



**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK,**

ORDER SHEET

COURT NO. : 1

31/01/2020

O.A./260/764/2019

D MOHAN RAO
-V/S-
M/O RAILWAYS

ITEM NO:4

FOR APPLICANTS(S) Adv. : Mr. S. B. Jena

FOR RESPONDENTS(S) Adv.: Mr. N. K. Singh

Notes of The Registry	Order of The Tribunal
	<p>Heard Learned counsels for the applicant and respondents.</p> <p>2. Learned Counsel for the applicant submitted that the applicant in this case was charge-sheeted for misuse of the privilege passes as per the details in the charge-sheet dated 28.11.2017 (Annexure-A/1 of the OA). After receipt of the charge-sheet the applicant had submitted his reply dated 12.12.2017 (Annexure-A/2) stating that because of his personal difficulties, due to death of his brother who was suffering from blood cancer and for medical treatment of his brother and wife, he could not travel and the fact of cancellation of the tickets/passes had escaped to his notice. He stated that because of the mental agony, the applicant could not cancel the passes issued to him and he had no intention to misuse the Railway passes. Although it was his mistake, but the same was not mala fide. The applicant in his reply appealed to be forgiven for his mistake. But the Disciplinary Authority passed an order dated 19.01.2018 (Annexure-A/3) imposing major penalty of reduction from the present post of CRS-I to the lower post of FCRC in level 5 of the 7th PC and the</p>

pay is fixed of the minimum of Rs.29,200/- for a period of five years with loss of seniority with further direction that on completion of the punishment period, he will progress in the same line from the date of his restoration. It was further submitted that no enquiry was conducted before imposition of the major penalty. The applicant filed an appeal dated 02.03.2018 (Annexure-A/4) which was considered by the Appellate authority i.e., Respondent No.4 and the appeal was rejected vide order dated 11.12.2018 (Annexure-A/5) with the following crisp order:-

"I have gone through the representation of the CO and keeping in view the facts and circumstances and found no new facts or reasons brought to light. I decide to uphold the punishment imposed by the Disciplinary Authority and Pecuniary loss if any may also be recovered."

3. Thereafter, the applicant filed a revision application dated 27.01.2019 which was also rejected by the Revisionary Authority vide his order dated 16.04.2019 (Annexure-A/7).

4. Learned counsel for the applicant also submitted that major penalty has been imposed without conducting the inquiry treating the case to be an admission by the applicant to the charge-sheet and the punishment is highly disproportionate because of the explanations of the applicant in his written submission and he prays for grant of the interim relief to stay the punishment order pending disposal of the O.A.

5. Learned counsel for the Respondents vehemently opposed the prayer for interim relief stating that the rules have been followed by the authorities in this

case and he stressed limited role of judicial review in disciplinary proceedings. He submitted that notice be issued for filing of Counter.

6. Having regard to the submissions made by the learned counsels for both the parties, it is noticed that the impugned order of the Appellate Authority dated 11.12.2018 (Annexure-A/5) is a cryptic and non speaking order indicating no reason for the findings, which violates the stipulations in para 19(d) of the Master Circular No. 67 of the Railway Board, which states as under:-

i) whether the procedure was followed correctly and there has been no failure of justice;

ii) Whether the Disciplinary Authority's findings are based on the evidence taken on record during the inquiry; and

iii) Whether the quantum of penalty imposed is commensurate to the gravity of offence.

After considering the above points the case should, if necessary, be remitted back to the Disciplinary Authority with directions; otherwise the Appellate Authority should pass reasoned, speaking orders, confirming, enhancing, reducing or setting aside the penalty. The orders of the Appellate Authority should be signed by the authority himself and not on his behalf.

[Rule 22(2) of the RS (D&A) Rules and Board's letter No. E(D&A)78/RG-6-11 dt. 3.3.78]"

7. In the case of **Ram Chander vs. Union of India & others, (1986) 2 SLR 608**, Hon'ble Apex Court while examining the manner of consideration of appeal by Appellate Authority in case of a Railway servant, has held as under:-

"Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and give a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fairplay and justice also require that such a personal hearing should be given."

8. On an examination of the order of the Appellate Authority at Annexure-A/5 of the OA and applying the position of law as discussed above, it is clear that the impugned order dated 11.12.2018 (A/5) of the Appellate Authority is not sustainable in the eyes of law since the said order is clearly a cryptic and non-speaking order without considering the points raised in the appeal.

9. For the reasons discussed above, the order dated 11.12.2018 (A/5) of the Appellate Authority and consequent order dated 16.4.2019 of the Revisionary Authority (Annexure-A/7 of the OA) are set aside and the matter is remitted to the Appellate Authority (Respondent No.4) to reconsider the matter afresh as per the provisions of law and to dispose of the appeal dated 2.3.2018 (Annexure-A/4) of the applicant by passing a speaking and reasoned order, copy of which is to be communicated to the applicant within 3 (three) months from the date of receipt of a copy of this order. The applicant, within one week of receipt of copy of this order, will be at liberty to submit a representation with additional grounds/points in favour of his appeal including the grounds mentioned in this OA and may also request the Appellate Authority for staying the operation of the punishment order pending consideration of the appeal and may seek an opportunity of being heard by the Appellate Authority. If such a representation is received from the applicant, the Appellate Authority shall consider such representation if the same is filed within the time stipulated as above and pass an appropriate order on the requests for stay of the punishment order and for personal hearing if made by the applicant in his representation, before disposal of the appeal as above.

10. It is made clear that no opinion has been expressed on other points raised in the OA, while passing this order. The OA stands disposed of accordingly with the above observations and directions. No order as to costs. Copy of the order be handed over to counsels for both the parties.

(SWARUP KUMAR MISHRA) MEMBER (J)	(GOKUL CHANDRA PATI) MEMBER (A)
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