

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1352/94
T.A. No.

199

(A)

DATE OF DECISION 25.9.97

Shri Mahesh Lal

Petitioner

Shri B.S. Mainee

Advocate for the Petitioner(s)

Versus

Respondent

UDI

Shri K. K. Patel

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Lakshmi Guaminathan, Member (J)

The Hon'ble Mr. S.P. Biswas, Member (A)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?



(S.P. Biswas)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1352/94

New Delhi this the 25th day of September, 1997.

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Sh. S.P. Biswas, Member(A)

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Sh. Mahesh Pal,
S/o Sh. Hardayal,
Ex. Substitute Loco Cleaner,
under Loco Foreman,
Northern Railway,
Moradabad. Applicant

(through Sh. B.S. Mainee, advocate)

versus

1. Union of India through
the General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divl. Railway Manager,
Northern Railway,
Moradabad. Respondents

(through Sh. K.K. Patel, advocate)

ORDER(ORAL)

Hon'ble Sh. S.P. Biswas, Member(A)

The applicant, a Substitute Loco Cleaner under Loco Foreman, Moradabad Division of Northern Railway is seeking relief in terms of quashing A-1 and A-2 orders dated 12.10.93 and 9.5.94 respectively. By A-1, he has been removed from service and by A-2, his appeal against the removal order has been turned down by respondents.

2. Shri B.S. Mainee, learned counsel for the applicant challenges the 1st order. This order was preceded by an enquiry which according to learned counsel is bad in the eyes of law on account of several factors mentioned by him.

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3. Both the learned counsel argued extensively on the issue of alleged perversity of the enquiry conducted. Both sides drew our attention to the respective merits of their contentions drawing support from the decisions of the Hon'ble Supreme Court as well as the Tribunal. Before expressing our views on the afore-quoted disputed issue, we find that there is an apparent legal infirmity in the issue of A-2 appellate order. It mentions that:-

(9)

"The above appeal was duly considered by Appellate Authority viz Sr. DME who has passed the following order:-

Appeal considered. There are no grounds in the appeal to reduce/waive punishment imposed. Hence appeal is rejected."

4. The order bears the head of sphinx. It does not convey the reasons for such a decision. A system of governance, based on the rule of law, reckons no decision without recording reasons behind it. The reasons behind any administrative orders, having civil consequences, are supposed to be made clear to the applicant as well as to the Court/Tribunal exercising judicial review over administrative orders. While examining the need for general principle of law requiring an administrative authority to record reasons for its decision, the Apex Court in a Constitution Bench in the case of S.M. Mukherjee Vs. U.O.I. (1990(5) SLR 8) held that:-

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"It must be concluded that except in cases where the appeal has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi judicial authority is required to record its reasons for its decision. Unfortunately A-1 order lacks the reasons for the decision reached."

The A-2 order is, therefore, in violation of the law laid down by the Apex Court in its Constitution Bench decision.

(10)

5. That apart, we find that while disposing of the A-2 appeal, the respondent (Sr. Divl. Mechanical Engineer) have not applied his mind to the requirements of Rule 22(c) of Railway Servants (Discipline & Appeal) Rules, 1968. The relevant provisions of the Rules has been laid down as follows:-

"22(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.

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6. In the instant case, the impugned order (A-2) passed by the respondents has obviously been issued by the respondents totally in violation of the extent rules on the subject and it cannot be sustained in the eyes/regulations prescribed by the respondents (Railways). (11)

7. We find that our views get support from the decision of the Hon'ble Supreme Court in the case of R.P.bhat Vs. U.o.I & Ors. (AIR 1996 SC 149). That was the case where the impugned order therein was passed by Director General and the said order was set aside by the Apex Court and the respondents were directed to dispose of the appeal a fresh after applying their mind to the regulations of Rule 27(2) (Corresponding rule in that organisation). The same situation prevails here. The Rule which has been violated in the present case is 22(c) of Railways (D&A) rules as afore-quoted.

8. For the reasons afore-mentioned, we allow the application with the following directions:-

(A) Annexures A-1 and A-2 orders stand quashed.

(B) The applicant shall be reinstated within a period of one month from the date of issue of a copy of this order.

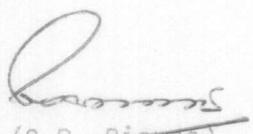
(C) The applicant shall not be entitled for back wages for the period he was out of job.

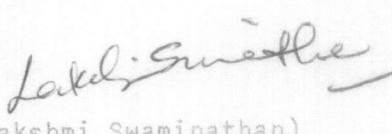
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(D) The respondents will have the liberty to proceed with the case in terms of the law laid down on the subject.

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There shall be no order as to costs.


(S.P. Biswas)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

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