

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 568/93

New Delhi this the 5th day of November, 1993

The Hon'ble Mr. J.P. Sharma, Member (J)
The Hon'ble Mr. B.K. Singh, Member (A)

Shri Bodh Raj Sharma, Applicant
Son of Late Shri Charanjit Lal,
Ex-Ticket Collector,
Northern Railway.

(Shri B.B. Raval, Counsel for the Applicant)

Vs

1. Union of India
through the Secretary
Railway Board
Rail Bhawan
New Delhi.
2. The Divisional Railway Manager
Northern Railway
New Delhi.
3. The Divisional Railway Manager,
Northern Railway,
Ambala. Respondents.

(Shri B.K. Aggarwal, Counsel for the Respondents)

ORDER
(Hon'ble Mr. J.P. Sharma, Member (J))

The applicant was a Ticket Collector and was charge sheeted for illegal extration of Rs. 10/- from one Shri Nand Kishore, a passenger, who was carrying permissible luggage on Ticket No. 42201/02 from Delhi to Etawah without issuing money receipt. He was served the charge sheet on 30.5.1985 and after enquiry the disciplinary authority passed the punishment order dated 10.2.1987 removing the applicant from service. An appeal against the same was rejected on 27.5.1987.

The Applicant filed O.A. No. 1808/87 which was decided by the order dated 22.4.1988 with the following order:

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"This is a wholly non-speaking order. As is evident from this order, neither it refers to the charge levelled against the applicant nor the plea raised in defence nor evidence in support of the defence. The order does not disclose whether the appellate authority has applied its mind to the several contentions raised by the applicant as regards the irregularity in the procedure and the lack of evidence to establish the charges. It has been repeatedly laid down by the Supreme Court/High Courts and by this Tribunal also that the appellate authority should dispose of the appeal on merits by a speaking order. The disposal of this appeal does not disclose that any of these decisions have been kept in view. We have, therefore, no option but to quash the appellate order and direct the appellate authority to hear and dispose of the appeal expeditiously and in any case not later than three months from the date of receipt of this Order."

The applicant preferred an appeal dated 27.5.1988 to Sr.DCS, Ambala because the applicant was transferred to Ambala Division after the creation of the Ambala Division. The appeal was disposed of by the appellate authority by the order dated 5.7.1988. The applicant again assailed the order passed by the appellate authority in O.A. No. 1309/89 which was decided on 31.7.1991 whereby the Bench observed that the appeal was rejected without taking into consideration the points raised in the appeal dated 27.5.1988. The applicant was also not given personal hearing in spite of the direction given by the Tribunal in its earlier decision dated 22.4.1988. The Tribunal, therefore, quashed this order remanded the case to the appellate authority to dispose of the appeal of the applicant within a period of two months. After remand by the order dated 30.9.1991, the respondent called for the memo appeal dated 27.5.1988, which was not available in the office. He submitted the copy of the Appeal dated 25.5.1988 in his letter

dated 22.10.1991. The said appeal was disposed of by the Impugned Order dated 31.10.1991. The applicant filed CCP No. 34/92 on the ground that the Sr. DCS, Ambala rejected the Appeal by non-speaking order without any application of mind and did not comply with the directions given in the judgement in the O.A. No. 1309/89 decided on 31.7.1991. The aforesaid CCP was disposed off by the order dated 16.1.1992 with the observation that the interference is not required under the contempt of court leaving the court open to the applicant to challenge the order in appropriate proceedings.

The applicant, therefore, filed this application on 25.1.1993 aggrieved by the order dated 31.10.1991.

The relief prayed by the applicant

(a) to quash the impugned order dated 31.10.1991 rejecting the Appeal dated 27.5.1988 and with further direction to reinstate the application with all consequential benefits from the date of removal. He also prayed for the cost of the application. By the order dated 15.3.1993 the case was admitted and was ordered to be listed for final hearing.

We have heard the learned counsel of both the parties at length and perused the record. It is not disputed that the disciplinary enquiry under Rule⁹ of the Railway Servant's (Disciplinary and Appeal) Rules, 1968 was initiated against the applicant for the alleged misconduct of accepting Rs. 10/- on 22.2.1985 while posted on duty at East Hall of Delhi Main Junction from one Shri Nand Kishore and he did not issue an EFT. The disciplinary authority passed an order of removal according with the findings of the Enquiry Officer on 10.2.1987.

The charge against the applicant is that he extracted Rs. 10/- from Shri Nand Kishore who was travelling Ex Delhi to Ettawah without any money receipt and he failed to maintain absolute integrity, displayed lack of devotion towards duty and acted in a manner of of unbecoming railway servant, thus contravened Rule 3.1(i)(ii) and)iii) of Railway Service Conduct Rules, 1966". The main attack to the findings of the enquiry officer has been that the passenger from whom the aforesaid amount was shown to have been extracted was not produced before the enquiry officer in order to confront his statement recorded in the absence of the applicant. The applicant preferred an Appeal which has been disposed of by non-speaking order dated 27.5.1987. That order was set aside by the Tribunal in O.A. No. 1808/87 decided on 22.4.1988. The order has been quoted above. The applicant again submitted the Appeal dated 27.5.1988 in continuation of his Appeal dated 11.5.1987 and he has taken a number of grounds. That Appeal after the direction given by the Tribunal was disposed of by the order dated 5.7.1988. The order is quoted below:

In compliance to judgement dated 22.4.1988 delivered in O.A. No. 1308/1987 By Central Administrative Tribunal, Delhi, Sr. DCS/NDLS has again considered your above cited appeal and passed the following orders:

1. After carefully considering the appeal, I have no hesitation in upholding the earlier orders, passed by the former Sr. DCS rejecting the appeal.

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2. The contention of the applicant Ticket Collector that that D&AR inquiry had been conducted in a biased manner is not accepted as I find the whole proceedings quite objective in nature.
3. It is the privilege of prosecution to produce any or all of its witnesses in examination which cannot be denied to it in this case. The prosecution is thus within its right for having not produced two of its witnesses for examination. The contention of the appellant TCR on this score is not tenable.
4. The crux of the case lies in the fact that the TCR accepted Rs. 10/- from the passenger when the money was never legitimately due from the latter and, as per his own admission, the TCR failed to issue the receipt immediately. The plea that the passenger had been in hurry and the TCR had no time even to start preparing the receipt, let alone issuing it, carries little conviction. The malafide intention on the part of the TRC, therefore, is quite evident.

In view of the above facts, I hold the earlier orders and reject the appeal once again".

The applicant also preferred a revision to the GM, Northern Railway under Rule 25 on 1.8.1988. However, since the same was not decided the applicant filed another O.A. No. 1309/89 and by the

order dated 31.7.1991 the Tribunal again quashed the Impugned Order passed in a Appeal dated 5.7.1988 by which the order of punishment of removal of service passed by the disciplinary authority on 10.10.1987 was upheld. This time also the Tribunal observed that the direction given by the Tribunal in its earlier judgement No. 1808/87 has not been complied with and again remanded the matter to the appellate authority. It appears that the respondents did not care even to read the order passed in the aforesaid O.A. After the remand the Impugned Order dated 31.10.1991 has been passed which is quoted below:

" In compliance to judgement dated 31.7.1991 delivered in OA 1309/89 by Central Administrative Tribunal, Delhi, I have gone through the whole case including copy of appeal dated 27.5.1988 submitted by Shri Bodh Raj Sharma alongwith covering letter dated 22.1-.1991 and find that Shri Bodh Raj Sharma Ticket Collector had admitted acceptance of Rs. 10/- from the passenger without issuing any receipt to him. Shri Bodh Raj Sharma was supposed to charge the passenger for excess luggage only after weighing the luggage which he did not do. Non-weighment of the luggage and non-issue of receipt for Rs. 10/- taken from the passenger proves his intention without any doubt and his plea that he was going to prepare the EFT but the passenger rushed to catch the train without getting the EFT is mere a concocted story just to cover up his guilt. Thus he extracted Rs. 10/- illegally from the passenger and such a serious charge does not deserve lenient consideration.

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The punishment awarded to Shri Bodh Raj Sharma ex. TC/SRE by the disciplinary authority is upheld".

The applicant has assailed the order on the grounds that the Impugned Order is a non-speaking order, the evidence produced has not been gone through by the Appellate Authority in as much as the possibility from whom the applicant was alleged to have extracted Rs. 10/ without receipt was not even produced before the enquiry officer. A bare reading of the Impugned Order dated 31.10.1991 goes to show that the Appellate Authority did not scrutinise the appeal of the applicant making certain objections to the findings arrived at by the disciplinary authority. In Ram Chander Vs. Union of India and ors (1986) 3 SCR page 103 the Hon'ble Supreme Court observed that after the 42nd Amendment of the Constitution of India the question still remained open as to the stage when the delinquent Government servant would get the opportunity of showing that he had not been guilty of any misconduct so as to deserve any punishment or that the charges proved against him were not of such a character as to merit the extreme penalty of dismissal or even of removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case. The applicant, therefore, preferred an Appeal in 1987 itself and submitted the same by another supplementary Appeal on 27.5.1988. The applicant has taken extensive grounds in the Memo of Appeal covering in Para 17 and running from page 28 to 35 of the paper book. The Impugned Order passed by the Appellate Authority did not at all discuss the evidence nor there is any consideration on the various grounds taken in the Memo of Appeal by the applicant. An Appellate Order should be speaking Order. Duty to give reasons is an incidence of

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the judicial process. The order passed by the Appellate Authority is just a mechanical reproduction phraseology of the Rule 22(2) of the Rules without any attempt on the part of the authority either to marshal the evidence on record with a view to decide whether the findings arrived at by the disciplinary authority could be sustained or not. The punishment order passed against the applicant by the disciplinary authority of removal from service is a matter of grave concern.

From another angle also we find that after the constitutional change where a right to make a representation on the proposed penalty which was to be found in clause 2 of the Article 311 of the Constitution having been taken away by the 42nd amendment, it seems that the only stage at which the delinquent Government servant can exercise his right of challenging the punishment order and the penalty therein is by enforcing his remedy by way of departmental appeal or ^{Revision} ~~retention~~. In the case of Ram Chander (Supra), the Hon'ble Supreme Court has also emphasized that ^{an} ~~all~~ objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the authority regarding the final order that may be passed on his appeal. In the present case, even in the judgement in OA 1808/87, the order dated 22.4.1988 clearly directed the Appellate Authority to hear and dispose of the appeal expeditiously leaves no doubt that an opportunity should have also been given to the applicant and that has not been done.

In view of the above facts and circumstances we are constrained to observe that the Appellate Authority has not considered the matter in spite of the direction issued twice for

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considering the appeal of the applicant in the light of the averments made therein. The appellate Order dated 31.10.1991, therefore, cannot be sustained.

In the present application, the applicant has only assailed the Appellate Order dated 31.10.1991 though the Appellate Order ^{with} merges ~~that~~ the order of the disciplinary authority yet the applicant has not taken any substantial ground to assail the order of the disciplinary authority. The only ground he has taken is that the passenger from whom the applicant has illegally extracted Rs. 10/- has not been examined was a material witness. In the counter the respondents have stated that in spite of the best attempt only 3 witnesses out of 5 attended the enquiry and 2 witnesses did not attend and as such their evidence was dispensed with. The applicant could not substantiate in this Judicial review before us ~~that~~ the conclusion arrived at by the disciplinary authority could not have reached on the basis of the evidence of these 3 witnesses and other material documents on record. In view of this the applicant can get only the benefit ^{of} non disposal of appeal by ^a speaking order. Thus the termination of service of the applicant could be faulted with on the technical ground and he can be given only the limited relief of reinstatement to the service on the same post which he held at the time when the order of removal from service dated 10.2.1987 was passed. We are fortified in our view by the authority of the case State Bank of India Vs. Shri N. Sundara Money (1976) 3 SCR page 160. The service of the respondents in this case were terminated without notice of appointment of retrenchment of compensation. The Hon'ble Supreme Court molded the relief taken into consideration the long period which had passed and directed that the employee would be put back to the same position where he left of, but his new salary will be what he would draw were considered to be appointed in the same post

'Today' denovo. He was further directed to ~~be~~ rank below all permanent employee in that cadre to be deemed to be a temporary hand till that time. He was not allowed to claim any advantage in the matter of seniority.

In view of the above discussion, the present application is partly allowed :-

1. The Impugned Order of Punishment of disciplinary authority Dated 10.2.1987 as well as the order of the Appellate Authority dated 31.10.1991 are quashed and set aside.

2. The applicant shall be reinstated to the same post from which he was removed from service within a period of 3 months from the receipt of the copy of the judgement but he shall not be entitled to any back wages for the period from the date of his removal from the service i.e. 10.2.1987 till the date he joins by virtue of this order. However, he will get all the benefits of continuity of service regarding fixation of pay, seniority etc.

In the circumstances mentioned above, the parties to bear their own costs.



(B.R. Singh)

Member(A)



(J.P. Sharma)

Member(J)

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