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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1937/88. DATE OF DECISION: 16-4-1991.

Shri T.C. Saxena APPLICANT.

V/s.

Union of India RESPONDENTS.

CORAM: Hon'ble Mr. B.S. Sekhon, V.C. (J).
Hon'ble Mr. P.C. Jain, Member (A).

Shri J.K. Bali, counsel for the Applicant.
Shri O.N. Moolri, counsel for the Respondents.

(Judgment of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A).)

JUDGMENT

Aggrieved by the order dated 8.10.1987 (Annexure A-1), the applicant, a retired Conductor, Northern Railway, has filed this application under Section 19 of the Administrative Tribunals Act, 1985. The impugned order is the order passed in appeal on the representation of the applicant against the punishment of Withholding of Increments Temporarily (W.I.T.) for three years. In appeal, the punishment was reduced to W.I.T. for one year. The applicant was further informed in the same impugned order regarding certain other matters, which are not relevant for the case before us.

2. The applicant has prayed for the following reliefs:-

A. to quash the penalty of WIT for one year passed by the Appellate Authority on the appeal of the applicant against the punishment order dated 4-1-1984;

B. to direct that the suspension from 8-5-1984 to 1-8-1984 was wrongful and that the period should be treated as duty.

3. Briefly stated, the relevant facts are as below: -

The applicant was issued a charge-sheet for a minor penalty by Senior Divisional Commercial Superintendent,

Moradabad on 18.8.1984 (Annexure A-2), on the charge that on 27-4-1984, when checking was done by Deputy C.C.S. (Special) on 158 DN between New Delhi and Hapur, 13 passengers holding II Class tickets, were found travelling in First ACC. On a check being made through A.F.I. Headquarters Office, it was noticed that/coach No.1319, the applicant had not even written the ticket numbers of those passengers in the chart nor had he given the Guard Certificate. He had also not instructed the TTE to convert these tickets to First ACC tickets. He was thus charged for violation of Rule (i) and (ii) of the Railway Service Conduct Rules, 1966. He submitted his explanation (A-3) dated 5-9-1984 and requested for withdrawal of the Memorandum of Charge-sheet and for treating the suspension period as on duty. The disciplinary authority imposed the punishment of Withholding of Increments for three years at the stage of Rs.730/- in the pay scale of Rs.700-900 with effect from 1-1-1985 (Annexure A-4). He preferred an appeal dated 1-1-1985 to Divisional Railway Manager, Northern Railway, Moradabad (Annexure A-5). He retired from service on attaining the age of superannuation on 31-1-1987 and till then the decision on his appeal had not been communicated to him. He made a representation dated 11/14-9-1987 for payment of his settlement dues etc. (Annexure A-6). In response to this, he was informed by letter dated 8-10-1987 (Annexure A-1) that on consideration of his appeal, the punishment had been modified to WIT for one year only.

4. We have perused the record of the case and have also heard the learned counsel for the parties.

5. The main grounds on which the applicant has challenged the impugned order are: -

- (1) The disciplinary authority passed the order of punishment without application of mind and against the relevant records;
- (2) as the punishment of WIT for three years imposed by the disciplinary authority was going beyond the date of his superannuation, as such, it amounted to imposition of a major penalty, for which inquiry was necessary;
- (3) in spite of his request in his appeal, he was not granted personal hearing by the appellate authority; and
- (4) that the appellate authority had neither applied its mind nor had gone into the details of the case and also the record.

6. The respondents have contested the application by filing a reply, in which it is admitted that the applicant remained under suspension from 8-5-1985⁶ to 1-8-84, but the suspension was for valid reasons. Further, the applicant had met the Senior Divisional Superintendent on 29-9-1986 and explained his position to him. The appeal is said to have been decided on 23-7-1987, but copy of the order of the appellate authority has not been filed. The applicant has also stated in his rejoinder that no order dated 23-7-1987 was communicated to him. The respondents did not give any specific reply to the grounds taken by the applicant in his O.A.

7. It is clear from the order passed by the disciplinary authority (Annexure A-4) that it had not discussed the points raised by the applicant in his reply to the Memorandum of Charge. Similarly, no reasons have been given to reject the contention of the applicant in his reply. Such an order cannot be

Ans.

said to be a speaking order. The appellate order also does not give any reason and, as such, it is also a non-speaking order. Sub-clause (2) of Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968 stipulates that in 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: -

- (1) Whether the procedure in the rule has been complied with;
- (2) whether the findings by the disciplinary authority are warranted by the evidence on the record; and
- (3) whether the penalty imposed is adequate, inadequate or severe.

It hardly needs to be reiterated that the disciplinary as well as the appellate authority are expected to give reasons for their orders. It was held in the case of RAM CHANDER v. UNION OF INDIA & OTHERS (1986(3) SCC 103) that an appellate authority discharging the quasi-judicial functions in accordance with the principles of natural justice, must give reasons for its decision. Similarly in the case of MAHESHWAR PARSAD v. STATE OF ANDHRA PRADESH (AIR 1970 SC 1302), the Hon'ble Supreme Court observed that recording of the reasons in support of a decision, by a quasi-judicial authority, is obligatory as it can show that the decision is reached according to the law and is not a result of caprice, whim or fancy or reached on grounds other than policy or experience. It has further been held that the necessity to record reason is greater if the order is subject to appeal.

8. In Railway Board's circular No.E.(D&A) 67 RG 6-13, dated 28-2-1968 read with R.B. No.E (D&A) 67 RG 6-13 dated 29.4.69, it has been laid down by the Railway Board

that if it is proposed to withhold increment of a charged railway servant, departmental inquiry should be held for withholding increments temporarily for any period which is likely to adversely affect his pension. In the present case, the punishment imposed by the disciplinary authority directed withholding of three increments with effect from 1-1-85. The applicant was due to retire on 31.1.87 and actually retired on that date. As such, a regular inquiry as is required to be held for imposing a major penalty, should have been held in this case also. Since it had not been done, the appellate authority, after the retirement of the applicant, probably had no other alternative except to reduce the penalty to WII for one year as no punishment could be imposed which may have lasted after retirement of the Government servant.

9. The applicant has also prayed for a direction that his suspension from 8-5-1984 to 1-8-1984 be declared as wrongful and he be treated as on duty for this period. The applicant does not appear to have challenged the order of his suspension except in the O.A. before us. The Memorandum of Charge dated 1-8-84 does not mention the fact of suspension, which goes to show that before the issue of Memorandum of Charge, he had probably already been reinstated. The applicant has also not stated any ground for now challenging the order of suspension. The relief prayed for is also barred by limitation. For all these reasons, the applicant cannot be granted this relief.

10. In view of the foregoing discussion, we are of the view that order dated 4-12-1984 passed by the disciplinary authority (Annexure A-4) and the order dated 23-7-87 passed by the appellate authority and

communicated to the applicant vide letter dated 8-10-87 (para 1 of Annexure A-1) cannot be sustained and are accordingly quashed and hereby set aside. As the applicant has already retired, it shall not be in the fitness of things to order a fresh inquiry at this stage. The applicant shall be deemed to have earned the increments from 1.9.85 as per the stages in the scale of pay in which he was drawing his pay as if no punishment order was passed on 4.12.87 or on 23.7.87. His pension and other retirement benefits shall be recalculated afresh and the arrears due to him on this account shall be paid to him by cheque through registered post. These directions shall be complied with within a period of three months from the date of receipt of a copy of this judgment by the respondents. In the facts and circumstances of the case, the parties are left to bear their own costs.

Dec 16/4/1991
(P.C. JAIN)
MEMBER(A)

(B.S. SEKHON)
V.C. (J)

16.4.1991. 16-4-91