

(A21)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Registration No. 707 (T) of 1986

P.R.Shakya ...

... Plaintiff-Applicant

versus

1. Union of India, through the
General Manager, Central
Railway, Bombay-V.T.

2. Divisional Railway Manager,
Central Railway, Jhansi

3. Senior Divisional Commercial
Superintendent, Central
Railway, Jhansi

4. Divisional Commercial Superin-
tendent-II, Central Railway,
Jhansi ...

... Defendant-Respondents

Hon. Justice S.Zaheer Hasan, Vice Chairman,
Hon. A. Johri, Member (A)

(Delivered by Hon. S.Zaheer Hasan, V.C.)

Suit No. 729 of 1984 (Parimal Ram Shakya v.
Union of India and others) pending in the court
of II Addl. Munsif, Jhansi, has been transferred
to this Tribunal under section 29 of the
Administrative Tribunals Act.

On 8.10.1984 the plaintiff filed the
aforesaid suit for declaration that the order
dated 29.4.1983 imposing penalty of withholding
increment and the order dated 12.3.1984 enhancing
the punishment were illegal.

On 12.10.1980 K.G.Krishnamurthy, Investi-
gating Inspector, Railway Board, checked 3-tier
coaches nos. 7132 and 7179 of K.K.Express at

Par
1/2

10.45 A.M. in which the plaintiff Parimal Ram Shakya was working as T.T.E. He revealed his identity to the plaintiff, who produced Rs 204/- in total and claimed Rs 45 as his undeclared private cash. The total value of the coupons and EFTs issued by him worked out to Rs 121/- giving an excess cash of Rs 83/- in his possession. By deducting Rs 45/- as undeclared private cash out of Rs 83/- found in excess, there was still a balance of Rs 38/- with him, for which he could not furnish any satisfactory reason as to how he happened to be in possession of excess cash amounting to Rs 38/-. According to Krishnamurthy's statement, some of the passengers told him that they would not give any written statement, but they have paid some extra money to the T.T.E. though the T.T.E. never demanded any money and they paid the extra money as tip.

On 15.3.1982 he was charge-sheeted with the aforesaid allegations. On 31.1.1983 Enquiry Officer B.K.Kamath observed that the plaintiff has stated that he declared his private cash in one of the foils of the EFT which has not been made available to him, so it was possible and probable that he declared his private cash and in the absence of the EFT book it was not susceptible of verification. So natural justice demanded that the delinquent employee was not denied any material which was very relevant for his defence. He further emphasised that this book was not only relevant, but it was material in this issue. He further held that the passengers

M

stated that the plaintiff had not taken any illegal gratification and they paid the money as extra tip. The defence of the plaintiff was that ~~the passengers~~ the passengers gave him money in notes of higher denominations and he wrote whatever amount was to be returned to them on the foil since he had no change. So the Enquiry Officer observed that since Shri Shakya had not demanded any money and the passengers had no grievance against Shri Shakya and they had not insisted on the balance money being returned to them by treating it as tip, the charges levelled against the plaintiff have not been sustained.

The matter went up before the Disciplinary Authority, which by its order dated 29.4.1983 imposed penalty of withholding the annual increment falling due on 1.10.1983 for a period of six months. On 5.9.1983 a show cause notice was issued by the reviewing authority for enhancing the punishment. On 19.10.1983 the plaintiff submitted a representation, and on 12.3.1984 defendant no. 3, the reviewing authority, enhanced the penalty by reduction to a lower post for a period of two years. On 12.4.1984 an appeal was filed to defendant no. 2 against the order dated 12.3.1984. On the copy of the memorandum of appeal there is an endorsement that its original was received in the office on 12.4.1984. After giving notice the suit was filed on 8.10.1984.

contended that the order of the Disciplinary Authority disagreeing with the Enquiry Officer contains no reason, and in the same way the order enhancing the punishment is not a speaking order, and since both of them have not applied their mind and have not passed a speaking order, so both the orders are liable to be set aside. It was further contended that the matter is pending since long, so it would not be expedient in the interests of justice to remit the case for action according to law.

The order of the Disciplinary Authority dated 29.4.1983 is a typed order in which dates and some other necessary details have been entered in the blanks. It runs as follows:-

"I have carefully considered your representation dated _____ in reply to the Memorandum of charge sheet No. _____ dated _____ and do not find your representation to be satisfactory and I hold you guilty of the article(s) of charge/imputation of misconduct or misbehaviour viz _____ levelled against you. I have decided to impose upon you the penalty of withholding of increment. Your increment raising your pay from Rs _____ to Rs _____ in the grade of Rs _____

normally due on _____ is therefore withheld for a period of _____ years _____ months.....
..... an appeal against this order lies to _____".

From the above it would appear that no reason has been given as to why the Disciplinary Authority did not agree with the finding of the Enquiry Officer to the effect that the charges could not be said to have been sustained.

P/6

According to rule 10(3) of the Railway Servants (Discipline and Appeal) Rules, 1968, the Disciplinary Authority shall, if it disagrees with the finding of the Enquiry Officer on any of the articles of charge, record its reason for such disagreement and record its own finding **if the evidence is sufficient for the purpose.**

So the provisions of rule 10(3) were not complied with.

The order of the reviewing authority runs as below:-

"I have carefully considered your representation dated 19.10.1982 in reply to SCN No. P.19/1654/VC/Con dated 5.9.1983 and do not find your representation to be satisfactory and I hold you guilty of the article(s) of charge/imputation levelled against you. I have decided to impose upon you the penalty of reduction to a lower post/grade/service. You are, therefore, reduced with immediate effect to the lower post/grade/service of ticket collector in the scales of Rs 260-400(BS) for the period of two years (NC) fixing your pay Rs 400/-. On restoration the period of reduction will not have the effect on your seniority".

2. Under Rules 18 & 19 an appeal against these orders lies to DRM JHS".

An appeal was filed on 12.4.1984 before the D.R.M. Jhansi against the order dated 12.3.1984 passed by the reviewing authority enhancing the punishment. So from the order of the reviewing authority dated 12.3.1984 it would appear that no reasons have been given and it is not a speaking order. Same is the case with the order dated 29.4.1983 passed by the Disciplinary Authority in which it was not stated as to why it did not agree with the

N

AN
1/6

-6-

finding of the Enquiry Officer. In the famous case of Ram Chander v. Union of India and others, reported in 1986(2) All India Service Law Journal, page 249, it was observed by the learned Judges:-

"We wish to emphasize that reasoned judgments decisions by tribunals, such as the 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 fairplay and justice also require that such a personal hearing should be given".

It has already been stated that under rule 10 of the Railway Servants (Discipline and Appeal) Rules reasoned order should have been passed by the Disciplinary Authority.

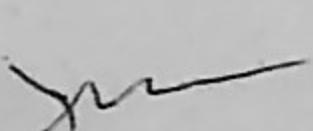
In view of the above we hold that the orders of the Disciplinary Authority dated 29.4.1983 and that of the Reviewing Authority dated 12.3.1984 are bad in law and they should be quashed.

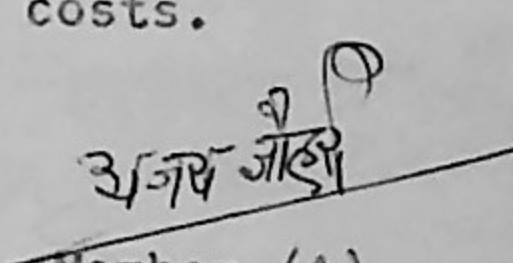
In the normal course we would have remitted the case for giving a hearing to the applicant and writing a reasoned order, but the circumstances of the case are such that

M

it will not be expedient to do so in the interests of justice. It is said that Rs 38/- were found in excess. The enquiry officer found him not guilty. The matter relates to November, 1980. We are running the end of 1986. This "sword" is hanging on the head of the plaintiff for such a long time and must have disturbed his daily routine. He must have spent time and money at different stages including this Tribunal. The passengers were not willing to give any statement and no eye-witness was produced. Under the circumstances the matter should rest.

With these observations the orders dated 29.4.1983 passed by the Disciplinary Authority and the order dated 12.3.1984 enhancing the punishment are set aside. The parties will bear their own costs.


Vice Chairman


Member (A)

D/- December 16/1986.