

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 21.02.2017

Delivered on: 28-03.2017

CORAM

THE HONOURABLE MR.JUSTICE K.K SASIDHARAN

and

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.5438 of 2015

D.Selvaraj .. Petitioner

versus

- 1 The Union of India
rep. by the General Manager,
Southern Railway,
Park Town, Chennai-3
- 2 The Chief Passenger
and Transportation Manager,
Southern Railway,
Park Town, Chennai-3
- 3 The Additional Divisional
Railway Manager,
Madurai Division Southern Railway,
Madurai 625 016
- 4 The Senior Divisional
Operations Manager
Madurai Division,
Southern Railway,
Madurai 625 016.
- 5 The Registrar
The Central Administrative Tribunal,
Madras Bench, Chennai. .. Respondents

Prayer:

Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order of the

5th respondent made in O.A.No.1129 of 2011 dated 30.7.2014 and to quash the same and further to direct the respondents 1 to 4 to extend all the consequential service benefits

For Petitioner : Mr. L.Chandrakumar

For Respondents : Ms.Bhavani Subramanian

ORDER

This Writ Petition has been filed against the order passed by the Central Administrative Tribunal, Madras Bench (in short, 'the Tribunal') dated 30.7.2014 in O.A.No.1129 of 2011 dismissing the application, filed by the petitioner herein.

2. The petitioner herein, has approached the learned Tribunal, seeking the following relief:

"To call for the records related to the impugned orders in No.P(A) 94/2010/912 dated 09.05.2011, No.P(A) 94/2010/912 dated 21.06.2010, No.U/Z.451/65 dated 09.10.2009 and No.U/Z.451/65 dated 18.07.2007 passed by the 1st, 2nd and 4th respondents and to quash the same and further to direct the respondents to do the necessary to arrange to pay the consequential benefits and to pass such other order/orders as this Hon'ble Tribunal may deem fit and proper and thus to render justice."

3. While the petitioner was working as Station Master Gr.III, he was issued with minor penalty charge memorandum dated 16.02.2004 in respect of certain acts of misconduct. The petitioner has submitted his explanation on 12.03.2004, denying the charges. Thereafter, no further action was taken against the petitioner and in the meanwhile, the petitioner was promoted to the post of Station Master Gr.II on 01.11.2003. After a lapse of three years, the Disciplinary Authority issued a major penalty charge memorandum dated 18.7.2007 and an inquiry was held into the charges. On conclusion of the inquiry, the Disciplinary authority imposed penalty of reduction of pay in the following manner.

"Pay Rs.16110-GP Rs.4200 in the pay band of Rs.9300-34800 is reduced and fixed at Rs.14930+GP Rs.4200 for a period of 12 months with cumulative effect, with effect from 01.11.2008. This will have the effect of postponing further increments of pay".

4. Aggrieved by the above order of penalty, the petitioner

preferred an appeal on 29.11.2009 and the Appellate Authority has modified the penalty to the effect that 'reduction of pay by two stages for 12 months with cumulative effect' keeping in view of his future service and gravity of offence involved.

5. As against the order of the Appellate Authority, modifying the penalty, the petitioner filed a revision on 11.08.2010, which was also dismissed, confirming the order of the Appellate Authority. As against the said orders, the petitioner approached the Tribunal.

6. Before the Tribunal, it was contended on behalf of the petitioner that for the same act of alleged misconduct, the petitioner was proceeded twice, one by way of minor penalty proceedings which was dropped midway and another by way of major penalty proceedings which culminated into imposition of the impugned penalty. However, the said contention was sought to be refuted by the respondents that the charges which formed minor penalty proceedings and the major penalty proceedings were different and the action initiated by the respondents, was well in order and the same cannot be faulted with.

7. Moreover, on behalf of the petitioner, it was contended that the Disciplinary Authority has relied upon the evidence let in the preliminary inquiry, which is not permissible under the departmental proceedings, particularly when a regular inquiry was initiated and inquired into. On behalf of the petitioner a decision was cited which rendered by the Hon'ble Supreme Court in SLP (Civil) No.2668 of 2005 (Nirmala J.Jhala versus State of Gujarat and another). It was also contended that proper procedure was not followed in the conduct of inquiry as the petitioner was not afforded with full opportunity by furnishing all the documents relied upon by the department and there was also no proper appreciation of evidence which was available in favour of the petitioner. All the contentions which were raised on behalf of the petitioner, were refuted by the respondents.

8. It is to be seen that originally, the Inquiry Officer submitted his report, holding that the charge No.1 was not proved and the second charge was proved. It is the case of the petitioner that once the main charge being not proved, the other remaining charge cannot stand on its own. However, the Disciplinary Authority disagreed with the findings of the Inquiry Officer in respect of the first charge and recorded his own disagreement note and put the petitioner on notice for his representation and only after getting his explanation, the impugned penalty order came to be passed.

9. Be that as it may, the learned Tribunal, after taking note of the rival submissions, dismissed the Original Application after recording the evidence against the petitioner. The learned Tribunal found that there was no infirmity in the order passed by the Appellate Authority and the Revisional Authority. As against the said order passed by the Tribunal, the present Writ Petition has been filed.

10. Shri L.Chandrakumar, learned counsel appearing for the petitioner strenuously contended that the petitioner has been proceeded with the disciplinary proceedings, twice for the same alleged act of misconduct. Moreover, when the Inquiry Officer himself has held that the main charge was not proved and there were no proper and legally acceptable reasons for recording the disagreement, the impugned penalty inflicted by the Appellate Authority, cannot be sustained in law. He also pleaded that the penalty being with cumulative effect, which will have far reaching financial implications on the petitioner which would continue till his life time. The learned counsel for the petitioner reiterated the submissions which were put forth before the learned Tribunal.

11. Considering the submissions of the learned counsel appearing for the petitioner, we find that there is considerable force in the contentions put forth by the learned counsel for the petitioner. The main charge which was held to be not proved after a thorough inquiry, the subsequent action by the Disciplinary Authority overturning the finding of the Inquiry Officer on the basis of record of the disagreement, in our opinion, cannot be sustained. It could be seen from the inquiry report, that a detailed analysis has been given by the Inquiry Officer for arriving at his conclusion. Such analysis, unless the same is found to be perverse and lopsided, the same cannot be differed with and unless there are strong contra evidence available on record to reach different conclusion. In the instant case, there appears to be no strong case available in disagreement, for coming to a different conclusion in respect of the main charge is concerned.

12. In the above circumstances, we gave our anxious consideration to the pleadings and the materials available on record and in view of the fact that the first charge was not proved as against the petitioner, we are of the view that ends of justice would be met if the impugned order dated 21.6.2010 is modified as one without cumulative effect.

13. Accordingly, the impugned penalty imposed by the Appellate Authority, i.e. 'reduction of pay by one stage for 12 months with cumulative effect' is hereby modified to that of

'reduction of pay by one stage for 12 months without cumulative effect'. We direct the respondents to pass consequential orders on the penalty now modified, within a period of two months from the date of receipt of a copy of this order.

The Writ Petition is disposed of on the above terms. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

suk

To

1. The General Manager,
The Union of India
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2. The Chief Passenger
and Transportation Manager,
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3. The Additional Divisional
Railway Manager,
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4. The Senior Divisional
Operations Manager
Madurai Division,
Southern Railway,
Madurai 625 016.
5. The Registrar
The Central Administrative Tribunal,
Madras Bench, Chennai.

+1cc to Mr.Chandrakumar, Advocate, S.R.No.19132

+1cc to Ms.Bhavani Subrayan, Standing Counsel, S.R.No.19268

W.P.No.5438 of 2015

SJ(CO)
RS(02/05/2017)