THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION NO.38738 OF 2018

ORDER: (per SK,J)

The petitioner is the unsuccessful applicant in OA/021/00941/2015 on the file of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad. His grievance therein was with regard to the show-cause notice 07.07.2015 issued by the Additional Divisional Railway Manager (Operations), Secunderabad Division, South Central Railway, the appellate authority, proposing to enhance the penalty imposed upon him from 'reduction of pay by one stage for a period of twelve months with recurring effect' to that of 'removal from service'. By order dated 09.10.2018, the Tribunal dismissed the O.A. Aggrieved thereby, he is before this Court.

The Senior Divisional Commercial Manager, Secunderabad Division, South Central Railway, the disciplinary authority, had earlier issued Charge Memo dated 15.10.2012 for imposition of a major penalty upon the petitioner enumerating three Articles of Charge. An enquiry was conducted by the duly appointed enquiry officer who submitted his report dated 05.08.2014 holding that the charges framed under Articles I and III were proved. By order dated 30.10.2014, the disciplinary authority confirmed the findings of the enquiry officer and imposed the penalty of reduction of pay by one stage, i.e., from Rs.18,020 to Rs.17,490/- in the pay band of Rs.9,300-Rs.34,800 for a period of twelve months with recurring effect. Aggrieved by the imposition of this penalty, the petitioner preferred an appeal on 13.12.2014 to the appellate authority, *viz.,* the Additional Divisional Railway Manager (Operations), Secunderabad

Division, South Central Railway. During the course of this appeal, the impugned show-cause notice dated 07.07.2015 was issued by the appellate authority proposing to enhance the penalty imposed upon the petitioner. Thereby, the appellate authority called upon the petitioner to submit his representation, if any, as against the proposed enhancement within 15 days from the date of receipt of the notice but the petitioner approached the Central Administrative Tribunal without doing so.

Perusal of Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968 (*for brevity,* 'the Rules of 1968'), indicates that the power of enhancement of the punishment imposed vests in the appellate authority thereunder. This Rule reads as under:

> '22. Consideration of appeal –
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> (1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 5 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.
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> (2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider :-
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> (a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
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> (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
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> (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders:-
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> (i) confirming, enhancing, reducing or setting aside the penalty; or
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> (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case:
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> Provided that -
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> (i) the Commission shall be consulted in all cases where such consultation is necessary;
>
> (ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an inquiry under Rule 9

has not already been held in the case, the appellate authority shall, subject to the provisions of Rule 14, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry, make such orders as it may deem fit;

(iii) if the enhanced penalty which the appellate authority proposes to impose, is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an inquiry under Rule 9 has already been held in the case, the appellate authority shall, make such orders as it may deem fit;

(iv) subject to the provisions of Rule 14, the appellate authority shall –

(a) where the enhanced penalty which the appellate authority proposes to impose, is the one specified in clause (iv) of Rule 6 and falls within the scope of the provisions contained in sub-rule(2) of Rule 11; and

(b) where an inquiry in the manner laid down in Rule 9, has not already been held in the case, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry, pass such orders as it may deem fit; and

(v) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 11, of making a representation against such enhanced penalty.

(3) In an appeal against any other order specified in Rule 18, the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable.'

Though Sri T.Prasanna Kumar, learned counsel for the petitioner, would contend that the power of enhancement can only be exercised by the appellate authority after disposal of the appeal filed by the petitioner on merits, we are not persuaded to agree. The rule is titled 'Consideration of appeal' and the appellate authority necessarily has to exercise the power of enhancement vesting in him under Rule 22(2)(c) while dealing with the appeal. This aspect is also clarified by the fact that *Proviso* (v) to Rule 22(2)(c) specifically states that no order imposing an enhanced penalty should be made unless the 'appellant' has been given a

reasonable opportunity, as far as may be, in accordance with Rule 11 by making a representation against the proposed enhancement.

We therefore find no merit in the contention of Sri T.Prasanna Kumar, learned counsel, that the appellate authority could not have issued the show-cause notice proposing enhancement of the penalty during the course of the petitioner's appeal. On the contrary, such a show-cause notice necessarily had to be issued by the appellate authority during the course of the appeal proceedings and not thereafter.

As the petitioner failed to respond to the show-cause notice dated 07.07.2015, we are of the opinion that the interest of justice would be sufficiently served by permitting him to do so at least at this stage.

The writ petition is accordingly disposed of permitting the petitioner to submit his representation, if any, to the show-cause notice dated 07.07.2015 issued by the Additional Divisional Railway Manager (Operations), Secunderabad Division, South Central Railway, within 15 days from the date of receipt of a copy of this order. Needless to state, the appellate authority is bound to abide by the procedure prescribed in Rule 22 of the Rules of 1968.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

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SANJAY KUMAR,J

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M.GANGA RAO,J

Date:01.11.2018
Note:
Furnish C.C. in three days.
(B/o) GJ