

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

O.A. No. 1402/88
T. No. 1402/88

DATE OF DECISION: 30/11/94

----- Bhajja Singh ----- PETITIONER

----- G. S. Kapoor & f ----- ADVOCATE FOR THE
Rakesh Verma PETITIONER

VERSUS

----- u.o & others ----- RESPONDENTS

----- S. A. K. Srivastava ----- ADVOCATE FOR THE
RESPONDENTS

COURT

The Hon'ble Mr. K. Nathu Kumar A.M.

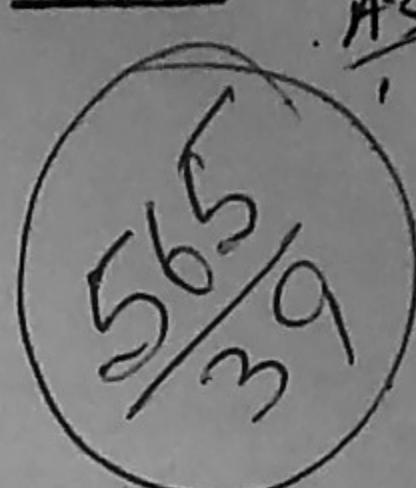
The Hon'ble Mr. T. S. Shahwali J.M.

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporter or not ? yes
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to all other Bench

MANISH/

SIGNATURE

RESERVED



CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the day 30th Nov 1994.

ORIGINAL APPLICATION NO. 1402 OF 1988.

Bhajju Singh S/o Sri R. Singh,
aged about 54 years,
R/o 261, Shiv Lok, Kankar Khera,
Meerut Cantt, working as Conductor
in Northern Railway, Moradabad.

By Advocate Sri G.S. Beqrar
Sri Rakesh Verma Applicant.

VERSUS

1. Union of India through General Manager,
Northern Railway, Baroda House,
New Delhi.

2. The Divisional Commercial Superintendent,
Northern Railway,
Moradabad.

3. The Senior Divisional Commercial Superintendent,
Northern Railway,
Moradabad.

By Advocate Sri A.V. Srivastava..... Respondents.

CORAM:- Hon'ble Mr. K. Muthukumar, A.M.
Hon'ble Mr. J.S. Dhalawal, J.M.

(ORDER)

By Hon'ble Mr. K. Muthukumar, Member (A)

1. The applicant, a Conductor under
the Divisional Commercial Superintendent, Moradabad,
..... 2

was charge-sheeted under Rule 11 (d) of Railway Servants (Discipline and Appeal) Rules, 1968, on his failure for maintain devotion to duty. The imputation of misconduct on which the chargesheet was based, was that while working as Conductor in Train number 157 Up Ex LKO to MB The applicant on 13/14.12.1987 failed to detect a passenger, holding ticket BSB to RMU, was actually travelling up to MB unauthorisedly and the applicant failed to issue any excess Fair Ticket to said passenger from RMU to MB till the time of the surprise check by the Railway Board Officers and the above passenger was charged excess fair through the Senior TC/MB on duty at the MB Station. The applicant submitted his representation against the aforesaid charge indicating the full facts of this case and denying the charges levelled against him. However, the Divisional Commercial Superintendent, the Disciplinary Authority passed the order imposing the minor penalty of stoppage of increment of the applicant for a period of three years. The appeal against this order was also disposed of by the Appellate Authority rejecting the aforesaid appeal by his order dt. 12.7.1978. Aggrieved by this, the applicant has approached this Tribunal with prayer to issue a suitable order for quashing the order of the Disciplinary / Appellate Authority. The main ground on which the applicant has sought relief is that the representation against the chargesheet was not at all considered properly by the Disciplinary Authority who, while ordering the punishment, had not recorded

his findings in support of his charges levelled against the applicant for justifying the punishment and thereby acted in violation of Rule 11 (d). The applicant also contends that no enquiry was conducted in this case.

The Appellate Authority while rejecting the appeal of the applicant had also not considered his representation and had not passed a speaking and reasoned order.

2. The respondents have denied the averments of the applicant and have contended that the Disciplinary Authority had taken into account the representation of the applicant on the chargesheet and taking into account the gravity of the offence had imposed the minor penalty of stoppage of increment for a period of three years. The Appellate Authority, in the light of the material on record had come to the conclusion that there had been no illegality or violation of any rules in the order of the Disciplinary Authority and the Appellate Order were perfectly valid and legal and did not suffer from any error of law or facts.

3. The learned counsel for the applicant strongly argued on the requirements of Rule ¹¹ (d) of the Railway Servants Discipline and Appeal Rules, 1968, and the various orders of the Railway Boards there reiterating the necessity of issuing a speaking and reasoned order while passing the order of punishment of the Disciplinary Authority. The counsel also stressed that since no enquiry

was held, it was although more necessary to record the reasoned and speaking order. The Appellate Order also did not disclose whether the Appellate Authority had applied its mind before rejecting the appeal. The learned counsel for the applicant referred to the decisions contained in the following cases viz:- a) Rama Nand Rai and others Versus U.O.I. ATLT 1987 Volume 2 Page 388. b) A. Palani Swami Versus U.O.I. ATR 1989 (2) CAT 205 Madras. c) Ram Chandra Versus U.O.I. AIR 1986 Supreme Court 1173.

The counsel for the respondents, however, relied on the decision in State Bank of India Versus Samrendra Kishore Endow JT 1994 (1) Page 217.

4. We have heard the learned counsel for the parties and perused the record and have also referred to the various decisions cited above.

5. It is well settled in law that it is incumbent on the Disciplinary Authority to pass the speaking / reasoned order. It is relevant to refer to Rule 11(d) of the Railway Servants (Discipline and Appeal Rules) 1968, under which the Disciplinary proceedings were initiated against the applicant . The relevant rule is reproduced below:-

" 11. PROCEDURE FOR IMPOSING MINOR PENALTIES

(1) Subject to the provisions of sub-rule (4) of Rule 10, no order imposing on a railway servant any of the penalties specified in clauses (i) and (iv) of sub-rule (1) and clauses (i) and (ii) of sub-rule (2), of Rule 6 shall be made except after-

- (a)
- (b)
- (c)
- (d) recording a finding on each imputation of misconduct or misbehaviour ; and
- (e)

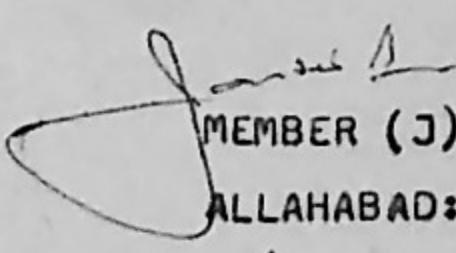
6. While recording the finding on the basis of the above rules , it is necessary that the Disciplinary Authority should indicate that the authority has become aware of the points raised in the representation against the charges and answer those points for proper compliance of the aforesaid provisions. Counsel for the applicant has rightly cited the decision in A. Palani Swami Versus U.O.I ATR 1989. From the Annexure-I to the application which is the impugned order of the Disciplinary Authority, it is clear that this order merely states that the applicant was charged with alleged misconduct and was held guilty of the aforesaid charges and the minor penalty was imposed. This impugned order cannot be considered as a speaking and reasoned order of the Disciplinary Authority. In considering the appeal of the applicant against the order of the Disciplinary Authority, the requirement of Rule 22 also casts an obligation on the Appellate Authority to consider whether the findings of the Disciplinary Authority are warranted by evidence on record and whether the Rules and Procedures have been complied with and whether the penalty is adequate or inadequate. While order passed by the Appellate Authority may not be a very detailed order repeating all that is said by the Disciplinary Authority, it should atleast disclose that the Appellate Authority has applied his mind adequately before passing the Appellate Order. In this case, however, the Appellate Authority has simply stated that after careful consideration, the appeal has been rejected (Annexure-2). In the decision

contained in Ram Chandra Versus Union of India cited by the counsel for the applicant, the Apex Court has observed as follows:-

" It is of utmost importance after the Forty-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. Considerations of fairplay and justice also require that such a personal hearing should be given."

7. The case relied upon by the counsel for the respondents, however, deals with an entirely different matter i.e, whether the adequacy of the punishment in the Disciplinary Proceedings could be adjudicated or not, was examined by the Apex Court and, therefore, is not directly relevant to the present case.

8. We find that there is a merit in the application. The application is, therefore, allowed and the impugned orders of the Disciplinary Authority / Appellate Authority are quashed. It is, however, open to the Disciplinary Authority to reconsider the matter and pass a reasoned and speaking order as may be on the reply of the applicant to the charge-sheet, considered appropriate within a period of three months from the date of the communication of this order. No order as to costs.


MEMBER (J)

ALLAHABAD: DATED: 30.11.94

amv


MEMBER (A)