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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.2770/99

Hon'ble Sh. V.K.Majotra, Member(A)  
Hon'ble Sh. Shanker Raju, Member(J)

New Delhi, this the 5<sup>th</sup> day of September, 2002

Shri Naresh Kumar Batra  
s/o Shri B.R.Batra  
Ex. Head Clerk  
Operating Branch  
Northern Railway  
Baroda House  
New Delhi. ... Applicant

(By Advocate: Shri B.S.Mainee)

Vs.

Union of India through

1. The General Manager  
Northern Railway  
Baroda House  
New Delhi.
2. The Chief Passenger Traffic Manager (II)  
Northern Railway  
Baroda House  
New Delhi. ... Respondents

(By Advocate: Sh. V.S.R.Krishna)

O R D E R

By Shri Shanker Raju, Member(J):

Applicant impugns respondents'

penalty order dated 22.3.1999 dismissing him from service and also appellate order dated 6.4.1999 upholding the punishment. He has sought reinstatement in service with all consequential benefits.

2. Applicant, who was working as Head Clerk, was placed under suspension on 16.4.1998 which was

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later revoked on 16.10.1998, was served upon a major penalty charge-sheet for the allegations of habitual absentism for long periods from May, 1995 to November, 1998. After conclusion of the disciplinary proceedings, the charge stood proved by the inquiry officer to which applicant was ~~suspended~~<sup>w</sup> to by filing a representation.

3. Earlier, applicant was dismissed, on account of absent unauthorisedly, w.e.f. 15.10.1987 and on appeal the same was reduced to a lesser punishment. In an another inquiry, he was dismissed on 26.2.1993 which was assailed before this Tribunal in OA No.2188/89 where by an order dated 13.10.1989 the OA was allowed with all benefits. On conclusion of the inquiry for habitual absentism, the applicant was inflicted upon a penalty of dismissal by an order dated 22.3.1999, against which he preferred an appeal as the appeal was not disposed of he filed OA No.2770/99 where directions have been issued to dispose of the appeal. As a consequence, the appellate order was passed on 23.5.2002 upholding the punishment, giving rise to the present OA.

4. Applicant has taken the following contentions to assail the impugned order:

- a) The applicant made a request for supply of a copy of the attendance register for its perusal which transpired that the entire period of absence has been decided as regularised as such

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he cannot be punished for the same charge as it would amount to double jeopardy.

- b) No witnesses have been examined in the enquiry to prove the attendance register.
- c) disciplinary authority has passed a non-speaking order <sup>which is</sup> against the railway instructions.
- d) absent period from 28.12.1998 to 12.1.1999 was not a part of the charge but was proved.
- e) appellate authority has passed a non-speaking order.
- f) findings of the inquiry officer were in vague and abrupt.

5. Shri B.S.Maine, learned counsel for applicant, contended that the order passed by the disciplinary authority does not contain any reasons and the same were never communicated although the respondents have taken a plea that the respondents have been recorded on file but it was incumbent upon them to facilitate and to make effective appeal by the delinquent official who have communicated those orders along with these orders.

6. Learned counsel for applicant further contended that he had requested to supply a copy

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of the applications sent by him to show that the period over which he has been charged of habitual absentism <sup>had already</sup> been regularised. Inquiry Officer despite acknowledging his request, has not bothered to supply the copies, which has prejudiced the applicant in his effective defence.

7. Shri V.S.R. Krishna, Id. counsel appearing for the respondents contended that applicant has a chequered history of remaining absent from duty and has stated that although the disciplinary authority has passed a detailed and speaking order but the same was not communicated to the applicant along with notice dated 6.4.1999. The appellate authority also considered the contentions of the applicant and passed a reasoned order. As the applicant was earlier dismissed on two occasions despite ample opportunity to improve <sup>in</sup> his misconduct of remaining absent and as he has been found unfit to be retained in service, the punishment is appropriate and is commensurate with the charge.

8. In so far as the supply of attendance register is concerned, applicant has not made any grievance about non-supply of documents. For the first time he took this objection only in the reply to be filed <sup>in</sup> the enquiry report. As the leave cannot be claimed as a right and unless it is sanctioned, no Government servant can avail the same.

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9. It is further stated that since the attendance register and oral evidence had not been considered necessary, and it is also not incumbent upon that the inquiry, to examine witnesses.

10. In the rejoinder, applicant has reiterated his pleas and has placed reliance on Railway Board's instructions dated 13.7.1981 and 5.12.1985 to contend that it is incumbent upon the disciplinary as well as appellate authority to apply their minds as a quasi judicial authority and to pass a self contained speaking and reasoned order, which is a valid compliance of the legal requirement as fortified by the Apex Court in Mahavir Prasad v. State of U.P., AIR 1970 SC 1302.

11. We have carefully considered the rival contentions of the parties and perused the material on record and also perused the official record produced by the respondents. It is not disputed by the respondents that earlier an order of dismissal was issued by an incompetent authority on 22.3.1999 which was revoked and subsequent order of dismissal was passed by the competent authority on 6.4.1999. It is also not disputed that although the respondents have not recorded reasons in support of the order of dismissal but have recorded in the file, the

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same have not been communicated to the applicant along with the order dated 6.4.1999.

12. Applicant preferred an appeal against dismissal order which was disposed of after the decision of the Tribunal in OA 2770/99 on 23.5.2002.

13. Railway Board issued OM dated 13.7.1981 which supplement the ~~the~~ Railway Servants (Discipline and Appeal) Rules, 1968, inter-alia provided as under:

" Sub:- Disciplinary cases need for issuing speaking orders by competent authorities.

The undersigned is directed to state that as is well known and settled by courts disciplinary proceedings against employers conducted under the provisions of CCS (CCA) Rules, 1965, are under other corresponding rules, are quasi-judicial in nature and as such, it is necessary that orders in such proceedings are issued only by the competent authorities who have been specified as disciplinary/appellate/reviewing authorities under the relevant rules and the orders issued by the such authorities should have the attributes of a judicial order. The Supreme Court in the case of Mahavir Prasad v. State of U.P., AIR 1970 SC 1302 observed that recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy, or reached on ground of policy or expediency. The necessity to record reasons is greater if the order is subject to appeal.

2. However, instances have come to the notice of this Department where the final orders passed by the competent disciplinary appellate authorities do not contain the reasons on the basis whereof the decisions

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communicated by that order were reached. Since such orders may not confirm to legal requirements, they may be liable to be held invalid, if challenged in a court of law. It is, therefore, impressed upon all concerned that the authorities exercising disciplinary powers should issue self-contained speaking and reasoned orders conforming to the aforesaid legal requirements.

3. Instances have also come to notice where, though the decisions in disciplinary/appellate cases are taken by the competent disciplinary/appellate authorities in the files, the final orders were not issued by that authority but only by a lower authority. As mentioned above, the disciplinary/appellate reviewing authorities exercise quasi-judicial powers and as such, they cannot delegate their powers to their subordinates. It is, therefore, essential that the decision taken by such authorities are communicated by the competent authority under their own signatures, and the order so issued should comply with the legal requirements as indicated in the proceeding paragraphs. It is only in those cases where the President is the prescribed disciplinary/appellate/reviewing authority and where the Minister concerned has considered the case and given his orders that an order may be authenticated by an officer, who has been authorised to authenticate orders in the name of the President.

4. The contents of this O.M. may kindly be brought to the notice of all concerned for their information and guidance."

14. If one has regard to the aforesaid statutory guide-lines, the disciplinary authority being a quasi-judicial authority, who recorded the reasons should pass a reasoned and speaking order and the same should have been communicated to the delinquent official.

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15. As the reasons have not been communicated in support of order of dismissal, in our considered view applicant has been greatly prejudiced in the matter of his defence and has been prevented from making an effective appeal against the order of dismissal to the appellate authority. Appellate authority on the basis of his appeal rejected and upheld the punishment order. As the aforesaid action has deprived the applicant a reasonable opportunity to defend, the action of the respondents is not in conformity with the principles of natural justice and is not ~~legally~~ sustainable.

16. Having regard to the Railway Board's instructions supra and the decision of the Apex Court in Mahavir Prasad's case supra, we partly allow this OA. Impugned order dated 23.5.2002 is quashed and set-aside. As the applicant has now, during the pendency of the OA, <sup>has</sup> been served upon the copy of the reasons recorded by the disciplinary authority, he is at liberty, if so advised, to prefer an appeal to the appellate authority against the punishment of dismissal within four weeks from the date of receipt of a copy of this order. The appellate authority shall act in accordance with the Railway Board's instructions and pass a detailed and speaking order within one month thereof.

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If the applicant is still aggrieved, it shall be open for him to approach, to redress his grievance, this Tribunal in accordance with law. No costs.

S. Raju

(SHANKER RAJU)  
MEMBER(J)

V. K. Majotra

(V.K. MAJOTRA)  
MEMBER(A)

/rao/