

Central Administrative Tribunal
Principal Bench

(10)

O.A. No.2885/2002

New Delhi this the 23rd day of April, 2003

Hon'ble Shri Shanker Raju, Member (J)

Shri Dinesh Kumar Bhatnagar
Helper Grade-I
Signal Workshop
Northern Railway
Ghaziabad.

-Applicant

(By Advocate: Ms. Meenu Maine, proxy for
Shri B.S. Maine)

Versus

Union of India: Through

1. The General Manager
Northern Railway
Baroda House,
New Delhi
2. The Chief Workshop Manager
Signal Workshop
Ghaziabad.
3. The Sr. Section Engineer (Erecting)
Signal Workshop
Northern Railway,
Ghaziabad.

-Respondents

(By Advocate: Shri R.L. Dhawan)

ORDER (Oral)

Applicant impugns respondents' order dated 22.8.2001, imposing upon him a minor penalty of withholding of six sets of passes as well as appellate order dated 18.6.2002, maintaining the punishment.

2. While working as helper khalasi applicant was served upon a minor penalty chargesheet on 16.8.2001 for the allegations that on 16.8.2001 he has refused to follow the direction of his superior for cutting sheets. In pursuance of the chargesheet applicant by letter dated 27.8.2001 applicant denied the charges and has requested for furnishing him a copy of Rule 3 (2) and

Rule 3 (3) of Railway Service (Conduct) Rules, 1966 reserving his right to file a detailed reply to the memorandum.

3. By an order dated 22.8.2001, disciplinary authority without rejecting the request of applicant for supply of documents and without further affording time to enable applicant to file reply on merits imposed upon him the aforesaid minor punishment.

4. By a letter dated 27.8.2001 addressed to the appellate authority applicant apprised about these facts and sought withdrawal of the punishment order. Ultimately he preferred an appeal against the order, which stood rejected, giving rise to the present OA.

5. Learned counsel for applicant Ms. Minu Mainee, contended that applicant has been deprived of a reasonable opportunity in so far as documents have been denied and without waiting for his reply on merits and without rejecting his request for supply of documents imposed upon him a penalty. According to learned counsel by non-consideration of his reply on merits applicant has been greatly prejudiced.

6. It is further stated that both, disciplinary as well as appellate authority have passed non-speaking orders, containing no reasons showing non-application of mind in violation of Board's letter.

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7. On the other hand, respondents' counsel Sh. R.L. Dhawan, took a preliminary objection of approach of applicant to this Tribunal with unclean hands. It is stated that although applicant has filed his representation on 28.2.2001, yet the same has not been disclosed and by referring to para 4.3 of the OA it is contended that therein an averment has been made that applicant has not been afforded opportunity to file reply.

8. On merits also it is stated that applicant has refused to comply with the directions which stood proved from the material and in absence of any defence adduced the charge stood proved and for which the punishment is commensurate and is in accordance with rules. In this backdrop it is stated that the report submitted by Junior Engineer containing the signature of two independent witnesses seals the issue and it is established beyond doubt that applicant has misconducted.

9. I have carefully considered the rival contentions of the parties and perused the material on record.

10. In so far as approach of applicant with unclean hands is concerned, the objection is over-ruled as applicant in para 4.3 contended that he was not accorded an opportunity to file reply which pertains to his reply on merits, as in his appeal preferred on 27.8.2001 he has highlighted the issue that the punishment has been imposed without passing any order on

his application dated 27.8.2001 and without taking into consideration the reply on merits which could not be filed.

11. As applicant has requested the authorities to furnish him the documents, even these documents were available in the form of Discipline Rules, yet it was incumbent upon the disciplinary authority to have responded to this application wherein applicant has specifically pointed out and reserved his right to file reply on merits. Disciplinary authority hastily acted upon the aforesaid application and immediately on receipt passed the order of penalty. The aforesaid reply was not a reply on merits where applicant could not put-forth his contentions in defence. As the penalty has been imposed without taking into account the merit reply certainly it has prejudiced applicant, vitiating the impugned orders. Denial of documents as well failure to communicate rejection of request for supply of documents and as per Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968 on receipt of minor penalty charge-sheet the disciplinary authority is to ensure that the delinquent official gets an opportunity to effectively defend the charges by way of making a representation. The aforesaid procedure adopted by the disciplinary authority is neither fair nor in consonance with the principles of natural justice. From the perusal of the orders passed by the disciplinary as well as appellate authority the same show non-application of mind, as no reasons have been assigned to arrive at a finding of guilt against applicant and upholding the punishment. Being a

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quasi-judicial authority and more particularly in the light of Board's letter dated 17.2.86 in a case of minor penalty when no enquiry has been held, disciplinary authority is mandated while passing orders to communicate brief reasons for the final decision regarding guilt of applicant. As the same has not been done the orders are vitiated.

12. In the result, for the foregoing reasons, OA is partly allowed. Impugned order of penalty as well as appellate order are quashed and set aside. However, this shall not preclude respondents from resuming the proceedings from the stage of affording applicant an opportunity to file reply on merits and thereafter to take a final decision. Aforesaid exercise shall be completed within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

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