

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Writ Petition No.27571 of 2014

1. The Deputy Chief Engineer/
Engineering Workshop,
Southern Railway,
Arakkonam.
 2. The Chief Engineer (WS),
Works Branch Headquarters,
Southern Railway,
Chennai 600 003.
 3. The General Manager,
Headquarters Office,
Southern Railway,
Chennai 600 003.
 4. Union of India,
rep. By Secretary,
Railway Board,
Rail Bhavan,
New Delhi.
- ... Petitioners

Vs.

1. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai 600 104.
 2. G.Shesha Sai Prasad
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari, calling for the entire records of the 1st respondent in O.A.No.368 of 2011 including the order dated 03.04.2014 and quash the same.

For Petitioners : Mr.V.Radhakrishnan,
Senior Counsel
for Mr.V.G.Suresh Kumar
R1-Tribunal
For 2nd Respondent : M/s.Giridhar & Sai

O R D E R

(Order made by S.VAIDYANATHAN,J.)

Challenging the order dated 03.04.2014 passed by the 1st respondent/Tribunal in O.A.No.368 of 2011, whereby the order dated 09.12.2010 passed by the 3rd petitioner was set aside and the order passed by the 2nd petitioner was restored with a consequential direction to the petitioners herein to refund the sums deducted from the pay of the 2nd respondent/applicant along with interest at the rate applicable to the deposits in the General Provident Fund, the petitioners herein have come up with the present Writ Petition.

2. Heard the learned Senior Counsel appearing for the petitioners/Railways and the learned counsel appearing for the 2nd respondent/applicant.

3. According to the petitioners/Railways, the 2nd respondent/applicant, viz. G.Sesha Sai Prasad entered the services of the Railways as a Khalasi on 12.09.1980. After due promotions, he is presently working as a Senior Section Engineer with effect from 05.02.2010. On account of his delinquency, the 2nd respondent/applicant was issued with a charge memo on 17.01.2004, which reads thus:

"Shri. G.Sesha Sai Prasad, Junior Engineer/Engineering Workshop, Southern Railway, Arakkonam, while working as such has committed a gross misconduct in as much as he along with other witnessing official had certified a shortage of 80.250 MT in respect of Lot No.001510102 sold vide Delivery Order No.00/Sales/02-03/PL/036, dated 16.08.2002 despite the availability of the specified scrap in the nominated location.

Thus, Shri. G.Sesha Sai Prasad had exhibited lack of integrity, lack of devotion to duty and acted in such a manner unbecoming of a railway servant contravening Rule 3(1) (i), (ii) and (iii) of Railway Services (Conduct) Rules, 1966."

4. In terms of Rule 9 of the Discipline and Appeal Rules, an Enquiry Officer was nominated to enquire into the charges against the 2nd respondent/applicant and on 30.06.2005, the Enquiry Officer submitted his finding holding the charges against the 2nd respondent/applicant to be proved. Subsequently, the 1st petitioner herein, i.e. the Disciplinary Authority imposed a penalty on the 2nd respondent/applicant, of reduction in pay for a period of 37 months with effect from 01.10.2007 under penalty advice dated 18/22.09.2007. The appeal filed by the 2nd respondent/applicant before the 2nd petitioner was decided on 16.03.2009 and the 2nd petitioner set aside the penalty imposed on the 2nd respondent/applicant. In terms of the powers vested in him under Rule 25(5) of the Discipline and Appeal Rules, the 3rd petitioner herein took up suo-moto revision and served a show cause notice on 13.04.2010 on the 2nd respondent/applicant, which was subsequently withdrawn due to an error in designation of the charged employee and a fresh show cause notice was thereafter issued on 16.09.2010, which was duly served on the 2nd respondent/applicant. The reply furnished by the 2nd respondent on 30.09.2010 to the said show cause notice was considered and thereafter the 3rd petitioner restored the earlier penalty of reduction of pay for a period of 37 months with immediate effect on the 2nd respondent/applicant, under penalty advice dated 09.12.2010, with a provision for preferring an appeal against the penalty so imposed. Without preferring an appeal, the 2nd respondent/applicant initiated proceedings before the 1st respondent/Tribunal in O.A.No.368 of 2011. Aggrieved by the order passed by the Tribunal, the petitioners are before this Court by way of the present Writ Petition.

5. Learned Senior Counsel appearing for the petitioners/Railways would contend that the Tribunal had not considered the enquiry report, the order of the Disciplinary Authority or the order of the Revisional Authority in a proper perspective, but had chosen only to consider the order of the Appellate Authority, which purported to exonerate the 2nd respondent/applicant, thus going beyond the scope of the interference in a departmental enquiry. Further, it is his contention that the Tribunal failed to note that the 2nd respondent/applicant without exhausting the appellate remedy available to him under the Rules, had filed the Original application and that the Tribunal ought to have dismissed the Original Application on the said ground alone. In support of his case, learned Senior Counsel has relied on a decision of the Supreme Court in the case of State Bank of India and others v. Narendra Kumar Pandey reported in (2013) 2 SCC 740, wherein, it is held as under:

"25. The High Court, in our view, under Article 226 of the Constitution of India was not justified in interfering with the order of dismissal passed by the appointing authority after a full-fledged inquiry, especially when the Service Rules provide for an alternative remedy of appeal. It is a well acceptable principle of law that the High Court while exercising powers under Article 226 of the Constitution does not act as an appellate authority. Of course, its jurisdiction is circumscribed and confined to correct an error of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of the principles of natural justice. In State Bank of India and Others v. Ramesh Dinkar Punde (2006) 7 SCC 212, this Court held that the High Court cannot re-appreciate the evidence acting as a court of Appeal. We have, on facts, found that no procedural irregularity has been committed either by the Bank, presenting officer or the Inquiring Authority. Disciplinary proceedings were conducted strictly in accordance with the Service Rules."

6. Learned counsel appearing for the 2nd respondent/applicant would submit that the disciplinary authority himself had observed that the conduct of the applicant cannot be termed to be a misconduct as alleged, even though he proceeded to impose the penalty of reduction in pay.

7. The facts that the 2nd respondent/applicant was charge-sheeted and there was an enquiry, wherein the disciplinary authority found the 2nd respondent/applicant guilty of the charges and imposed the punishment of reduction of pay by one stage, which was interfered with by the appellate authority wherein the benefits have been restored to the 2nd respondent/applicant, are not disputed. It is also not in dispute that invoking the powers under Rule 25(5) of Railway Servants (Discipline & Appeal) Rules, 1968, the order was reviewed by the General Manager, Southern Railway, the 3rd petitioner herein and the punishment of reduction in pay by one stage without cumulative effect was imposed. A perusal of the Further Affidavit filed by the petitioners/Railways would show that disciplinary action was also initiated against the other officers who are the witnessing officials, along with the 2nd respondent/applicant, and penalty under D & AR action was imposed on them.

8. The 2nd respondent/applicant challenged the said order before the Central Administrative Tribunal, without resorting to the appellate remedy provided under the Rules. For the sake of convenience, relevant Rules under the Railway Servants (Discipline & Appeal) Rules, 1968 are extracted hereunder:

18. Orders against which appeal lies:
Subject to the provisions of Rule 17, a Railway servant may prefer an appeal against all or any of the following orders, namely:

- (i) an order of suspension made or deemed to have been made under Rule 5;
- (ii) an order imposing any of the penalties specified in Rule 6 whether made by the disciplinary authority or by an appellate or revising authority;
- (iii) an order enhancing any penalty imposed under Rule 6;

19. Appellate Authorities:

(1) A Railway servant, including a person who has ceased to be in Railway service, may prefer an appeal against all or any of the orders specified in Rule 18 to the authority specified in this behalf either in the Schedules or, where no such authority is specified-

(i) where a penalty is imposed by a revising authority under Rule 25, to the authority to which it is immediately subordinate;

(ii) where a penalty is enhanced, either in appeal or on revision, to the authority to which the authority making the order is immediately subordinate;

25. Revision:

(1) Notwithstanding anything contained in these rules -

- (i) the President, or
- (ii) the Railway Board, or

(iii) the General Manager of a Railway Administration or an authority of that status in the case of a Railway servant serving under his control, or

(iv) the appellate authority not below the rank of a Divisional Railway Manager in cases where no appeal has been preferred, or

(v) any other authority not below the rank of Deputy Head of Department in the case of a Railway servant serving under his control - may at any time, either on his or its own motion or otherwise, call for the records of any inquiry and revise any order made under these rules or under the rules repealed by Rule 29, after consultation with the Commission, where such consultation is necessary.

(5) No action under this Rule shall be initiated by -

(a) an appellate authority other than the President; or

(b) the revising authorities mentioned in item (v) of sub rule (1) -

after more than six months from the date of the order to be revised in cases where it is proposed to impose or enhance a penalty or modify the order to the detriment of the Railway servant; or more than one year after the date of the order to be revised in cases where it is proposed to reduce or cancel the penalty imposed or modify the order in favour of the Railway servant:

Provided that when revision is undertaken by the Railway Board or the General Manager of a Zonal Railway or an authority of the status of a General Manager in any other Railway Unit or Administration when they are higher than the Appellate Authority, and by the President even when he is the appellate authority, this can be done without restriction of any time limit.

The above Rules makes it very clear that the 2nd respondent/applicant has got an alternative statutory appellate remedy, which he has not availed.

9. It is the contention of the 2nd respondent/applicant that alternative remedy is not a bar for this Court to interfere with the punishment imposed on him and that this Court can look into the facts and interfere with the order impugned, as Railways are amenable to the jurisdiction of this Court and at this point of time, for the incident of the year 2004, he need not undergo trauma again. The 2nd respondent/applicant also drew the attention of this Court to the defect in the enquiry, wherein, the request of the 2nd respondent/applicant seeking for two additional documents, was rejected by the 1st petitioner by an order dated 28.09.2004 on the ground that they are not at all relevant. But in the Enquiry Report, those documents have been referred to by the Enquiry Officer. It has been vehemently contended by the 2nd respondent/applicant that there was no shortage of scrap at all as contended in the charge sheet and the penalty of reduction of pay band by one stage for a period of 37 months without cumulative effect, has caused much hardship to him.

10. It is submitted by the learned Senior Counsel appearing for the Railways that the 2nd respondent/applicant has not been charge-sheeted for shortage of scrap, but for his negligence in duty. Though it is contended by the learned counsel for the 2nd respondent/applicant that the 2nd respondent/applicant has not taken a plea that he has got an alternative remedy to challenge the order passed under Rule 25 and the petitioners/Railways also have not addressed the arguments on that point, the same cannot be accepted, as the said contention raised by the counsel for the Railways has been reflected in paragraph 6 of the order of the Tribunal, wherein, it has been specifically mentioned that though the 2nd respondent/applicant has got an alternative remedy, it has not been availed by him.

11. The decision relied on by the learned counsel for the 2nd respondent/applicant in the case of J.Jason Joseph v. Union of India (W.P.No.37607 of 2007) will not be applicable to the facts of this case, as in that case, Rule 25 was considered and that aggrieved by the order of the revisional authority, an appeal was preferred and it was rejected. Against the same, the petitioner had approached the Central Administrative Tribunal and the Court had also held that there was no independent decision by the revisional authority to reopen the proceedings exercising the revisional jurisdiction.

12. It is seen that the appellate authority, has issued a well reasoned and speaking order, exonerating the 2nd respondent/applicant and setting aside the order of penalty and the revisional authority has invoked powers under Rule 25(5) of Railway Servants (D & A) Rules, for suo-moto revision. Though, it is contended that the revisional authority has not given detailed reasons in his order, the following paragraphs of the

order dated 09.12.2010 passed by the 3rd respondent/revisional authority would make it very clear that proper reasoning has been given.

"It is seen from the whole issue, that the purchaser has been given liberty to resort to segregate and selective loading to enjoy cost advantage, even though the contract is for "as is where is basis" and to abandon the balance scrap material, predominantly consisting of some slag and clinkers, duly providing an opportunity to the purchaser to claim that there was no balance scrap materials left over, thereby facilitating him to claim shortage on the above grounds. Over and above, 4.095 MTs of scrap was delivered on 10.04.2003, which clearly indicates the lack of proper supervision and vigil in the execution of the delivery.

In view of the gravity of the irregularity committed by you, I impose a penalty of reduction by one stage from Rs.16,950/- to Rs.16,330/- in Pay Band Rs.9,300-34,800 with Grade Pay Rs.4,600/- for a period of 37 months with immediate effect without the effect of postponing your increments and with no adverse effect on your pension.

The above penalty is imposed by me and the Appellate Authority is Member Engineering/Railway Board. Appeal, if any thereon, may be submitted through proper channel within 45 days from the date of receipt of this advice.

13. This Court is of the view that there need not be any elaborate reasoning. But, the reasoning given by the revisional authority is to the point, where it has been clearly stated that there is lack of proper supervision and vigil in the execution of the delivery by the 2nd respondent/applicant. That apart, the Tribunal proceeded on the basis that there is discrepancy with regard to the shortage of scraps in Metric Tonnes. Whereas, the charge is that the 2nd respondent/applicant did not supervise the work and there was no proper vigil in the execution of delivery.

14. Even though the Tribunal has rightly discussed that Courts are not supposed to interfere with the orders passed by

the disciplinary authority/appellate authority/revisional authority except in cases where serious procedural violations and violation of principles of natural justice are brought out, the Tribunal has not answered as to why the appellate remedy available to the 2nd respondent/applicant has not been availed by him. The grievance of the 2nd respondent/applicant that he has not been given any opportunity to proceed with the enquiry before the appellate authority has to be redressed only before the appellate authority, as this Court cannot re-appreciate the evidence as a Court of appeal. In other words, this Court is entitled to correct the error of law or procedural error.

15. Therefore, we find much force in the contentions raised on the side of the petitioners/Railways. In view of the same, this Writ Petition is disposed of on the following terms:

(i) the order dated 03.04.2014 passed by the 1st respondent/Tribunal in O.A.No.368 of 2011 is set aside and the matter is remitted to the appellate authority;

(ii) the applicant in O.A.No.368 of 2011, who is the 2nd respondent herein is entitled to prefer an appeal within a period of two weeks from the date of receipt of a copy of this order;

(iii) on receipt of the appeal preferred by the 2nd respondent/applicant, the appellate authority shall consider the same and pass appropriate orders within a period of two months.

No costs. Consequently, connected M.P.No.1 of 2014 is closed.

Sd/-

Assistant Registrar(CS VI)

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सत्यमेव जयते
Sub Assistant Registrar

To :

1.The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai 600 104.

2.The Deputy Chief Engineer,
Engineering Workshop,
Southern Railway,
Arakkonam.

3.The Chief Engineer (WS)
Works Branch Head Quarters,
Southern Railway,
Chennai 600 003.

4.The General Manager,
Headquarters Office,
Southern Railway,
Chennai-600 003.

5.The Secretary,
Union of India,
Railway Board,
Rail Bhavan,
New Delhi.

+1cc to Mr.V.G.Suresh Kumar, Advocate, S.R.No.7351
+1cc to M/S.Giridhar & Sai, Advocate, S.R.No.7068

W.P.No.27571 of 2014

msm (CO)
srg (17/02/2016)



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