the inquiry was conducted arbitrarily and in violation of the prescribed rules as the applicant was not given any opportunity to cross examine the witnesses nor compliance of Rule 9.21 of the Railway Servants Discipline and Appeal Rules was made by the inquiry officer. Subsequently, the disciplinary authority passed the order dated 03.07.2015 imposing the penalty of compulsory retirement against the applicant without passing a reasoned and speaking order. Applicant preferred an appeal against the said order but the same was rejected vide order dated 22.12.2015 by way of a unreasoned and non-speaking order. Thus, learned counsel argued that grave injustice has been done against the applicant and thus prayed that the OA be allowed and impugned orders be quashed thereby directing the respondents to reinstate the applicant along with all consequential benefits.

7. Learned counsel for the respondents vehemently opposed the submissions of the applicant's counsel and by way of counter affidavit, he argued that the inquiry was conducted against the applicant following due procedure as prescribed under the stipulated rules and provisions. The applicant was given every due opportunity. Although as per findings of the inquiry officer, the charge leveled against the applicant regarding remaining absent from duty from

16.04.2014 to 02.09.2014 was not fully proved but in view of the applicant's leave record from 01.01.2010 to 29.08.2014 and as per the written statement of Jagdish Chand, Store Issuer and Kanhiya Lal, working Mate Gang No. 84 Kulwa given in the departmental proceedings before the Inquiry Officer, it was established that the applicant was a habitual absconder and remained absent from time to time. Further, when the applicant was given the inquiry report, he did not give representation against it within 15 days which is required under rules and therefore, the order dated 03.07.2015 was passed. The entire inquiry was conducted in accordance with rules and the applicant was given adequate opportunity of hearing. The applicant also preferred an appeal against the order dated 03.07.2015 but the same got dismissed vide order dated 22.12.2015 as it lacked substance. Learned counsel further argued that claim of the applicant that he was never given any financial upgradation or promotional benefits is absolutely false and baseless as he was conferred with financial upgradation as and when it fell due upon him. Thus, prayer was made to dismiss the OA as the same lacks merits.

8. Rejoinder has been filed by the applicant citing the same averments as have been given in the OA.

9. We have considered the rival contentions and gone through the documents on record.

10. As the facts of the case have been recorded above in detail they are not reiterated. Vide impugned order dated 03.07.2015, the disciplinary authority of the respondents has imposed the punishment of compulsory retirement upon the applicant alleging his unauthorized absence from duty from 16.04.2014 to 02.09.2014. The applicant challenged the aforesaid order through his appeal dated 16.07.2015 but the same got rejected vide Appellate Authority's order dated 22.12.2015. The applicant has challenged the aforesaid two orders and seeks his reinstatement. The major allegation for which the applicant was given the penalty of compulsory retirement is that he remained unauthorisedly absent from duty for the period 16.04.2014 to 02.09.2014. However, at the outset, it is pertinent to mention that in the inquiry report itself, the inquiry officer has recorded that applicant's absence for the aforesaid period was not conclusively proved but still the respondents went ahead to impose the punishment of compulsory retirement upon the applicant on the basis of his previous leave record from 01.01.2010 to 29.08.2014 thereby attributing the applicant as habitual absconder. The punishment was also imposed taking into consideration the written statement of prosecution witness Jagdish Chand, Store Issuer and prosecution witness Kanhiya Lal, working Mate Gang No. 84 Kulwa given in the departmental proceedings before the Inquiry Officer. This clearly establishes that the major allegation for which the memorandum of charges was issued against the applicant and subsequently the inquiry was initiated was never established during the inquiry. Thus, in that scenario, it was incumbent upon the disciplinary authority concerned to have given a disagreement note. However, no such action

was taken on the part of the said authority. Secondly, it is also evident from the records and submission raised across the bar that the written statement of two prosecution witnesses on the basis of which, the applicant was leveled as habitual absconder, the delinquent was never afforded any opportunity to cross-examine those prosecution witnesses. Therefore, it cannot be held that the inquiry was conducted in accordance with the prescribed procedure and adhering to the principles of natural justice. In this regard, it would also be pertinent to refer to the law laid down by the Hon'ble Supreme Court of India in the case of *Moni Shankar Vs Union of India and Another* vide its judgment dated 04.03.2008 reported in 2008 AIR SCW 2067. In the said case, the Apex Court dwelled upon a similar controversy as prevailing in the instant case of the applicant and examined the usage of Rule 9(21) of the Railway Servant Discipline and Appeal Rules which also forms a basis in the instant controversy. Provision enshrined under the aforesaid rule which deals with the appropriate method of conducting an inquiry in the respondents' organization seems to have been seriously violated in the instant case also. The operative portion of the aforesaid judgment is quoted herein below for better understanding:

"24. It is the High Court who posed unto itself a wrong question. The onus was not upon the appellant to prove any bias against the RPF, but it was for the department to establish that the charges leveled against the appellant.

25. The High Court also committed a serious error in opining that sub-rule (21) of Rule 9 of the Rules was not imperative. The purpose for which the sub-rule has been framed is clear and unambiguous. The railway servant must get an opportunity to explain the circumstances appearing against him. In this case he has been denied from the said opportunity.

26. The cumulative effect of the illegalities / irregularities were required to be taken into consideration to judge as to whether the departmental proceeding stood vitiated or not.

27. For the aforementioned purpose, the manner in which the enquiry proceeding was conducted was required to be taken into consideration by the High Court. The trap was not conducted in terms of the Manual; the Enquiry Officer acted as a Prosecutor and not an independent quasi judicial authority ; he did not comply with Rule 9(21) of the Rules, evidently therefore, it was not a case where the order of the Tribunal warranted interference at the hands of the High Court.

27. The impugned judgment, therefore, cannot be sustained. It is set aside accordingly and that of the Tribunal restored. The appeal is allowed with costs."

11. Therefore, in view of the above deliberations, we are of the considered opinion that the instant original application holds merits and is liable to be allowed. Accordingly, the OA is allowed and impugned orders dated 03.07.2015 passed by the disciplinary authority and dated 22.12.2015 passed by the appellate authority are hereby quashed and set aside. Since the applicant has already attained the age of superannuation, he cannot be reinstated. However,

respondents are hereby directed to pay all the consequential benefits to him that would have accrued if the aforesaid orders had never been passed. Also, since the Tribunal is of the opinion that the inquiry held in the case of the applicant was not in accordance with the prescribed procedure as stipulated in departmental manuals and statutes, if they deem fit, respondents would be free to conduct an inquiry afresh in the matter thereby giving adequate opportunity of hearing and conducting the entire inquiry in accordance with rules and any order passed subsequent to it shall be a reasoned and speaking one.

12. All associated MAs stand disposed of. No costs.