

10

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 181 of 1993

New Delhi, this the 24th day of August, 1998

HON'BLE MR. N. SAHU, MEMBER (A)
HON'BLE DR. A VEDAVALLI, MEMBER (J)

Sh. Surinder Singh, S/O Sh.
Virbal Singh, Ex-Points Man,
Northern Railway, Rly. Station
Gulwati, Bulandshahar, R/O C/O
Sh. Munna Lal Panwale, West
Rohtas Nagar, Near Rehman
Building, Shahdara, Delhi.

--APPLICANT.

(By Advocate Sh. M L Sharma)

Versus

1. Union of India

Through: General Manager,
Northern Railway, Hd. Qrs.
Office, Baroda House, New
Delhi.

2. The Chief Operating Supdt.
Northern Railway, Hd. Qrs.
Office, Baroda House, New
Delhi.

3. The Divisional Railway
Manager, Northern Railway,
Moradabad.

--RESPONDENTS.

(By Advocate: None)

O R D E R (ORAL)

By Mr. N. Sahu, Member (Admnv) -

Heard Sh. M L Sharma, counsel for applicant. We find that there was no appearance on behalf of respondents on 20.4.1998, 27.5.1998, 28.5.1998, 27.7.1998 and 24.8.1998 and even today. It appears to us that the respondents are not interested in any further representation. We will only consider the pleadings on record. We heard Sh. M L Sharma, counsel for applicant and after hearing him we dispose of the OA.

Kausimbe.

2. This OA is filed against the order No. 333-T/2/56-N/90 TA, dated 16.4.92 by the Asstt. Operating Supdt. Northern Railway, Moradabad by which the applicant has been removed from service. The applicant is also aggrieved by the Appellate Order dated 22.3.1993 which is Annexure R-2 at page 56 of the pleadings. The Appellate Order which is a one line order is extracted hereunder:-

"Sub: Appeal against the punishment of removal from service.

Ref: Your appeal dated 15.5.92

The above appeal was duly considered by appellate authority viz DRM who has passed the following orders:-

"I find no reason to change the punishment imposed."

3. The applicant states that he had raised many grounds and grievances in his appeal letter dated 15.5.1992 against the punishment order dated 16.4.92. Inter alia, he was aggrieved of the respondents' failure to make certain documents available to him which were necessary for defending his case. He was aggrieved of the failure by the Enquiry Officer to give him an opportunity to cross-examine certain key-witnesses. Most important, he wanted to bring to the notice of the appellate authority that the log register wherein his signature was allegedly taken by the Station Master was not produced. The defence note submitted by him has not been accepted by the enquiry officer. Finally, the

hasinkh

defence helper, Station Supdt./ Chandausi, Sh. C P Sharma was not relieved in time and, therefore, his assistance could not be arranged in the course of enquiry. The applicant requested for personal hearing before the appellate authority but he was denied the same. Counsel for applicant also stated that there are other points in his appeal which ought to have been considered. The appellate authority's one line order shows that he did not consider any of these points and passed a non-speaking order. The appellate order being a statutory order should have been passed and signed and communicated by the appellate authority himself. It is strange that this order was communicated by simply extracting one sentence as the appellate order by clerical staff. Rule 22 of Railway Servant's Discipline and Appeal Rules, 1968 provides three important parameters for hearing and disposing of an appeal. These three parameters are statutory requirements and their compliance is mandatory.

- a) The appellate authority shall consider whether the procedure laid down in the rules has been complied with and, if not, whether such non-compliance has resulted in violation of any of the provisions of the Constitution of India.

4. Counsel for applicant has brought to our notice the decision of the Hon'ble Supreme Court in the case of **SMT. INDRANI BAI VS. UNION OF INDIA AND OTHERS** 1994 (2) ATJ Vol. 17, 382. In that case, the employee, a Turner in Gun Carriage factory was alleged to have committed

Handwritten signature

theft in the factory. The charge memo was issued and enquiry was held. No opportunity was given to the delinquent employee to cross examine the witnesses. The Hon'ble Supreme Court held that the principles of natural justice had been violated and quashed the order of dismissal. Counsel for applicant has cited the Full Bench decision of the Central Administrative Tribunal, Ahmedabad in the case of **SURESH B. DAVE VS. THE POST MASTER GENERAL & ORS.** Full Bench Judgements of Central Administrative Tribunal [1989-1991] Vol.II, 418. In that case the charged official demanded copies of the relevant documents. The enquiry officer denied the same stating that he had no right to the copies. The Full Bench held that it was a case of denial of reasonable opportunity to defend. We are not suggesting for a minute that whatever the applicant had stated must be accepted as true. These are the two main grounds of the applicant which the appellate authority should have examined but did not. The appellate authority was duty bound under the rules to examine each of the contentions of the applicant, more so, when the order of the Disciplinary Authority was not also a speaking order.

5. The second parameter is that the appellate authority is bound to record explicitly as to "whether the findings of the Disciplinary Authority are warranted by the evidence on record". Thirdly, the appellate authority must record whether the penalty imposed is adequate, inadequate or severe.

Handwritten signature

6. We find that the appellate authority has not applied his mind to the any of the major contentions of the applicant as stated in his appeal/ petition. The very purpose of filing an appeal gets defeated, if statutory requirements are not complied with by the appellate authority in disposing of this OA.

7. We are, therefore, constrained to remand the case back to the appellate authority with a direction that the said authority shall pass the order in accordance with the mandatory requirements of rule 22 We also direct the appellate authority to allow an opportunity of being heard to the applicant and he shall pass a speaking order on the points raised by the applicant in his appeal/ petition. The appeal shall be disposed of within 10 weeks from the receipt of a copy of this order. We accordingly quash the impugned order of the appellate authority into which the order of the disciplinary authority has merged.

8. The OA is disposed of as above. No costs.

A. Veda Valli
(DR. A VEDAVALLI)
MEMBER (J)

N. Sahu
(N SAHU)
MEMBER (A)

/sunil/