

AP/1 (5)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.907 of 1987

Roshan Lal Sharma ..... Applicant

Versus

Union of India & Others ..... Respondents.

Hon. Justice Kamleshwar Nath, V.C.

Hon. K. J. Raman, A.M.

(By Hon. Justice Kamleshwar Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 is for issue of a direction to quash the punishment order dated 28.1.1986 contained in Annexure-A.14 and the appellate order dated 12.5.1986 contained in Annexure-A.16.

2. The applicant who was a Permanent Way Inspector at Shamli Railway Station, when in consequence of a derailment of a railway wagon at night on 3.7.83 a passenger train collided with it on 4.7.83 at 2.40 P.M. A chargesheet dated 14.8.84 Annexure.A.1 was framed against him under Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968 and after enquiry a penalty order dated 9.3.83 was passed withholding his one increment at the stage of Rs. 675/- due on 1.3.85 for a period of two years. When the matter figured before the A.D.R.M.II by way of appeal the latter issued a notice dated 28.11.84 Annexure-A.15 proposing the enhancement of punishment. The circumstances requiring enhancement of punishment were set out. An enquiry under Rule 9 was proposed to be held and the applicant was called upon to file a written

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statement of his defence within a specified time. In course of time the A.D.R.M. II passed the first impugned penalty order dated 28.1.86 Annexure-A.14 whereby he directed reduction of the applicant to a lower stage in the time scale of his pay for a period of two years without cumulative effect. The applicant's appeal figured before the Divisional Railway Manager who passed the second impugned order dated 12.5.86 Annexure-A.16. This document is a letter written on behalf of the Divisional Railway Manager informing the applicant that the Divisional Railway Manager had considered the appeal of the applicant and had passed the following order :-

" Regret I see no reason to amend or alter the punishment ".

3. The learned counsel for the applicant says that the ~~appellate~~ order dated 12.5.86 Annexure-A.16 is a non-speaking order and therefore could not be sustained in the eyes of law. The record which led to the passing of this order was placed before us and we are unable to find that the Divisional Railway Manager had made any consideration of the case ' Bichar Kia ' and at the bottom of this order is recorded the D.R.M.'s single line order extracted above. We are satisfied that it is a non-speaking order and violates the principles of natural justice, <sup>and</sup> therefore cannot be sustained.

4. So far as Annexure-A.14 dated 28.1.86 is concerned, the first point raised is that the appellate authority was not competent to issue a notice of enhancement. This is not correct.



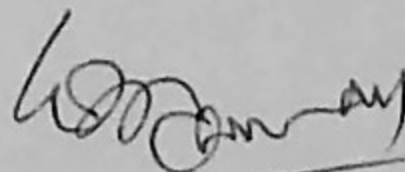
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Rule 22(2)(i) of the aforesaid Rules authorises the appellate authority to enhance the punishment. The second contention is that in enhancement notice the appellate authority ought to have indicated the exact enhancement proposed to be made. We find no justification for this submission. Proviso II to Rule 22 (i) of the Rules only contemplates that the enhanced penalty that the appellate authority may propose to impose should be one under Clause V to IX of Rule 6. The order Annexure-A.14 therefore does not suffer from the infirmities referred to by the learned counsel for the applicant.

5. Even so, in view of what we have held in respect of the order Annexure-A.16 dated 12.5.86 we quash the same and direct that the appropriate appellate authority shall reconsider the appeal and pass a final speaking order in accordance with law within two months from the date of the service of the copy of this order. It will be open to the appellate authority to examine <sup>alleged</sup> grounds of invalidity of the first impugned order Annexure-A.14 other than those already considered in this judgement. There shall be no order as to costs.



Member (A)



Vice Chairman

Dated the 15th March, 1989.

RKM