

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 622/93
T.A. No.

199

DATE OF DECISION 13.10.97

Sh. Mahesh Chander Tewari

Petitioner

Sh. G. D. Bhandari

Advocate for the Petitioner(s)

Versus

U. O. I. & Ors.

Respondent

Sh. Rajeev Bansal

Advocate for the Respondent(s)

CORAM

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

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

1. To be referred to the Reporter or not? Yes

2. Whether it needs to be circulated to other Benches of the Tribunal?

S. P. Biswas
(S. P. Biswas)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA No. 622/1993

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New Delhi, this 13th day of October, 1997

Hon'ble Mrs. Lakshmi Swaminathan, Member (J)
Hon'ble Shri S.P. Biswas, Member (A)

Shri Mahesh Chander Tewari
9268, Mohalla Tokri
Pul Mathai, Delhi Applicant

(By Advocate Shri G.D. Bhandari)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi.
2. Divl. Railway Manager
Northern Railway, Moradabad. Respondents

(By Advocate Shri Rajeev Bansal)

ORDER

Hon'ble Shri S.P. Biswas

The applicant, a Substitute Loco Cleaner of Moradabad Division/Northern Railway, is aggrieved by Annexure A-1 and A-3 orders dated 21.4.92 and 14.1.92 issued by the appellate and disciplinary authorities respectively. A-3 order removing him from services with immediate effect has been affirmed by A-1 order rejecting his appeal.

2. While challenging the above orders, learned counsel for the applicant drew our notice to the series of infirmities perpetuated by the respondents while conducting enquiry and also dealing with applicant's representation at the level of disciplinary authority. Without exhausting the catalogue of such legal lapses, the learned counsel submitted that the order of disciplinary authority is in violation of Rule 9(a)(i) of the Railway Servants (Discipline & Appeal) Rules, 1968 (RULES for

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short). As per this rule, on receipt of applicant's statement of defence, disciplinary authority is required to consider the same and decide whether enquiry should be proceeded with under this rule. Accordingly, the applicant submitted his explanation to the charge-memo on 8.4.91 but the above rule was not adhered to by the disciplinary authority.

3. To add further, the counsel would submit that the enquiry itself has been vitiated on the ground that the basic records, i.e. muster-roll, live casual labour register and attendance registers etc., were not produced to substantiate the allegation of inadequate number of working days of the applicant. In support of this contention, the learned counsel drew our attention to the decisions of the Full Bench of the Tribunal in the case of Lal Singh Vs. General Manager/Norhtern Railway in OA No. 486/90 decided on 10.08.93.

4. That apart, since the case under S.F.5 was preceded by a report of the vigilance investigation as mentioned by the inquiry officer in his report dated 12.12.91, a copy of the said investigation report should have been made available to the applicant. By not doing so, respondents have gone against the orders of the Railway Board in Circular No.52E/0/26-III E.(D&A) dated 24.8.68. The above order indicates that it will be wrong to deny access to such report when those have been relied upon in framing the charges.

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5. Learned counsel submitted that the disciplinary authority has blatantly violated Railway Board's order vide letter No.E(D&A)78 RG6-11 dated 3.3.78. The order of the disciplinary authority mentions:

"I hereby accept the findings of the enquiry committee and appeal of employee has not any considerable weightage as such I hereby impose the punishment of removal from Railway service upon Shri Mahesh Chand Tiwari".

The above order, as per the counsel, is devoid of the application of principles that need to be infallibly followed in such cases. The following orders of Board have binding effect on Disciplinary Authorities in Railways:-

"3. Law requires that the disciplinary authority imposing the penalty must apply its mind to the facts, circumstances and record of the case and then record its findings on each imputation of misconduct for its findings so as to show that it has applied its mind in the case. The reasons recorded by the disciplinary authority should be comprehensive enough to give a chance to the delinquent railway servant to explain his case in his appeal".

Such an order, without reasons being mentioned, is alien to a system governed by Rule of Law.

6. We do not think that we are required to go into details of all the claims of applicant's counsel. Apart from respondents' failure in respect of A-3 order, there is a glaring illegality vitiating A-1 appellate order dated 21.4.92. For that reason, application succeeds. The impugned A-1 order is unique in the sense that it contains no reasons for conclusion reached therein. All

that is stated is:-

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"Having gone through the appeal and case in detail, I find that the procedure laid down has been followed and the findings of the disciplinary authority are relevant by evidence on record. I therefore conclude that the punishment imposed is adequate and hence confirm it".

It is a settled law in this country as elsewhere that every quasi judicial order must be supported by reasons. We are satisfied that in the disposal of the appeal, the Sr. Dvl. Mechanical Engineer (Power) has not applied his mind to the requirement of the rule 22(2) of Railway Servants (D&A), Rules, 1968. That rule stipulates the following:

"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 ensure:

(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 record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass

(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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7. In the instant case, the appellate order passed is evidently in violation of the above D&A rules prescribed for the Railway Officers. We are distressed to note that a responsible authority has passed an order confirming order of removal of an employee under him, without even the charity of stating the reasons that persuaded him to confirm such a drastic action. The said order has to be set aside in the light of the law laid down on the subject.

8. We find that our stand gets well supported by the decision of Supreme Court in the case of R.P. Bhat Vs. UOI & Ors. ATR 1986 SC 149. That was the case where the Director General of Border Roads Organisation did not apply his mind nor recorded reasons in fulfilment of requirements of Rule 27(2) and the apex court directed disposal of the appeal afresh after applying mind and complying with provisions under the relevant rule. The same situation prevails here.

9. Because of the reasons aforementioned, the OA deserves to be allowed and accordingly we do so with the following orders:

(A) A-1 appellate order dated 21.4.92 and A-3 order dated 14.1.92 disciplinary authority are hereby set aside.

(B) We make it clear that we have no expressed any opinion on the merits of the chargesheet.

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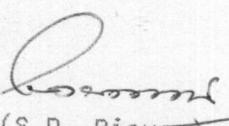
(B) We make it clear that we have no expressed any opinion on the merits of the chargesheet.

(C) Applicant shall be taken back to duty within a period of 6 weeks from the date of receipt of a certified copy of this order.

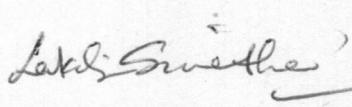
(D) Respondents will have the liberty to proceed with the case afresh in accordance with law laid down on the subject.

(E) There shall be no back wages for the intervening period.

No costs.


(S.P. Bawas)
Member (A)

/vv/


(Mrs. Lakshmi Swaminathan)
Member (J)