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(Reserved) (Bench No.1)

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD.

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Registration No. 181 of 1986.

Gulab Chand Mishra . . . vs. . . . Union of India and others.

Hon'ble Mr. Justice S.Zaheer Hasan, Vice Chairman.

Hon'ble Mr. Ajay Johri, Member(A).

(Delivered by Hon'ble Mr. Justice S.Zaheer Hasan, V.C.)

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This is an application/19 of the Administrative Tribunals Act (No. 13 of 1985) by applicant Gulab Chand Mishra for quashing the order of his removal from the post of Diesel Mechanic Grade II.

Applicant's case is that he was an active member and office bearer of the National Railway Majdoor Union, and in that connection with his trade union activities other rival trade union leaders were not pleased with him. It is said that on 5.2.1982 in the meeting addressed by the applicant, who was working as Diesel Mechanic Grade II, he used derogatory and abusive language against the Scheduled Caste and Scheduled Tribe employees of the Railway and in that connection on 22.3.1982 a show cause notice was issued to him. The charge-sheet was issued by Sri A.P.Mittal, Divisional Mechanical Engineer, Head Quarters on 10.11.1982. Mr. S.N.Alam was appointed as an Inquiry Officer to receive evidence. On 16.4.1983 Sri A.P.Mittal D.M.E.,HQ, passed the order of applicant's removal from service (vide Annexure-4 to the application) in which it was mentioned that the appeal lies against the order to Senior Divisional Mechanical Engineer, (Power), Jhansi. On 5.5.1983 the applicant preferred an appeal. Senior Divisional Mechanical Engineer(P), the

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appeallate authority, passed the following order in appeal:-

" I have gone through the appeal of the party and find that nothing new has been brought out to mitigate the charges. Appeal is rejected."

An application for review was moved before the General Manager, Central Railway, on 15.11.1983. Another application was moved to Senior Divisional Mechanical Engineer(P.) on 14.6.1983 with a request that the said application may be treated as second appeal or a review application. On 11.10.1983 the applications dated 14.6.1983, 1.8.1983 and 27.9.1983 were disposed of by Divisional Railway Manager with the following observation:-

" Seeing all these papers, I gather a view that Shri G.C. Misra is a chronic trouble maker and basically an indisciplined workman.

2. Howsoever big may be his claim for sympathy, but compared to individual's interest; the administration's responsibility to give efficient transportation service to Railway users should take priority and with this objective in view, the chronic trouble makers and instigators should be weeded out.

3. I do not think Mr. G.C. Mishra would reform himself. In due course, his basic interest would come to form and he will be a big headache.

4. I am sorry to say that my overall responsibility as DRM, do not permit me to reengage Misra even as a fresh entrant. Regarding his conditions of starvation etc., it is not the Railway's responsibility else."

On 15.12.1983 the review application dated 11.11.1983 was dismissed with the observation that it was not permissible to

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the employee to seek review of the decision of the appellate authority in a disciplinary case. Thereafter a representation was made to the President on 6.1.1984 which still stands undisposed of: Hence the application was moved in this Tribunal.

It was contended, firstly, that the order of promotion was passed by Divisional Railway Manager, and so, the Divisional Mechanical Engineer was not the appointing authority; and secondly, that the appellate order is bad because it is not a speaking and reasoned order. It was contended on behalf of the respondents that there was no legal defect in the appellate order and the appeal against the impugned order could be filed before the Senior Divisional Mechanical Engineer (P) as it is mentioned in the Annexure-4 to the Application.

On 26.4.1983 the D.M.E., HQ. passed the order of removal. An Appeal was filed on 5.5.1983. Vide Annexure-5 to the Application, Senior Divisional Mechanical Engineer (P), the appellate authority, passed the following order:-

"I have gone through the order and I find that nothing new has been brought out to mitigate the charges.

Appeal is rejected."

Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968 lays down that 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; (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and thereafter pass

necessary orders. In the case of Ram Chandra vs. Union of India, A.I.R. 1986 S.C. page 1173, Hon'ble Supreme Court held 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. But, 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. 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 an objective consideration by the Railway Board after due application of mind which ~~implies~~ implies the giving of reasons for its decision. It was further observed by the Hon'ble Supreme Court in the said case that it is of utmost importance ^{to} ~~after~~ the Fourty-Second Amendment as interpreted by the majority in Tulsiram Patel's case((1985)3 SCC 398)

~~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. Reasoned 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.

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Considerations of fairplay and justice also require that such a personal hearing should be given.

The appellate order, quoted above, is not a speaking order and is in violation of Rule 22 of the Railway Servants (Discipline and Appeal) Rules; and in view of the law laid down in Ram Chandra's case (supra), the appellate order has to be set aside. As regards the dispute regarding the appointing authority, from the evidence led before us it cannot be ascertained with reasonable certainty as to who was the appointing authority. So, this aspect of the case will be considered by the appellate authority while dealing with the case after remand.

The application is allowed and the order passed by the appellate authority is set aside. The appellate authority is directed to dispose of the appeal, after affording a personal hearing to the appellant (applicant) on merits, by a reasoned order in conformity with the requirement of Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, as expeditiously as possible. Parties are directed to bear their own costs.

October 28, 1986. Vice Chairman.

JK
BGR ⁴
Member (A).