
(2019) 01 CAT CK 0053

In the Central Administrative Tribunal

Case No : Original Application No. 2528 Of 2013

S.P. Singh

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 23-01-2019

Acts Referred:

Prevention Of Corruption Act, 1987 — Section 7
Indian Railway Servants (Discipline And Appeal) Rules, 1968 — Rule 14(1)
Constitution Of India, 1950 — Article 311(1)

Citation : (2019) 01 CAT CK 0053

Hon'ble Judges : Nita Chowdhury, Member (A), S.N. Terdal, J

Bench : Division Bench

Advocate : Meenu Mainee, Shailendra Tiwary

Final Decision : Dismissed

Judgement

S.N. Terdal, J

1. Heard Mrs. Meenu Mainee, counsel for applicant and Mr.Shailendra Tiwary counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

"8.1 That this Hon'ble Tribunal may be pleased to allow the OA and to quash the impugned orders and direct the Respondents to reinstate the Applicant and give all consequential benefits, including the back wages with interest.

8.2 That this Hon'ble Tribunal may also be pleased to award any other or further relief which this Hon'ble Tribunal may deem fit and proper to the Applicant.

8.3 That the cost of the proceedings may kindly be granted in favour of the Applicant and against the Respondents."

3. This is a second round of litigation. The relevant facts of the case are that on 17.11.2008, the applicant was convicted under Section 7 of Prevention of

Corruption Act, 1987 and sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.5000/-. On the basis of the said conviction, a notice was issued to the applicant proposing to take action under Rule 14(1) of Indian Railway Servants (Discipline and Appeal) Rules, 1968. After considering all the grounds raised by the applicant in his written representation dated 22/30-1-2009, a penalty order removing him from service was passed vide order dated 19/23.02.2009. The said order of removal was passed by Senior Divisional Engineer. The appeal filed by the applicant was also dismissed by the appellate authority. The Revisional Authority also dismissed the revision petition. The applicant challenged the order passed by the disciplinary authority dated 19/23.02.2009 and subsequent orders by filing OA no.554/2011. This Tribunal vide order dated 18.01.2011 disposed of the OA with a direction to respondents to examine whether the Senior Divisional Engineer who passed the penalty order was competent authority to impose the penalty of removal as per the rules operating on the relevant date. The Tribunal also recorded that the same authority had issued show cause notice which was not challenged by the applicant on grounds of the competency. Para 4 of the said order dated 18.01.2011 is extracted below:

"7. However, from the material placed before us, we are not clear as to who is the appointing authority for an employee of the rank of Section Engineer when the impugned removal order was issued. The show cause notice was issued by the same SDE, Northern Railway, Ambala Cantt. and the applicant had not challenged this Memorandum on the ground that the SDE was not the competent authority. Neither as this ground been take even at the stage of filing Revision Petition, which is annexed at pages 81-83 of this OA. Nevertheless, competence being a legal ground could be taken at any time. In the circumstances, we remit this matter to the RA to examine with reference to the official records and determine the authority which granted him promotion to the rank of Section Engineer according to relevant Rules, determine who is the appointing authority or an equivalent officer who could impose the penalty of removal from service on the applicant. The RA should examine whether the Senior Divisional Engineer was the appointing authority, or was an officer of equivalent rank having the competence to impose the penalty of removal or not on the relevant date and pass a reasoned order according to Rules within a period of three months from the date of receipt of a copy of this order. The OA, is disposed of accordingly."

4. The applicant filed a Review Application No.44/2012 against the above said order dated 18.01.2011. This Tribunal again vide order dated 20.09.2012 disposed of review application no. 44/2012 reiterating the opinion expressed earlier holding that as to who is the competent authority was within the domain of the respondents to decide. As such this Tribunal disposed of the review application directing the respondents authorities to decide by a reasoned and speaking order as to who is the competent authority to pass an order of removal with regard to the applicant. The relevant para no.4 of the review order dated 20.09.2012 is extracted below:

"4. We have heard the proxy counsel for the Review Applicant as well as the Respondent's counsel. A perusal of the aforesaid order dated 18.01.2012 would reveal that we have not taken a decision as to who would be the competent authority in the matter. We had only reverted the case back to the revisionary authority to examine the case of the applicant with reference to the official records and determine the authority who granted him the promotion to the rank of Section Engineer, according to the relevant rules and also to determine who is the competent authority or an equal officer who could impose the penalty of removal of service upon the applicant. The revisionary authority was also expected to pass a reasoned order under intimation to the applicant. Probably the said authority has not passed the order because of the pendency of this Review Application. Now, since we are disposing of this Review Application, the respondents should pass appropriate orders as already ordered earlier vide our order dated 18.01.2012. Accordingly, this Review Application is disposed of."

Thus the above said orders dated 18.01.2011 and 20.09.2012 have attained finality.

5. In compliance with the above said orders of the Tribunal dated 18.01.2011 and 20.09.2012, the respondents have passed a detailed reasoned and speaking order dated 18.02.2013. From the perusal of the said order, it is crystal clear that the respondents have applied their mind and referring to the codal provision and the schedule of power, came to the conclusion that the Senior Divisional Engineer who passed the order of penalty of removal from service on the applicant vide order dated 19/23/2/2009 is the competent authority.

6. In this second round of litigation, the applicant has challenged all the above said orders of the disciplinary authority, appellate authority and the order dated 18.02.2013 passed in compliance with the directions issued by this Tribunal.

7. The counsel for the applicant vehemently and strenuously contended that the Senior Divisional Engineer is not the competent authority. She contended that only the appointing authority can pass an order of dismissal on the applicant in view of the provisions of Article 311 (1) of the Constitution of India which reads as under:

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed."

She has relied on the following judgments of Hon'ble Supreme Court and High Court regarding the interpretation of the above said Article 311(1) of the Constitution.

(1) Ram Krishan Prajapati Vs. State of U.P. (2000) 10 SCC 43).

(2) Union of India & Ors. Vs. Jagdish Prasad (W.P (C) 4847/2012)

This Tribunal is bound to follow the provisions of Article 311(1) of the Constitution and also the law laid down by the Hon'ble Supreme Court while interpreting the above said Article 311(1) of the Constitution.

But, however, in view of the facts and circumstances of this case that even in the earlier OA also this Tribunal held that it is for the respondents authorities to state as to who is the competent authority and indeed, as extracted above, they have directed the respondents to pass a reasoned and speaking order stating as to who is the competent authority to appoint and also to pass penalty order with respect to the applicant.

8. As elaborated above, the respondents have taken a decision quoting the codal provisions and the rules governing the railway servants. We are, therefore, of the view that the impugned orders do not require any interference.

9. Accordingly, OA is dismissed. No order as to costs.

10. This is a frivolous application. The applicant could not establish that the said Senior Divisional Engineer was not the competent authority in the first round of litigation. The orders dated 18.01.2011 and 20.09.2012 attained finality. Even after having been given a detailed and reasoned order, he has again approached this Tribunal raising the same issue once over again. In this OA also he has failed to establish that the Senior Divisional Engineer is not the competent authority. As such this OA is dismissed with exemplary cost of Rs.30,000/- which is to be paid to the CAT Bar Association Library.