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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.41/2001

This the 22nd day of March, 2002.

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

HON'BLE SHRI KULDIP SINGH, MEMBER (J)

M.R.Verma S/O Bharat Singh,
R/O 295/28, Dev Nagar,
Near Shiva School,
Sonapat (Haryana),
presently at 214, Supreme Enclave,
Mayur Vihar-I, Delhi.

... Applicant

(By Shri Neeraj Shekhar, Advocate)

-versus-

1. Union of India through
General Manager, Northern Railway,
New Delhi.
2. Chief Engineer, Construction-North,
Northern Railway, New Delhi.
3. Deputy Chief Engineer, Construction-I,
Northern Railway,
Jammu Tawi.

... Respondents

(By Shri H.K.Gangwani, Advocate)

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, Member (A) :

Applicant has challenged penalty of dismissal from service imposed upon him in disciplinary proceedings vide order dated 15.3.2000 (Annexure A-2) passed by respondent No.3, Dy. Chief Engineer (C) and confirmed in appeal vide order dated 11.8.2000 (Annexure A-4) passed by respondent No.2, Chief Engineer/Const/North. Applicant has sought quashing of these orders and also direction to respondents to pay him all retiral dues alongwith all consequential benefits.

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2. Learned counsel of applicant Shri Neeraj Shekhar contended that the appellate authority has mechanically passed the appellate order without marshalling evidence on record and without application of mind to misconduct thereby not conforming to provisions of rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968. Learned counsel stated that whereas as per these rules, the appellate authority was supposed to have marshalled the evidence to conclude that the findings of the disciplinary authority were warranted by the evidence on record, he passed the appellate orders without going into the evidence at all.

3. On the other hand, learned counsel of respondents, Shri H.K. Gangwani, stated that even though applicant had not filed the appeal within the prescribed time limit of 45 days, the appellate authority considered the same to dispense justice and passed detailed reasoned orders. Rule 22(2) ibid reads as follows :

"(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 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:"

Among other things, provisions of this rule mandate that the appellate authority has to consider whether the findings of the disciplinary authority are warranted by the evidence on record. Learned counsel of applicant relied on 1986 (2) AISLJ 249 : **Ram Chander v. Union of India** in this behalf. It was held in that case as follows :

"4. To say the least, this is just a mechanical reproduction of the phraseology of r.22(2) of the Railway Servants Rules without any attempt on the part of the Railway Board either to marshal the evidence on record with a view to decide whether the findings arrived at by the disciplinary authority could be sustained or not. There is also no indication that the Railway Board applied its mind as to whether the act of misconduct with which the appellant was charged together with the attendant circumstances and the past record of the appellant were such that he should have been visited with the extreme penalty of removal from service for a single lapse in a span of 24 years of service. Dismissal or removal from service is a matter of grave concern to a civil servant who after such a long period of service, may not deserve such a harsh punishment. There being non-compliance with the requirements of r.22(2) of the Railway Servants Rules, the impugned order passed by the Railway Board is liable to be set aside."

4. We have gone through the appellate order carefully. In the order there is not a single sentence dealing with the evidence on record to endorse the

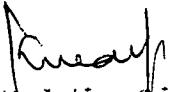
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findings of the disciplinary authority. Clearly, the appellate order has been passed mechanically without application of mind and without marshalling the evidence on record, which is violative of the provisions of rule 22(2) *ibid*.

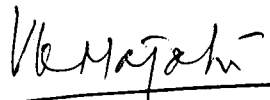
5. In this view of the matter, appellate order dated 11.8.2000 (Annexure A-4) is quashed and set aside. The appellate authority, i.e., respondent No.2, Chief Engineer/Const./North, is directed to marshal the evidence on record and apply mind to misconduct and consequent imposed penalty so as to conform to rule 22(2) *ibid* and pass a reasoned order in appeal. This direction shall be complied with within a period of eight weeks from service of these orders.

6. It was also pointed out by the learned counsel of applicant that applicant has not been paid the provident fund dues so far. No satisfactory explanation came from respondents' side as to why the provident fund dues have not yet been paid to applicant. Respondents are directed to pay these dues to applicant within a period of fifteen days of communication of these orders.

7. The OA is disposed of in the above terms. No costs.


(Kuldip Singh)
Member (J)

/as/


(V. K. Majotra)
Member (A)