

Central Administrative Tribunal
Principal Bench

O.A. 1568/95

New Delhi this the 22th day of December, 1997

(7)

Hon'ble Shri S.R. Adige, Vice Chairman(A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Shri Mahender Kumar,
S/o Shri Ghazi Ram,
Ex-Substitute Loco Cleaner under
Locoforeman, Northern Railway,
Moradabad. ... Applicant.

By Advocate Shri B.S. Mainee.

Versus

Union of India: through

1. The General Manager,
Northern Railway,
Moradabad.
2. The Divl. Railway Manager,
Northern Railway,
Moradabad. ... Respondents.

By Advocate Shri Rajeev Sharma.

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Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has impugned the respondents' order dated 24.10.1994 removing him from service, and the appellate authority's order dated 27.6.1995 rejecting his appeal.

2. The brief facts of the case are that the applicant claims that he had worked as Casual Labourer for various periods from 1.7.1978 to 19.4.1981. He submits that in pursuance to the respondents circular, he had applied for the post of Substitute Loco Cleaner as he had fulfilled the eligibility conditions. He states that the respondents after due verification of his working days appointed him as Substitute Loco Cleaner in 1988. Thereafter, a memo of charges was issued against him in

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July, 1991 alleging that with his connivance, a forgery was committed in the number of working days under IOW, Balamau to secure employment as Substitute Loco Cleaner. After holding the departmental inquiry, the impugned orders mentioned above have been passed. Shri B.S. Maine, learned counsel, has impugned the penalty orders on a number of grounds, for example, that only one prosecution witness, Shri S.P. Jutla, came to the witness box and the other relevant prosecution witness Shri Hari Om Agarwal, did not appear, that the disciplinary authority did not apply his mind while passing the impugned order and the appellate authority had also rejected his appeal without ^{passing a B} application of mind by non-speaking order. Shri Maine, learned counsel, has relied on the judgements of the Tribunal in **Mahesh Pal Vs., Union of India** (O.A.1352/94) (copy placed on record), **Hari Giri Vs. Union of India & Ors.** (ATJ 1991(2) 580), **Sunil Kumar Vs. Union of India & Ors.** (ATJ 1995(1) 320) and Full Bench judgement in **Lal Singh Vs. G.M. Northern Railway, New Delhi and Anr.** (Full Bench Judgements of CAT 1991-1994 (Vol.III) 251). He has also submitted that the applicant had asked for certain relevant documents which had not been given to him. He further submits that the Railway Board's circular dated 3.3.1978 which requires the disciplinary authority imposing the penalty to apply its mind to the facts, circumstances and record of the case and then record its findings on each imputation of misconduct and misbehaviour, have not been complied with, either by the disciplinary authority or by the appellate authority.

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3. We have seen the reply filed by the respondents and we have also heard Shri Rajeev Sharma, learned counsel. They have denied the above statements of the applicant and have submitted that the applicant was not eligible to get employment in the Railways because he had submitted forged certificates to secure employment by fraudulent means. They have also submitted that the charges against him have been proved at the Inquiry in accordance with the rules. Shri Rajeev Sharma, learned counsel, has submitted that the inquiry has been held in accordance with the principles of natural justice and there is no infirmity in the penalty orders. He relies on the judgements of the Supreme Court in **S.N. Mukherjee Vs. Union of India** (1990(4) SCC 594), **Ashwani Kumar & Ors. Vs. State of Bihar & Ors.** (1997(2) SCC 1) and **Tara Chand Khatri Vs. MCD Delhi and Ors.** (1977(1) SCC 594).

4. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. We find that the impugned penalty orders dated 24.10.1994 and 27.6.1995 have been passed by the disciplinary authority and the appellate authority respectively, which are not speaking orders. No reasons have been given by the disciplinary authority as to why he had come to the conclusion that the applicant should be given the penalty of removal from service. The appellate authority's order also does not deal with the issues raised by the applicant in the appeal nor have any reasons been recorded. The respondents have relied on the judgement of the Supreme Court in **S.N. Mukherjee's case (supra)** and the learned counsel has submitted that the reasons are not

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required for an order to be passed by the confirming authority when he is confirming the sentence recorded earlier. However, that case would not be applicable to the present case because even the disciplinary authority's order does not disclose any reasons for the conclusion. In fact, in this very case itself, the Supreme Court has held as follows:

"Except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions must record the reasons for its decision. Such a decision is subject to the appellate jurisdiction....."

As mentioned above neither the disciplinary authority's order or the appellate authority's order has recorded any reasons for the decision. It is relevant to note that the disciplinary authority has filled a cyclostyled form imposing the penalty of removal from service without any discussion of the facts or evidence which lead him to this conclusion. Under Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, the appellate authority is required to consider various aspects while passing the impugned order, namely, whether the procedure laid down in these rules has been complied with, whether the findings of the disciplinary authority are warranted by the evidence on record and whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe. In the present case, the appellate authority's order has also not been passed in accordance with these rules. (see also the observations of the Supreme Court in

R.P. Bhatt Vs Union of India & Ors. (AIR 1996 SC 149).

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5. We are of the view that the judgement in Ashwani Kumar's case (supra) relied upon by the respondents is on the question of appointments made in excess of sanctioned posts which deal with the recruitment process and are, therefore, not relevant to the facts of the present case. We also do not find the other judgements relied upon by the respondents to be relevant in the facts. and circumstances of this case. However, in a similar case, Mool Chand Vs. Union of India & Anr. (OA 1343/94), decided on 28.10.1996, the Tribunal while allowing the application has observed as follows:

"In passing, we notice that cyclostyled forms are supplied to public authorities intending to guide them, that these are used as devices to save themselves the trouble of applying their mind to facts. Minds of public authorities must rise above cyclostyled forms. They must apply their mind to the facts of the cases that come for their consideration and they must discharge their onerous responsibilities realising the duties they owe themselves and to those whose fortunes are left in their hands".

We respectfully agree with this judgement.

6. In the result, therefore, this application succeeds and is allowed. We, however, refrain from expressing any opinion on the merits of the case. The impugned orders passed by the disciplinary authority dated 24.10.1994 and the appellate authority dated 27.6.1995 are quashed and set aside. The case is remitted to the appellate authority to pass a speaking order within two months from the date of receipt of a copy of this order.

No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

S.R. Adige
(S.R. Adige)
Vice Chairman(J)

'SRD'