

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 27TH DAY OF JULY, 2010)

PRESENT :

HON'BLE MR. G. SHANTHAPPA, MEMBER-J

ORIGINAL APPLICATION NO. 07 OF 2007
(U/s, 19 Administrative Tribunal Act.1985)

Kamta Prasad aged about 44 years, son of Sri Nathi Lal,
Resident of 46/908, Nagla Gokul Chand, Kishorepura, Agra.

.....Applicant

By Advocate: Shri A.K. Srivastava

Versus

1. Union of India through General Manager, North Central Railway Allahabad.
2. Divisional Railway Manager, North Central Railway, Agra Division, Agra.
3. Senior Divisional Commercial Manager, North Central Railway, Agra Division, Agra.

..... Respondents

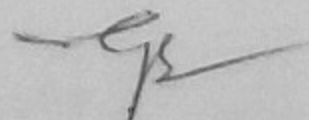
By Advocate: Shri A.C. Mishra

ORDER

(DELIVERED BY: HON'BLE MR.G. SHANTAHPPA - MEMBER-J)

The applicant has filed this O.A. with the relief to quash the penalty order issued by Disciplinary Authority dated 22.09.2005 (Annexure-1) and the order issued by the Appellate Authority dated 03.01.2006 (Annexure-3) and for a direction to grant consequential benefit of promotion.

2. It is the case of the applicant. The departmental enquiry was completed after 3 years 5 months and 4 days, which is against the



rules. The disciplinary authority was D.C.M. of the Jhansi Division, while charge sheet SF-5 was issued, whereas, the penalty was imposed by Sr. D.C.M. of the Agra Division, which is not correct. The complainants have not given any complaints nor any their statements were taken, they were not called as prosecution witnesses. The other TTE's were performing the duties in the same train were not taken as prosecution witnesses nor their statement taken. The Railway Board vigilance Inspectors were performing the preventive check against the applicant, only those vigilance Inspectors were prosecution witnesses. The facts are stated in defence brief of the applicant in regard to Rs. 185/- excess amount, the enquiry proceedings were against the rules.

3. The respondents have filed counter affidavit, vehemently opposed the O.A. The preventive check was conducted that in reply to the contents of paragraph no. 4.5 of the Original Application it is admitted to the extent that preventive check was conducted on 18.4.2002 and subsequently major penalty charge sheet was issued on 12.9.2002. Enquiry Officer was nominated on 4.10.2002 and enquiry was conducted by him. It is further clarified that Preventive check took place on 18.4.2002 and draft charges of the same were received on 26.8.2002 from Vigilance Organization. Upon the charges, SF 5 was issued to the applicant on 12.9.2002 and reply of which was submitted on 25.9.2002 by applicant. Subsequently Enquiry officer was nominated on 4.10.2002 and Enquiry officer vide letter dated 11.12.2002 has asked applicant to attend enquiry on 2.1.2003 with his ARE. Applicant has nominated his ARE on 7.2.2003 which was



acknowledged by the Enquiry Officer on 25.3.2003 as such the delay is not on the part of respondents and occurred due to receipt of the draft charges from vigilance organization and nomination of ARE by the applicant.

The enquiry report was served to applicant on 3.3.2005 and reply on enquiry report was received on 17.3.2005. Disciplinary Authority has passed the provisional orders on 8.4.2005 which was sent to Vigilance organization on 12.4.2005 for seeking adequacy. The adequacy decision was received back on 8.9.2005 and accordingly the order of imposing penalty upon the applicant was issued on 22.9.2005. It is evident that the time consumed during the official and administrative procedure which is not arbitrary.

The Enquiry was properly conducted and the appellate order has rightly been passed. The Original Application is devoid of merit and deserves to dismiss.

4. I have carefully considered the pleadings, supra and examined the impugned orders in the OA, the order of the Disciplinary Authority is reads as under:-

"I have carefully considered the enquiry report and the findings submitted by the enquiry officer appointed to enquiry into the charges framed against you vide memo number P-19/5035/VC/CON dt. 12.9.02 and your representation dt. 17.3.05 in reply to the enquiry report sent to you vide letter of even number dated 01.3.05 and I hold you guilty of the articles of charge/imputation of misconduct/misbehavior viz. as shown in the charge memorandum leveled against you. I have decided to impose upon you the Penalty of reduction to a lower Post/Grade/Service. You are, therefore, reduced to the

lower Post/Grade/Service of Ticket Collector for the grade Rs. 3050-4590 for a period of Three years & months with/cumulative effect from the date of this order. Your pay is fixed in grade Rs. 3050-4590 at stage Rs. 3050/=.

Speaking orders:-

“The enquiry report submitted was examined and I agree with this report of EO. The DE was having Rs. 185/- excess during the check and this was admitted by D.E. in writing. The employee remitted this excess cash vide MR No. 471598 dated 18.4.02 and there was no short remittance on this account. Although convinance/consent of CE could not be substantiated however it is fact that Fire II M/E ticket holders were traveling in sleeper class coach S/9.

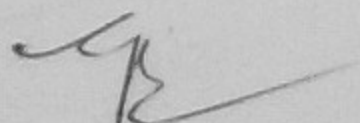
Both the charges were partially substantiated. In view of gravity of case, I decide to revert the employee in initial grade fixing his pay Rs. 3050/- for three years with cumulative effect.”

5. The Appellate Authority decided the appeal dated 8.11.2005. The order of the Appellate Authority reads as under:-

SPEAKING ORDER

“उपरोक्त प्रकरण मे यह पाया गया है कि जांच अधिकारी द्वारा जांच के सभी नियमो का पालन किया गया। जांच के दौरान किसी भी साक्ष्य ने कोई असंतोष प्रकट नहीं किया। जांच अधिकारी द्वारा जो जांच रिपोर्ट प्रस्तुत की गई उसमे ये आरोप आंशिक रूप से सिद्ध होते दिखाये गये है। डी ई द्वारा अपील मे जो बातें कही गई है वह स्वीकार योग्य नहीं है।

1. सतर्कता निरीक्षको के विरोधाभास के बारे मे स्पष्ट रूप से नहीं बताया गया कि यह विरोधाभास कहां बताया गया है।
2. सतर्कता निरीक्षको ने डरा-धमकाकर 185/- रुपये अधिक पाये जाने की बात लिखवाई, यह सत्य प्रतीत नहीं होती है।



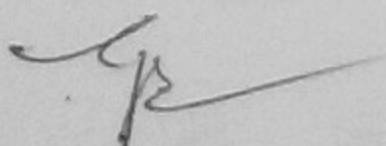
3. S-9 कोच में 5 अवैध यात्री यात्रा करते हुए पाये गये और उनसे पैसा भी वसूला गया यह बात सिद्ध होती है, लेकिन उन सबके पीछे *malafied intention* नहीं पाया गया।

उपरोक्त प्रस्तुतियों को ध्यान में रखते हुए डी ई पर लगाए गए दण्ड को कम करते हुए *pay Rs. 3050/-* पर 3 वर्ष के लिए *without cumulative effect* का दण्ड निर्धारित किया जाता है।”

6. Based on the facts narrated above, I am of the view, the Disciplinary Authority has not assigned the reasons on the charges, representation to the charge, the procedure followed by the enquiry officer and the representation to the enquiry report. When the documents available on record were not considered in detail, such an order is not sustainable in the eye of law.

7. I am of the view the said order is liable to be quashed. The applicant has challenged the order of the Disciplinary Authority before the Appellate Authority. The Appellate Authority without assigning any reason, has dismissed the appeal.

8. The order of the quasi-judicial authority should be in accordance with the law laid down by the Hon'ble Supreme Court in the case of **Ram Chandra Vs. U.O.I reported in 1986 (2) SLR 608, Apparel Export Promotion Council Vs. A.K. Chopra reported in 1999 SCC (L&S) 405 and Narinder Mohan Arya Vs. United India Insurance Co. Ltd. Reported in (2006) 4 SCC 713.** The appellate authority must give reasons even while affirming the order of the Disciplinary Authority. In my opinion, an order of



affirmation need not contain elaborate reasons, but that does not mean that the order of affirmation need not contain any reasons whatsoever. The order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming or reversing or modifying the order of the Disciplinary Authority. The purpose & disclosure of reasons is that the people must have confidence in the judicial or quasi-judicial authorities, unless the reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence it is an essential requirement of the rule of law that some reasons at least in brief must be disclosed in a judicial or quasi judicial order, even if it is an order of affirmation. The reasoned order should be in accordance with the judgment of the Hon'ble Supreme Court reported in 2004 (7) SCC 431 - Cyril Lasrado (Dead) By Lrs. And Others Vs. Juliana Maria Lasrado & Another in which Hon'ble Supreme court has held as under: -

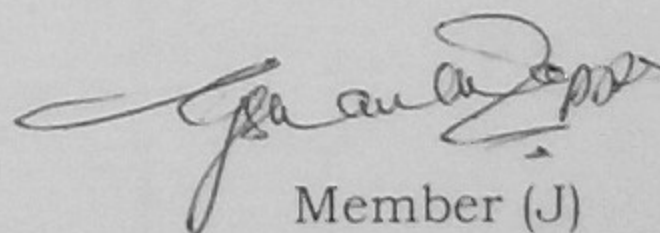
"12. Even in respect of administrative orders, Lord Denning, M.R. in Breen V. Amalgamated Eng. Union observed. (All ER p. 1154h). "The giving of reason is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. Vs. Crabtree it was observed: "Failure to give reasons amounts 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 objectively. 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 the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance".

Reasons is the heart beat of every conclusion, without the same, it becomes lifeless as held by Hon'ble Supreme Court in the case of **Raj Kishore Jha Vs. State of Bihar** reported in (2003) 11 SCC 519. How to consider the case is as directed by the Hon'ble Supreme Court in the case of **R.P. Bhatt Vs. Union of India** reported in (1986) 2 SCC 651 and **Divisional Forest Officer, Kothagundum & Ors. Vs. Madhusudan Rao** reported in 2008 (2) SC 253.

9. I am of the view the order of the Disciplinary Authority dated 22.09.2005 and Appellate Authority dated 03.01.2006 (Annexure-3) are liable to be quashed, accordingly, quashed and set aside. The matter is remitted back to the Disciplinary Authority. The Disciplinary Authority is directed to decide the case of the applicant from the stage on which the inquiry report was issued.

10. Accordingly, the OA is allowed to the extent as indicated above. The matter is remitted back to the respondents to decide the matter of the applicant afresh. No costs.


Member (J)

/s.v./-