

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No. E(D&A) 2003/RG6-25

New Delhi, 27/11/2007

The General Manager(P)
All Indian Railways and Production Units etc.
(As per standard list).

Sub: Review of an order by the same authority which had passed original order in the case and conduct of such review during the pendency of the case before a court of law regarding.

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A case has come to the notice of this Ministry where the disciplinary proceedings had been instituted against a Railway servant on the charge of unauthorized absence from duty. On consideration of the case, the disciplinary authority imposed a penalty which was upheld in appeal. An O.A. (No. 14/2001) was filed by the Railway servant concerned before CAT, Jabalpur. It was then noticed that while the charge sheet was issued for unauthorized absence, the penalty has been imposed on the charge of leaving Headquarters without permission. Since penalty was imposed on a charge other than that mentioned in the chargesheet, the disciplinary authority passed fresh orders in the case bringing out the correct charge. The penalty imposed vide fresh orders was later modified by the appellate authority.

2. The Hon'ble Tribunal vide orders dated 6.5.2003 allowed the O.A. and set aside the orders passed in the disciplinary case of the applicant with consequential benefits to him. The Hon'ble Tribunal inter alia held that :

- i) There is no evidence that the applicant was unauthorisedly absent because leave for 2 days was sanctioned to him by the Station Master and further period was covered by medical certificates issued by railway medical officer;
- ii) The penalty was imposed on the basis of charges foreign to the charge sheet;
- iii) The disciplinary authority was not competent to review its own orders and as such the subsequent orders of the disciplinary authority are without jurisdiction;
- iv) Revised order was passed during pendency of the O.A. and was thus not valid.

3. In this case, the Railway servant concerned had been sanctioned leave for two days only but he remained absent for about 3-1/2 months without intimation. At the time of joining, he produced medical certificate from railway doctor. Still the fact remains that he had not given any intimation about his illness and thus remained unauthorisedly absent. The findings of CAT to the extent that it was a case of no evidence thus were not correct. The disciplinary authority passed a cryptic order and to compound the matter also cited in the penalty order the allegations which were different from the charges. He should have been careful and should have put the case records in proper perspective while passing orders. The appellate authority's orders in the case were also vague in nature. This apparently led the Hon'ble Tribunal to conclude that it was a case of no evidence which could have easily been avoided by passing a reasoned and speaking order. Utmost care should therefore be exercised while passing final orders in the disciplinary cases. These orders should also be self-explained, reasoned and speaking as has already been emphasized on a number of occasions in the past. In any case, printed proforma should not be used by the Disciplinary/Appellate/Revisionary Authorities while passing final orders in the disciplinary case.

4. The observation made by CAT, Jabalpur in their orders dated 6.5.2003 in O.A. 14/2001 about passing of order when the matter is sub-judice has been considered taking into account the legal advice in the matter. It is clarified that once an order has been challenged before a court of law it should not be interfered with during the pendency of the case. The impugned order(s) has to be taken as it is and nothing can be reduced or added to it. In such situation, any proposed fresh order should be passed only with the leave of the court.

5. As regards review of orders, it is clarified that an order, if found to be containing some patent error, can be reviewed by the same authority who had passed the original order. Some of the circumstances in which the orders can be reviewed and fresh orders passed are given below:

- i) where the original order was not in conformity with the provisions of Rule 6 of RS(D&A) Rules, 1968 e.g. the penalty of withholding of increments was imposed on a Railway servant who was at the maximum of the scale and could not draw any further increments; or the penalty of withholding of promotion or reduction to a lower stage in the time scale of pay was imposed on permanent basis whereas as per rules these penalties can be imposed for a specified period only. In such cases an effective penalty may be imposed by means of a fresh order by the same authority who had originally passed those orders in the disciplinary case;
- ii) where the authority who passed the order was not competent to impose the penalty. In such case the punishing authority will withdraw its orders and refer the papers to the authority which is competent to impose the proposed penalty;
- iii) where there is a patent error in the original order e.g. the date or reference number or name/designation etc. was shown incorrectly in the order. Fresh orders may be passed by the same authority to correct these inaccuracies in the original order.

It may please be noted that even in the circumstances cited above, an order which has been challenged before a court of law can be reviewed only with the permission of the court.

6. This should be given wide publicity.

Please acknowledge receipt.

Sd/-
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Railway Board