

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

LIBRARY

No. O.A. 884 of 2014

Reserved on : 28.11.2019

Date of order: 4.12.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Shri Prabir Kumar Gangopadhyay,
Son of Shri Bidyut Ganguly,
Aged about 53 years,
Working as Executive Engineer/TM/KGP,
Residing at House No. 25D,
Hijli Cooperative Society,
Kharagpur - 721 306,
District - West Midnapur,

... Applicant

- V E R S U S -

1. Union of India,
Through the General Manager,
S.E. Railway,
Garden Reach,
Kolkata - 700 043.

2. The Chairman,
Railway Board,
Rail Bhaban,
Sansad Marg,
New Delhi - 1.

3. The Joint Secretary (E),
Railway Board,
Rail Bhaban,
New Delhi - 1.

4. Secretary (S-1),

Wb



Union Public Service Commission,
Dholpur House,
Shahjahan Road.

... Respondents

For the Applicant : Mr. C. Sinha, Counsel

For the Respondents : Mr. T.K. Chatterjee, Counsel

ORDER

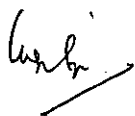
Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached this Tribunal challenging the disciplinary proceedings initiated against him vide charge memorandum dated 20.3.2009 as well as the orders passed by the disciplinary authority as well as the appellate authority dated 12.9.2012 and 28.2.2014 respectively.

2. Heard both Ld. Counsel on their rival contentions, examined pleadings and documents on record.

3. The submissions of the applicant, briefly put, is that the applicant is working as EN/TM/1/GRC at Kharagpur with the respondent authorities and that a major penalty chargesheet dated 20.3.2009 was served on him on three articles of charge.

The applicant denied the charges and also raised the issue that the said charge memorandum is untenable in the eyes of law as because the list of witnesses annexed as Annexure IV of the memorandum of charge, has been stated as 'Nil'.






That, despite his defence, the Enquiry Officer held that the Articles of Charges at I and III have been fully established but Articles of Charge No. II have not been proved.

The disciplinary authority issued a note of disagreement, and the applicant duly responded to the same on 1.12.2010. The disciplinary authority, however, without taking into consideration the applicant's defence, imposed the penalty of reduction to a lower stage in time scale of pay by two stages for a period of six months with cumulative effect.

The applicant, thereafter, preferred an exhaustive appeal dated 4.4.2013 (Annexure A-9 to the O.A.) to the appellate authority, who rejected the same upholding the penalty imposed by the disciplinary authority vide his orders dated 27.2.2014 (Annexure A-11 to the O.A.).



During hearing, Ld. Counsel for the applicant would agitate that the orders of the appellate authority are cryptic, and, despite an exhaustive and comprehensive representation raising a number of issues, the appellate authority has failed to consider each of the issues raised by the applicant, and, that, the provisions of Rule 22 of the Railway Servant (Discipline & Appeal) Rules, 1968 have not been followed in true spirit.

4. Ld. Counsel for the respondents, however, would vociferously agitate that orders issued by the respondent authority is reasoned and speaking and cannot be termed as cryptic under any circumstances.

5. At the outset, we would refer to Rule 22 of the Railway Servant (Discipline & Appeal) Rules, 1968 on the subject of consideration of appeal and reproduce the same as under:-

"22.Consideration of appeal - (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.

hnl

(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 :-

(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;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders:-

(i) confirming, enhancing, reducing or setting aside the penalty; or

(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."

Vide Board's letter No. E(D&A)78/RG 6-11 dated 3.3.78, clarifications have been provided on three main aspects which should be taken into account by the appellate authority while deciding on an appeal.



Such aspects are as follows:-

"(ii) The Appellate Authority has to consider three main aspects viz.

- (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."

It has further been held that, after considering the three main aspects, the case should be necessarily 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.

The appellate authority's order dated 27.2.2014 is reproduced as under:-

hnh

भारत सरकार (GOVERNMENT OF INDIA)
रेल मंत्रालय (MINISTRY OF RAILWAYS)
रेलवे बोर्ड (RAILWAY BOARD)

Confidential

No. E(O)-2013/AE-3/SER/55

New Delhi, Dated 27/02/2014

ORDER

The President has carefully considered the appeal 04.04.2013 preferred by Shri Prabir Kumar Gangopadhyay, the then ADEN/Settlement/Adra now XEN(TM-1)/South Eastern Railway/GRC at KGP against the penalty of "Reduction to a lower stage in the time scale of pay by two stages for a period of six months without cumulative effect" imposed upon him by the Railway Board vide Order No. E(O)-2011/PU-2/SER/16 dated 12.09.2012.

2. After giving careful consideration to the said appeal and other records/aspects relevant to the case, the President, in consultation with the Union Public Service Commission, has come to the conclusion that all the three Articles of charge are proved against Shri Gangopadhyay for the detailed reasons given in UPSC's letter No. F.3/299/2013-S.I dated 04.02.2014. President has observed that the disciplinary authority has imposed the said penalty on Shri Gangopadhyay after following due procedures and Shri Gangopadhyay has not brought forward any additional facts in his appeal meriting consideration. Accepting the advice of UPSC and holding that the penalty of "Reduction to a lower stage in the time scale of pay by two stages for a period of six months without cumulative effect" earlier imposed on Shri Gangopadhyay was not excessive, the President has decided to reject the said appeal of Shri Gangopadhyay, there being no merit in it. This is hereby done.

3. A copy of the UPSC's letter No. F.3/299/2013-S.I dated 04.02.2014 containing their advice is enclosed herewith.

4. Shri Gangopadhyay is required to acknowledge receipt of this order alongwith UPSC's advice in writing.

By order and in the name of President.

(B.MAJUMDAR)
JOINT SECRETARY(E)-II
RAILWAY BOARD

Shri Prabir Kumar Gangopadhyay
The then ADEN/Settlement/Adra
Now XEN(TM-1)/South Eastern Railway/GRC at KGP

From the above, the following is inferred:-

heh



- (i) That, the President, being the appellate authority, had carefully considered the appeal and other aspects relevant to the case.
- (ii) The President had consulted the UPSC.
- (iii) Upon such consultation and with reference to the records, the President has come to the conclusion that all the three articles of charges are proved against the applicant based on the detailed reasons given in UPSC letter dated 4.2.2014.
- (iv) That, the President had observed that the disciplinary authority had followed due proceedings.
- (v) That, the charged officer/appellant have not brought any additional facts meriting consideration.
- (vi) That, the penalty of reduction to a lower stage imposed by the disciplinary authority was not excessive.
- (vii) Upon finding no merit in the appeal of the charged officer, the President decided to reject his appeal.



Upon examination of the said appeal, we find that the appellate authority has confirmed:

- (i) That the procedure was followed correctly and that there has been no failure of justice.
- (ii) That, the disciplinary authority's findings have been arrived at after following appropriate procedure; and
- (iii) That, the quantum of penalty is commensurate with the gravity of the offence.

Hence, all three aspects to be considered by the appellate authority have been recorded in the brief but speaking order of the appellate authority.

hnh

Next, we examine the appeal preferred by the applicant on 4.4.2013 (Annexure A-9 to the O.A.) and, we find that the appellant has raised the following issues before hand in the said appeal:

- (i) The list of 'Nil' witness in Annexure I to the said memorandum of charges.
- (ii) That, an enquiry cannot proceed only on the basis of documents;
- (iii) That, the contents of annexure A-II of the charge memo cannot be altered at an later stage.
- (iv) Natural justice was denied to him on inserting corrigendum in the form of additional three pages of documents.
- (v) Factual/technical discrepancies on items of works.
- (vi) That, the charged officer had carried out his duties with all seriousness and cannot be held guilty of negligence.



Hence, the appeal of the charged officer/appellant were built on grounds of certain procedural infirmities raised earlier with the disciplinary authority, on factual disputes regarding technical specifications with respect to items of work and purported denial of natural justice in inserting certain additional documents as corrigendum at a later stage.

The appellate authority has applied his mind and has concluded that there has been no violation of procedural or natural justice. The orders of the appellate authority also refers to detailed reasons in UPSC letter dated 4.2.2014, which, however, has not been made available to us by either of the parties, but a reference has been made to detailed reasons incorporated in the UPSC letter.

hsh

Therefore, we are of the considered view that the President in his capacity as the appellate authority did examine the issues raised in the appeal before arriving at his conclusion and that the provisions of Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968 have been duly considered and substantially abided by the appellate authority.

In **Rani Lakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney, (2009) 4 SCC 240**, the Hon'ble Apex Court had ruled that it is the duty of the appellate authority to give reasons while affirming the order of disciplinary authority as the delinquent officer is entitled to know the mind of the appellate authority in arriving at his decision. It was further held however, that detailed reasons need not be given but at least brief reasons should be given even if the order passed by the authority below is affirmed. Hon'ble Court had held, upon discussion of the ratio in **Prabhu Dayal Grover vs. Union of India (1995) 6 SCC 279**,



"that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority."

In **S.N. Mukherjee vs. Union of India, (1990) 4 SCC 594** the Hon'ble Court ruled that:

"36..... The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge."

In this case, we find that the appellate authority has given adequate reasons while affirming the reasons of the disciplinary authority, even if briefly.

Accordingly, we do not find the orders of the appellate authority to be violative of Rule 22 of Railway Servants (Discipline & Appeal) Rules, 1968 or in transgression of the ratio contained in **Rani Lakshmi Bai**

h/h

Kshetriya Gramin Bank (supra) and find no reason to interfere with the orders of the appellate authority.

The O.A. stands dismissed on merit. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP

