

Central Administrative Tribunal
Principal Bench, New Delhi.

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O.A. No. 1029/93

New Delhi, this the 27th day of July, 1999

HON'BLE SHRI S.R. ADIGE, VICE-CHAIRMAN (A)
HON'BLE SHRI P.C. KANNAN, MEMBER (J)

Tarsem Lal s/o Shri Ram Chand,
House No. 108-H, Rishi Nagar,
Shakur Basti, Delhi.
(By Advocate: Shri G.D.Bhandari)

....Applicant

versus

Union of India through

1. The General Manager,
Northern Railway,
Bareda House, New Delhi.

2. The Divisional Railway Manager,
Northern Railway, State Entry Road,
New Delhi.

...Respondents

(By Advocate: Shri R.L.Dhawan)

O R D E R

BY HON'BLE SHRI P.C.KANNAN, MEMBER (J)

1. Heard Shri G.D.Bhandari, counsel for the applicant and Shri R.L. Dhawan, counsel for the respondents.

2. The applicant, who was a Driver 'A' Special in the grade of Rs. 1640-2900/-, has challenged the order dated 21.6.91 of compulsory retirement imposed by the disciplinary authority (Annexure A-1) and the order of the appellate authority dated 24.3.1992 (Annexure A-3) on various grounds. The case of the applicant is that he was appointed on 24.6.1953 as a Loco Cleaner under the respondents and lastly, he has been holding the post of Driver 'A' Spl. in the scale of Rs.1640-2900/- The applicant was issued a major penalty charge sheet dated 20.12.1990 (Annexure A-4). The statement of article of charge levelled against the applicant is that while functioning as a Driver on 18.11.1990, has been responsible

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for not stopping short of level crossing Gate No. 15-C to ensure its closure and passing same in open position indisregard of the caution orders issued to him at MTL and MUZ, which has resulted in an accident with the Truck No. NLZ 5230 at the railway crossing and caused death of one cleaner and minor injuries to the truck driver. An inquiry officer was appointed by order dated 13.2.1991 (Annexure A-5) who submitted his report dated 14.4.1991 to the disciplinary authority (Annexure A-20). On the basis of the enquiry report and after considering the representation of the applicant, the disciplinary authority imposed the punishment of compulsory retirement w.e.f. 7.6.1991 (Annexure A-1). The applicant thereafter submitted a detailed appeal dt. 9.3.1992 (Annexure A-2) to the competent appellate authority. In this appeal, the applicant challenged the order of punishment on various grounds. The main grounds are as under:-
3. There were two caution orders issued to him on 18.11.90. The second caution order which was issued later on 18.11.90 clearly indicated that he should stop dead, if required. It also contained another instruction which reads as follows:

"Please pass after ensuring closure of gate to road traffic and gateman hand signal"

It was, therefore, contended that the second caution order authorised him to proceed further without stopping of the train if the gateman displayed the signal. It was stated that as the gateman displayed green hand signal to him he did not stop the train. The applicant has also brought out that in that particular railway crossing, there was no requirement for stopping the train completely at the railway crossing. It was also stated that applicant had rendered meritorious service of over 30 years and never acted or participated in any strike. It was also stated that the punishment of compulsory retirement has ruined his life. The applicant also contended that the whole procedure adopted by the enquiry officer was not in accordance with rules, e.g., truck driver was not summoned; the applicant was not allowed to produce his defence witnesses; the applicant was not supplied with the true copies of the proceedings against the gateman; the applicant was not given additional

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document supplied on 13.4.1991; and he was not given a personal hearing even on his written request. In the light of the above, the applicant contended that the order of punishment imposed on him was against the facts and law and, therefore, required to be set aside.

4. The appellate authority by order dated 24.03.1992 (Annex A-3) rejected the appeal with the following observations:-

"The past record of Shri Tarsem Lal was examined as well as the two caution orders. Shri Tarsem Lal Ex-
driver failed to observe the instructions contained in the caution orders issued at MTD and MUD leading to collision with a drunk causing loss of human life. Shri Tarsem Lal has been involved in three accident cases earlier. Considering these facts his appeal is rejected."

5. The respondents in their reply had stated that the punishment order and the appellate order are in accordance with law and the rules and instructions of the Railway Board. It was also stated that the applicant was involved in a fatal accident on 18.11.1990 and the said accident occurred due to the negligence of the applicant. It was also stated that the appointment of Shri R.P. Degra, Loco Inspector, as Enquiry Officer to conduct D.A.R. proceedings was in accordance with the rules and the applicant was given reasonable opportunity and the inquiry was conducted in an impartial manner. A copy of the inquiry report was furnished to the applicant. As the applicant was found guilty of the charge, the disciplinary authority, after considering the representation submitted by the applicant and other records awarded the punishment.

6. Shri Bhandari, counsel for the applicant referred to the inquiry proceedings in detail to indicate how the order of punishment was against the rules. He also submitted that the Appellate Authority did not apply his mind as to whether the fact of misconduct with which the applicant was charged together with attendant circumstances and the past record of the applicant as required under the rule 22(2) of the Railway Servants (Discipline & Appeal) Rules.

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7. He submitted that the order of the appellate authority had simply reproduced the charge and also referred to the past bad records. He stated that the order of the appellate authority is bald and cryptic and did not consider any of the grounds raised by the applicant in his appeal. The Appellate Authority had also not examined whether the findings of the disciplinary authority are warranted by the evidence on the record and whether the penalty imposed is adequate, inadequate or severe. In this connection he relied upon the judgement of the Hon'ble Supreme Court in the case of Ram Chander vs. Union of India (AIR 1986 SC 1173). The relevant observations of the Hon'ble Supreme Court are contained in paragraphs 9 and 24. The same reads as under:-

"9. These authorities proceed upon the principle that in the absence of a requirement in the statute or the rules, there is no duty cast on an appellate authority to give reasons where the order is one of affirmance. Here, R.22(2) of the Railway Servants Rules in express terms requires the Railway Board to record its findings on the three aspects stated therein. Similar are the requirements under R.27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. R.22(2) provides that in the case of an appeal against an order imposing any of the penalties specified in R.6 or enhancing any penalty imposed under the said rule, the appellate authority shall 'consider' as to the matters indicated therein. The word 'consider' has different shades of meaning and must in R.22(2), in the context in which it appears, mean objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision".

"24. XXXXXXXXX. Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsi Ram Patel's case that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair-play and justice also require that such a personal hearing should be given".

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8. Shri Bhandari in his contention also referred to the Railway Board's letter dated 3.3.1978 & MHA O.M. dated 13.7.1981 and submitted that the appellate order passed is not in accordance with provisions of Rule 22 and the instructions of the Railway Board and the judgement of the Supreme Court.

9. Mr. Bhandari also challenged the order of disciplinary authority and the report of the inquiry officer on various grounds and referred to a number of judgements of the Supreme Court and Tribunals.

10. Mr. R.L. Dhawan, counsel for respondents submitted that the appellate order is in accordance with the requirement of the rules. He referred to the observations of the appellate authority that the applicant had failed to observe the instructions and contended that this finding of the appellate authority is sufficient for the purpose of disposal of the appeal. He also submitted that the inquiry was conducted in accordance with the rules and the disciplinary authority after giving reasonable opportunity to the applicant imposed the minimum punishment prescribed in the rules.

11. We have carefully considered the submissions of the counsel on either side and examined the pleadings. We find glaring illegality vitiating the order of the Appellate Authority. Hence the O.A. is to be allowed on this ground alone. We, therefore, do not propose to consider various other grounds raised before us by the counsel for the applicant. We

12. Rule 22(2) of the Rules reads 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;

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(b) whether the findings of disciplinary authority are warranted by 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 ~~make~~ such directions as it may deem fit in the circumstances of the case.***

13. The Railway Board vide its letter dated 3.3.1978 issued the following instructions:

"All the points raised by the delinquent railway servant in his defence appeal be considered and it should be recorded by the Disciplinary Authority/Appellate Authority as to why the said points are not tenable".

14. The provisions of Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968 and the instructions dated 3.3.1978 issued by the Railway Board provides that the appellate authority should consider all the points raised in the appeal and the appellate authority should record his reasons as to why the said points are not tenable. The appellate order, does not refer to any of the grounds/points that have been urged in the appeal. We also find that the appellate authority has relied upon the past bad record of the applicant that he was involved in three accidents for the rejection of the appeal. As the past bad record of the applicant was not made a specific charge in the chargesheet, we held that the reference to the same in the appellate order has vitiated the proceedings before the appellate authority. In the circumstances, we hold that the appellate order is not in conformity of the rules, instructions of the Railway Board and the judgement of the Hon'ble Supreme Court in Ram Chander's case (supra). We, however, make it clear that we have not examined the various grounds raised in the appeal and, therefore, do not express any opinion on the merits of the appeal.

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15. In the facts and circumstances of the case, we quash the appellate order dated 24.3.1992 (Annexure A-3) and remit the matter to the appellate authority with a direction that the authority should hear and dispose of the appeal after affording a personal hearing to the applicant on merits by a reasoned order in conformity with the requirement of rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968 as expeditiously as possible and, in any event, not later than 3 months from the date of receipt of a copy of this order.

16. The O.A. is disposed of accordingly. No costs.

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(P.C.KANNAN)
MEMBER (J)

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(S.R.ADIGE)
VICE-CHAIRMAN (A)

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