

(2014) 09 AHC CK 0231

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 35277 of 2011

Union of India

APPELLANT

Vs

Shyam Kishore Tiwari

RESPONDENT

Date of Decision : 08-09-2014

Acts Referred:

Citation : (2014) 10 ADJ 45 : (2014) 107 ALR 802

Hon'ble Judges : Rakesh Tiwari, J; Ashok Pal Singh, J

Bench : Division Bench

Advocate : A.K. Gaur, Advocate for the Appellant; Sanjiv Singh and Namwar Singh, Advocate for the Respondent

Judgement

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Rakesh Tiwari, J.—Heard Sri A.K. Gaur, learned counsel for the petitioners, Sri Sanjiv Singh, learned Counsel for the respondent and perused the record. By means of present writ petition, the petitioners have prayed for issuance of a writ certiorari to quashing of the impugned order dated 25.4.2011 passed by the respondent No. 2 in O.A. No. 965 of 2005 Shyam Kishore Tiwari v. Union of India and others.

2. The brief facts of the case are that the respondent No. 1 Shyam Kishore Tewari while functioning as Office Superintendent Grade II was served a minor penalty charge-sheet dated 30.11.2003 under Rule 11 of Rules 1968. He submitted his reply to the charges on 31.7.2003. After considering the reply, the Disciplinary Authority imposed following penalty upon him by his letter/order dated 12.7.2004, which reads thus:

"FORMS OF ORDERS OF IMPOSITION OF PENALTY OF "REDUCTION TO LOWER STAGE IN SAME TIME SCALE OF PAY" UNDER RULE NO. 6(V) OF RAILWAY SERVANTS (D & A) RULES 1968,

I have carefully considered your explanation dated 7.1.2004 in reply to charge

memorandum No. P/PF/DAR/SKT/OS-II/SSE/S/JHS, District. 30.11.2003. I do not find your representation to be satisfactory and I hold you guilty of the articles as shown in the charge memorandum leveled against you.

I have decided to impose upon you the penalty of reduction to a stage in the same time scale you are, therefore reduced from the stage of Rs. 6900/- to the stage of Rs. 5500/- in the scale of Rs. 5500/9000 (R.S.R.P.) at present you are holding for period of Two Years from the date of this order issued with further directions that on expiry of the period, the reduction will not have the effect of postponing further increments.

Under rules 18 and 19 of the RS (D & A) Rules, 1968, an appeal against these orders lies to ADRM/JHS.

The appeal shall be preferred in your own name and under your own signature and presented within 45 days from the date you received the orders to the appellate authority sending a copy of the same to the undersigned.

The appeal shall be complete in itself, shall contain all material statements and arguments on which you rely and shall not contain any disrespectful or improper language.

Please acknowledge receipt.

Encl. Speaking Order.

(J.K. Jain) Sr. DEN/N/JHS (D.A.)

Copy-OS/P/PW section for information and necessary action.

ADEN/L/JHS for information

Sr. DEN/N/JHS."

3. The petitioner preferred an appeal challenging the order dated 12.7.2014 upon which the Appellate Authority vide its order dated 1.9.2004 instead of quashing the said order reduced the punishment from two years to one year, which reads thus:

Against the appellate order dated 1.9.2004 a revision petition under Rule 25 of Rules 1968 was preferred by the employee, which was dismissed by Chief Bridge Officer and Revisionary Authority by its order dated 17.12.2004 confirming the order passed by the Appellate Authority saying that the charge, salary payment orders to Shri Roshan Lal was made by the appellate authority for the period September, 2003 and October, 2003 inspite of the fact that Shri Rohan Lal was not working in the unit under him during the aforesaid period and that no reason was given by it in this regard. Aggrieved by the order, the employee preferred O.A. No. 965 of 2005, Shri S.K. Tiwari v. Union of India and others, before the Central Administrative Tribunal, Additional Bench, Allahabad (herein after referred to as the Tribunal") praying the following relief:

"A. To issue, a writ, order or direction in the nature of certiorari to quash the orders of disciplinary authority dated 12/7/2004 order of Appellate Authority dated 1/9/2004 and order of Revising Authority dated 17/12/2004.

B. To issue a writ, order or direction in nature of mandamus commanding the respondents to restore his pay at Rs. 6900/- and grant further increments on due dates and arrears of pay and allowances be paid to the application with all consequential benefits."

4. The petitioners in the counter reply therein denied the allegations contained in the O.A. submitting that as the reply to the charge-sheet dated 30.11.2003 was not found satisfactory by the Disciplinary Authority and who has rightly imposed penalty upon the employee, vide its order dated 12.7.2004, after following the prescribed procedure for imposing a minor penalty.

5. The Tribunal in its judgment dated 25.4.2011 while allowing the O.A. came to the conclusion in paragraph Nos. 9 to 12 that the penalty imposed upon the employee is a major penalty, which falls under Sub Rule V of Rule 6 of Rules 1968" and for imposing such a penalty, a departmental enquiry is a must, which had not been conducted in the instant case. The finding recorded by the Tribunal in paragraphs No. 9 to 12 is as follows:

"9. That the contents of para 4.3 of the original Application are matter of procedure, hence need no reply. However, it is submitted that the explanation/ reply dated 31.7.2003, which was given by the applicant regarding charges labeled against them through charge-sheet dated 30.11.2003 was not found satisfactory hence Disciplinary Authority has correctly imposed the penalty upon the applicant vide letter dated 12.7.2004 (A-J to the O.A.) as per Rules.

10. That the contents of para 4.4 and 4.5 of the Original Application have no relevancy with the present controversy hence need no reply. However, the chargesheet dated 30.11.2003 is not the consequence of the complaint.

11. That the contents of para 4.6 of the Original Application are not correct hence denied. In reply, it is submitted that the penalties are laid down under Rule G of Railway Servant Disciplinary and Appeal Rules, 1968 and the procedure for imposing the minor penalties is described under Rule 11(1)(b) of Railway Servant Disciplinary and Appeal Rules, 1968. It is crystal clear from the Rule 11(1)(b) that enquiry is not a mandatory provision for imposing the minor penalty. However, an oral enquiry can be done, which is entirely on the discretion of the Disciplinary Authority. The photo copy of the Rule G & 11(b) of the Railway Servant disciplinary and Appeal Rules, 1968 are annexed herewith and marked as Annexure C.A. I and C.A. II to this counter.

It is further submitted submitted that since penalty imposed upon the applicant is reduction of his pay to a lower stage in the same time scale of pay i.e. from the stage of Rs. 6900/- to the stage of Rs. 5500/- for a period of two years with non cumulative effect and is a minor penalty as described at serial No. iii(b)

under Rule 6 of Railway Servant Disciplinary and Appeal Rules, 1968, in which enquiry is not required. It is also clear from the bare perusal of order dated 12.7.2004 that Disciplinary Authority has imposed the penalty upon the applicant after going through the applicant's explanation in reply to charge memorandum dated 20.11.2003. Thus, there is nothing illegality with the applicant. The action taken by the disciplinary Authority vide letter dated 12.7.2004 is proper and as per Rules.

12. That in reply to the contents of para 4.7 of the Original Application it is submitted that the Appellate Authority has considered the applicant's appeal dated 23.8.2004 sympathetically and has disposed of the same vide order dated 1.9.2004 (A-2 to the OA) by reducing the period of penalty from two years to one years."

6. Accordingly, the Tribunal issued direction for compliance of its order within twelve weeks from the date of communication of the order.

7. The aforesaid judgment dated 25.4.2011 was challenged in the instant writ petition and was assailed on the grounds that its bare perusal would demonstrate that the same suffers from manifest error of law and jurisdiction as the Appellate Authority had set aside the penalty order passed by the Disciplinary Authority directing that the employee is entitled to restoration of pay being drawn by him at the time of imposition of penalty with annual increments as per rule that the judgment rendered by the Tribunal is in teeth of the provisions contained in Rules 1968, in as much as the penalty prescribed under Rule 6(iii)(b) i.e. reduction to the lower stage in the time scale of the pay for a period of not exceeding three years without cumulative effect is covered under minor penalty as such the competent authority could reduce the pay of the employee at any stage in the time scale of pay by three years in case of minor penalty. However, the aforesaid penalty have been amended vide railway Board's letter dated 10.12.2004 to "Reduction to a lower stage in time scale of pay by one stage for a period of not exceeding three years without cumulative effect."

8. Therefore, the order passed by the Disciplinary Authority dated 1.4.04 and appellate authority order dated 12.7.2004 having been passed prior to the issuance of Railway Servant (Discipline & Appeal) (Second Amendment) Rules 2004 notified on 10.12.2004, published in gazette of India Part II on 19.2.2005, were in accordance with the amended Rules.

9. Submission of learned counsel for the petitioner is that there is a flagrant miscarriage of justice by the Tribunal holding that the penalty imposed upon the respondent No. 1 falls under major penalty; that judgment and order passed by the Tribunal is violative of the provisions of Rules 6(iii)(b) of Railway Servant (Discipline & Appeal) (Second Amendment) Rules 2004 and is liable to be set aside.

10. Further submission of learned counsel for the petitioners is that as provided in Part III of "The Railway Servants (Discipline & Appeal) Rules, 1968" the

Penalties and Disciplinary Authorities, the petitioner vested with minor penalty as provided in Rules 6 Sub-Clause (V) of the aforesaid Rules 1968. The minor and major penalty referred to in the Rules for ready reference which is quoted here:

"PENALTIES AND DISCIPLINARY AUTHORITIES

6. Penalties

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Railway servant, namely:

Minor Penalties-

(i) Censure;

(ii) Withholding of his promotion for a specified period;

(iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders;

(iii-a) Withholding of the Privilege Passes or Privilege Ticket Orders or both;

(iii-b) Reduction to a lower stage in the time scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension;

(iv) Withholding of increments of pay for a specified period with further directions as to whether on the expiry of such period this will or will not have the effect of postponing the future increments of his pay;

Major Penalties

(v) Save as provided for in clause (iii-b) reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

(vi) Reduction to a lower the scale of pay, grade, post, or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the Railway" servant was reduced and his seniority and pay on such restoration to that grade, post or service;

(vii) Compulsory retirement;

(viii) Removal from service which shall not be a disqualification for future employment under the Government or Railway Administration;

(ix) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government or Railway Administration:

Provided that in cases of persons found guilty of any act or omission which resulted or would have, ordinarily, resulted in collision of Railway trains, one of

the penalties specified in clauses (viii) and (ix) shall, ordinarily, be imposed and in cases of passing Railway signals at danger, one of the penalties specified in clauses (v) to (ix) shall, ordinarily be imposed and where such penalty is not imposed, the reasons therefor shall be recorded in writing:

Provided further that in case of persons found guilty of possessing assets disproportionate to known sources of income or found guilty of having accepted or having obtained from any person any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act, one of the penalties specified in clauses (viii) or (ix) shall ordinarily be imposed and where such penalty is not imposed, the reasons therefor shall be recorded in writing."

11. Per contra learned counsel for the petitioner submits that from perusal of the order dated 1.1.2004 of reducing the petitioner to the lowest grade in pay scale with cumulative effects from Rs. 6900/- to Rs. 5500/- in the scale of Rs. 5500/9000 by two years, was an order imposing a major penalty and before passing it the appellants had not held any regular departmental inquiry in this matter, thus denying the reasonable opportunity of defence to the employee is violation of principle of natural justice and that subsequent Railway Board's letter dated 10.12.2004 to reduction to a lower stage in time by one stage without cumulative effect would not cure the defect that petitioner was charged for a major penalty and inquiry was conducted accordingly in this context, hence, the judgment passed by the Tribunal is liable to be upheld.

12. After hearing learned counsel for the parties and on perusal of record, Rules as well as orders passed by the Appellate and Revisional authorities, we are of the considered opinion that the Tribunal on the facts and circumstances as well as the material available on record rightly come to conclusion that the petitioner was visited with a major penalty without holding any regular departmental inquiry noting the charges. The reasoning given by the Tribunal in its paragraphs 9 to 11 of the impugned judgment is based on cogent reasons and sound principle of law.

13. It is a trite law that all rules, regulations and amendment in statutory rules are prospective in its operation and unless it is clearly specified that the rules, regulations/statute would be applicable; and the prospective declaration of law is a device innovated by the Apex Court to avoid reopening of settled issues and multiplicity of proceedings as has been held in Chandra Kishore Jha Vs. Mahavir Prasad and Others, .

14. We, therefore, find no illegality or infirmity in the impugned judgment of the Tribunal and affirm to same. For all the reasons stated above, the writ petition is dismissed. The petitioners are directed to comply with the orders of the Tribunal within a period of one month from the date of production of a certified copy of the present order. Respondent No. 1 shall be entitled to all consequential benefits of the order with regard to his service and retiral dues accordingly.