

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH**

Original Application No. 1646 of 2005

Thursday, this the 23rd day of July, 2009

Hon'ble Mr. Ashok S. Karamadi, Member (J)
Hon'ble Mrs. Manjulika Gautam, Member (A)

Dinesh Pratap Singh S/o Late Vijay Bahadur Singh R/o Village-
Konhka-Purva Post Office-Hana, Tehsil-Mau, District Chitrakoot.

Applicant

By Advocate: Sri Saurabh

Vs.

1. Union of India, through, General Manager, Central Railway, Chhatrapati, Shivaji Terminal, Mumbai.
2. Additional Divisional Railway Manager, Central Railway, Bhusawal.
3. Divisional Commercial Manager, Office of the D.R.M., Central Railway, Bhusawal.
4. Assistant Commercial Manager, Office of the D.R.M., Central Railway, Bhusawal, Inquiry Officer.

Respondents

By Advocate: Sri Prashant Mathur.

ORDER

By Hon'ble Mr. Ashok S. Karamadi, J.M.

This application is filed seeking quashing of the Orders passed by the Disciplinary Authority, Appellate Authority and the Revisional Authority dated 11.07.2002, 17.03.2003, and 22.12.2004, and further direction to the respondents to reinstate the applicant with consequential benefits.

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2. The brief facts of the case are that the respondents have issued charge memorandum dated 06.04.2001 against the applicant with the charges mentioned as under: -

"That the said Shri D.P. Singh, TC while on duty on 1057 Dn manning FN 1 and S/9 coaches on 16/17-01-2001 between DR & DH1 committed serious misconduct in that:

Article-I: He was carrying passengers in FN1 and S/9 coaches after taking illegal gratification from them without issuing EFRs.

Article-II: He absconded from his duty post between IGP to CSN.

Article-III: He non co-operated with vigilance check."

Based on the above charges, the inquiry was held, the Inquiry Officer has given a report dated 31.10.2001 with the findings that charges No. 1 and 2 have been proved and the charge No. 3 has not been proved. On the receipt of the inquiry report by the applicant, he submitted his representation on 15.01.2002, stating that the findings of the Inquiry Officer are erroneous, and the evidence has not been properly assessed. The Disciplinary Authority has passed the impugned order on 11.07.2001 imposing penalty of removal from service. The applicant being aggrieved by the same preferred an appeal on 31.08.2002. The Appellate Authority by the Order dated 17.03.2003 dismissed the appeal filed by the applicant, against the same the applicant has preferred the Revision Petition, the Revisional Authority by the Order dated

22.12.2004 affirmed the Order passed by the Appellate Authority.

3. On notice, the respondents have filed the Counter Reply. The sum and substance of the Counter Reply is that the Orders passed by the competent authorities i.e. the Disciplinary Authority, Appellate Authority and Revisional Authority are the self explanatory on the subject, by providing all reasonable opportunities to the applicant to defend his case and after due consideration of the entire materials on record, and the grounds on which the applicant is seeking quashing of the impugned orders are not tenable in law having regard to the reasons contained in the impugned orders and sought for the dismissal of the O.A.

4. The applicant has filed the Rejoinder Affidavit, reiterating the same contentions as urged in the O.A.

5. We have heard the learned counsel for the parties and perused the pleadings and materials available on record. Learned counsel for the applicant submits that the entire inquiry proceedings alleged against the applicant are false, and the findings recorded by the Inquiry Officer are erroneous as the evidence has not been



properly assessed, and the passengers have not been produced before the Inquiry Officer, and no eye witness has been produced by the prosecution in the regular inquiry in support of his charges, the Appellate Authority as well as the Revisional Authority have not considered the case of the applicant in a proper prospective with reference to the grounds taken by the applicant, further submitted that the impugned orders are not speaking order. The learned counsel for the respondents submits that the impugned orders do not call for any interference, otherwise he submits if the Tribunal comes to the conclusion that the impugned order of the Revisional Authority is not a speaking order, in that event matter may be remitted back to the Revisional Authority only for passing a speaking order. In view of the rival contentions of the learned counsel, we have perused the impugned orders of the respondents, which are as under: -

"Appellate Order

SPEAKING ORDER

I have heard Shri D.P. Singh, TC Bhusawal, the CE in person alongwith his ARE. I have also gone through the charge memorandum, E.O's findings orders of DA and the appeal submitted by him. On going through the papers, it is noticed that CE has submitted alongwith the appeal a Certificate issued by Dr. Warke's Nursing Home Kalyan in his defence that he was admitted in said Hospital on 17/1/01 and 18/1/01. It is also observed that CE did not submit aforesaid certificate during the proceedings of Enquiry, further on going through the proceedings and statements, it is not clarified as to how the CE reached to Hospital where as he was working . . . the train. Did he inform to his fellow staff? Who took him to Hospital and got admitted. These queries remain unanswered because CE did not submit the same during the DAR Enquiry. On the contrary, there is recorded statement that CE, on seeing the Vigilance team approaching to his compartment ran away and boarded 1015 Dn at IGP Station. Efforts to chase him failed. Hence this certificate can not be considered in view of the contradictory facts on record.

Further, it is also a recorded fact that number of Berths were vacant but these berths were occupied by passengers unauthorisedly. On being questioned, four passengers gave in writing that TTE collected the amount

[Signature]

from him but not issued EFR. Since this was the earmarked coach for CE. Hence there is bonafide doubt about him. CE has also not given any convincing reason as to why he did not make allotment against vacant berths to the passenger, who boarded the coach at DR/KYN. CE has also stated that he is being falsely implicated but no cogent reason for the same is furnished hence this can not be accepted to.

Thus, in view of the foregoing facts, I do not find any reason to reduce the punishment imposed by DA. Therefore appeal is regretted."

Revisional Order

SPEAKING ORDER

Sub: - Revision Petition of Shri D.P. Singh, TTE/BSL against the orders of penalty of "Removal from Service."

I have gone through the entire case carefully and also Revision Petition dated 03-06-2003 submitted by Delinquent Employee against the penalty imposed on him.

Charges have been proved by Enquiry Officer. However, Delinquent Employee has raised certain points in his Revision Petition in GROUNDS. The following clarifications have been given to D.E.'s GROUNDS: -

- a) Charges have been proved with the documents and witnesses indicated in the chargesheet. Demand of D.E. for additional prosecution witnesses is not justified.
- 5) Witness Shri S.S. Salunke (PW-1) was eye witness and therefore D.E.'s contention that eye witness was not available is not correct.
- b) D.E.'s contention that he fell sick supported by Medical Certificate is correct and therefore, charge framed in Article-II is not proved.

Article-III is not proved during enquiry.

Considering the above facts, I uphold the penalty imposed by D.A. i.e. "Removal from Service."

Having regard to the facts and circumstances of the case and the grounds urged by the applicant, we are prima facie satisfied that the applicant has made out a case for interference, in that view of the matter on perusal of the Appellate Order, and also the Revisional Authority's order, we are not satisfied with both the orders, as both the orders suffer from non-application of mind to the facts and materials on record and the grounds taken by the applicant, and therefore, the conclusion reached by the Appellate Authority with reference to the materials and the grounds taken by the applicant, it cannot be said the

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decision is just and proper, as the Appellate Authority has not based its decision on the entire materials on record, as such, same is unsustainable in law, and further on perusal of the Revisional Authority's order, which does not contain any brief facts of the case nor the materials, and in the absence of acceptable reasons, the conclusions reached by it, are unsustainable in law, and both the orders are non-speaking orders. The Hon'ble Supreme Court in the case of State of Haryana vs. Ramesh Kumar reported in All India Service Law Journal 2009 (2) page 358, considered the object of giving reasons by administrative orders at para-7, which reads as follows: -

"7. Even in respect of administrative orders Lord Denning M.R. in *Breen v. Amalgamated Engineering Union*, 1971 (1) All E.R. 1148 observed 'The giving of reasons is one of the fundamentals of good administration'. In *Alexander Machinery (Dudley) Ltd. v. Crabtree*, 1974 LCR 120, it was observed. 'Failure to give reasons amounts to denial of justice'. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at'. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the 'inscrutable face of the sphinx', it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The 'inscrutable face of a sphinx' is ordinarily incongruous with a judicial or quasi-judicial performance."

In view of these reasons, the contentions of the respondents are rejected. The applicant has made out a case for grant of relief.



6. Learned counsel for the applicant, in support of his contention, has relied on the following Judgments: -

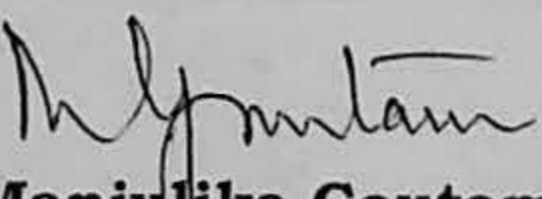
"[i] (2008) 3 Supreme Court Cases 484 Moni Shankar vs. Union of India and another;


[ii] O.A. No. 641 of 2002 Om Prakash Singh vs. Union of India and others (decided on 29.09.2005 by Allahabad Bench of CAT)

[iii] O.A. No. 1380 of 2008 Suneet Kumar Shukla vs. Union of India and others (decided on 12.01.2009 by Allahabad Bench of CAT)."

We have gone through the above decisions, and the same are not applicable to the present facts and circumstances of the case.

7. In view of the foregoing reasons, this O.A. is partly allowed, the impugned orders of the Appellate Authority and Revisional Authority are set aside and the matter is remitted back to the Appellate Authority to pass fresh order in accordance with law within a period of two months from the date of receipt of a certified copy of this order. No order as to costs.


[Manjulika Gautam]
Member 'A'


{Ashok S. Karamadi}
Member 'J'

/M.M/