

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. No. 554/87
KAKXXN8.

DATE OF DECISION 22.7.1992

Shri Indravadan Ambalal Dave, Petitioner

Mrs. D.N. Mehta,
Mr. Shailesh Brahmbhatt Advocate for the Petitioner(s)

Versus

The Union of India & Ors. Respondent

Mr. N.S. Shevde Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V. Krishnan : Vice Chairman

The Hon'ble Mr. R.C. Bhatt : Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(S)

Shri Indravadan Ambalal Dave,

... Applicant

Vs.

1. Union of India,
Through:
The Chairman,
Railway Board,
Rail Bhavan,
New Delhi.
2. The General Manager,
Western Railay,
Churchgate,
Bombay.
3. The Divisional Railway Manager,
Western Railway,
Pratapnagar,
Baroda.
4. The Senior Divisional Commercial
Superintendent, Western Railway,
Pratapnagar, Baroda.
5. The Divisional Commercial Supdt.
Western Railway,
Pratapnagar,
Baroda.
6. Shri I.P. Gaur.
Head Travelling Ticket Examiner,
Viramgam Railway Station,
Viramgam, District- Ahmedabad.
7. Shri C.T. Patel,
Head Travelling Ticket Examiner,
Railway Station, Baroda.
8. Shri M.B. Patel,
Head Travelling Ticket Examiner,
Railway Station, Godhra.
9. Shri V.M. Joshi,
Head Travelling Ticket Examiner,
Railway Station, Baroda.
10. Shri A.A. Makwana,
Travelling Ticket Inspector,
Railway Station, Ahmedabad. ... Respondents

O R A L J U D G M E N T

O.A./554/87

...2....

(6)

Date: 22.7.1992

None for the applicant. on the last occasion also neither the applicant nor his counsel was present. Mr. Shevde learned counsel for the respondents is present, and is ready. The applicant does not appear to be interested. In the circumstances, the application is dismissed for default.

rcb

(R.C. Bhatt)
Member (J)

N.V. Krishnan
22.7.92

(N.V. Krishnan)
Vice Chairman

*K

M.A. 266/92

in

O.A. 554/87

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Date	Office Report	ORDER
(16) 18.9.92		<p>Present: None for the applicant. Mr. N.S.Shevde, Adv/Res.</p> <p>M.A. 266/92 has been filed to set aside the order dated 22.7.92 dismissing the application in default. That application can be considered only if either the applicant or his counsel is present. Hence as a last opportunity call on 15th October, 1992.</p> <p><i>R.C.B</i> <i>KL</i></p> <p>(R.C.Bhatt) Member (J) (N.V.Krishnan) Vice Chairman</p> <p>vtc.</p>

Date	Office Report	ORDER
15-10-92 37		<p>Call on 12th November 1992.</p> <p style="text-align: right;">(N.V.Krishnan)</p> <p>*AS. Vice Chairman.</p> <p>Mr. Shailesh Brahmbhatt for the applicant.</p> <p>Mr. N.S. Shevde for the respondents.</p> <p>M.A. is filed by the applicant for restoration.</p> <p>Call again on 26.11.1992.</p> <p style="text-align: right;">(R.C.BHATT) (N.V.KRIEHNAN)</p> <p>MEMBER (J) VICE CHAIRMAN</p> <p>*SS</p> <p>Mr. Shailesh Brahmbhatt for the applicant.</p> <p>Mr. N.S. Shevde for the respondents.</p> <p>The learned counsel for the applicant submits that he is ^{for} loss the M.A. Therefore, comply ^{he was apply} for apply ^{from} certain copy to the Registry for to grant of submission.</p> <p>List again on 10.12.1992.</p> <p style="text-align: right;">(R.C.BHATT) (N.V.KRISHNAN)</p> <p>MEMBER (J) VICE. CHAIRMAN</p> <p>*SS</p>
12/11/92 14-		
26.11.92		

(12)

Date	Office Report	ORDER
(9) 10-12-92		<p>Present : None for the applicant. Mr. N.S.Shevde, Adv/Res.</p> <p>Copy of the M.A. has not been served on the respondents. In the circumstances list again on 7th January, 1993.</p> <p><i>AB</i></p> <p>(R.C.Bhatt) Member (J)</p> <p>(N.V.Krishnan) Vice Chairman</p> <p>vtc.</p>
(6) 7.1.1993		<p>The applicant's counsel has sent a leave note. The applicant is also absent. M.A. 266/92 is for restoration of the original application which was dismissed in default on 22.7.92. Copy has been served the respondents' counsel Mr. N.S.Shevde. We have heard to him.</p> <p>2. In view of the averments made in the M.A we allow this M.A. and hence the O.A. is restored to file. M.A. is disposed of accordingly. It is 1987 matter. Let it listed for final hearing on 12th January.</p> <p><i>AB</i></p> <p>(R.C.Bhatt) Member (J)</p> <p>(N.V.Krishnan) Vice Chairman</p> <p>vtc.</p>

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DATE	OFFICE REPORT	ORDERS
12.1.93 (15)		<p>In the interest of justice, the matter is adjourned. <i>Parte abat</i></p> <p><i>res</i> <i>cl</i></p> <p>(R.C. Bhatt) (N.V. Krishnan) Member (J) Vice Chairman</p>
2.3.93		<p>The learned advocate for the parties are present. The M.A./266/92 is already been disposed of. It is ^{not} understood how the office to show it in the cause list. It may be rectified. The learned advocate for the applicant <i>respondent</i> <i>Shevde</i> Mr. Brahmbhatt mentioned that the matter may be put before the Division Bench, because it is question of departmental inquiry. Accordingly the matter is adjourned to 15th April, 1993.</p> <p><i>Ad</i></p> <p>(V. Radhakrishnan) Member (A)</p>
15.4.93	<p><i>*K</i></p> <p><i>Res subm</i></p> <p>1) <i>Notice issued on</i> <i>27.4.93</i></p> <p>2) <i>Notice of</i> <i>Re. No. 6, 8</i> <i>& 10 return</i></p> <p><i>Arrived</i> <i>21.6.93</i></p>	<p>Mr. Shailesh Brahmbhatt for the applicant is present. Mr. N.S. Shevde for respondent No. 1 to 5 is present. Issue notices to respondent No. 6 to 10 to remain present on 24th June, 1993. The respondent No. 1 to 5 to produce the <i>filed</i> disciplinary proceedings against the applicant. Call on 24th June, 1993.</p> <p><i>M.R. Kolhatkar</i></p> <p>(M.R. Kolhatkar) Member (A)</p> <p><i>res</i></p> <p>(R.C. Bhatt) Member (J)</p> <p>vtc.</p>

OA/554/67

DATE	OFFICE REPORT	ORDERS
24/6/93		<p>This is a D.B. matter The other Hon'ble Member is not available. Adj. to 15/7/93</p> <p>(B. C. Bhat) Member (U)</p>
15/7/93		<p>This is a D.B. matter The other Hon'ble Member is not available. Adj. to 31/8/93</p> <p>(M. R. Kolhatkar) Member (A)</p>

Date	Office Report	ORDER
3/8/93		<p>Learned advocates for the parties are present. Notices sent to respondents no.6,8, and 10 have returned unserved, while respondents no. 7&9 are served as it appears from the record.</p> <p>Learned advocate for the applicant's ^W submits ^W submits that the applicant delete the respondents who are not served but one chance be given. Last chance is given to the applicant to serve serve respondents no. 6,8, and 10. The applicant also permitted to apply direct service on respondents no.6,8, and 10.. The applicant should take prompt action to get the notices served to them, contacting the Registry as early as possible, and also for direct service. Maxm</p> <p>Returnable by 18th August, 1993. If these respondents are not served by that date, the applicant may either delete those respondents or the matter will proceed as if, the application is not prosecuted against those respondents.</p> <p>Call on 18/8/93 ^{19/8/93}. Direct service permitted on respondents no. 6,8, and</p> <p><i>19/8/93 HR</i></p> <p><i>M.R.Kolhatkar.</i></p> <p>(M.R.KOLHATKAR) Member (A)</p> <p><i>Ans</i></p> <p>(R.C.BHATT) Member (J)</p> <p>ssh</p>

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DATE OFFICE REPORT

ORDER

19.8.1993.

Res. sub.

As per this
order, advocate
Shri Brahmbhatt
has not paid
fees for process.

AB
17-9-93

20/9/93

Process fees paid
on 20-8-93 and
notices issued to
Respondents no. 6, 8 & 10.
J. M. Patel
S. S. Patel
17-9-93

Mr. Shailesh Brahmbhatt is present
for the applicant. The Registry to keep
ready the notices to be served on respondent
no. 6, 8 and 10. Mr. Shailesh Brahmbhatt,
submits that the applicant is ready to
be served directly. He should also make
an attempt to serve ~~through~~ by Regd. Post
by payment of process, Returnable by
20/09/1993. Call on 20/9/1993.

M.R.Kolhatkar

(M.R. Kolhatkar)
Member (A)

R.C.Bhatt
(R.C. Bhatt)
Member (J)

AIT

Mr. Brahmbhatt for the applicant
submits that the applicant will pay ~~process~~
process fee within 2 days. The notice then
be issued to respondents no. 6, 8, 10 ~~express~~
Returnable by 14/10/93.

M.R.Kolhatkar

(M.R. KOLHATKAR)
Member (A)

R.C.Bhatt
(R.C. BHATT)
Member (J)

ssh

O. A. 554187

(12)

DATE	OFFICE REPORT	ORDER
22.12.1993		<p>As the Head and Member of the Board is not available, the matter is adjourned to 25.1.1994.</p> <p><i>D</i></p> <p>K. RAMAMOORTHY MEMBER (A)</p>
05.01.1994.		<p>Adjourned to 25.01.1994 at the request of Mr. Shailesh Brambhatt.</p> <p><i>D</i></p> <p>(K. Ramamoorthy) Member (A) (N.B. Patel Vice Chairman)</p>
		<p>AIT</p>
25/1/1994	OFFICE REPORT	<p>ORDER</p> <p>At the request of Mr. S. Brambhatt, adjourned to 16/2/1994.</p> <p><i>D</i></p> <p>(K. Ramamoorthy) Member (A) (N.B. Pa Vice Chairman)</p>
		<p>AIT</p>

16/2/94

other
As the learned Member of
the Bench is not available
the matter is adjourned
to 2/3/94.

R

K. RAMAMOORTHY
MEMBER (A)

RECORDED RECORDED

RECORDED

2/3/94

At the request of Mr. Brambhatt
and with the consent of Mr. Shevde,
adjourned to 4/3/1994.

(K. Ramamoorthy)
Member (A)

(N. B. Patel)
Vice Chairman

a.a.b.

4-3-94

Parties' advocates present. At the request
of applicants' dependent's advocate.
Adjourned to 4-4-94

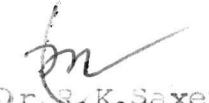
K. RAMAMOORTHY
MEMBER (A)

(N. B. Patel)
Vice Chairman

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Date	Office Report	Order
4/4/94		<p>For want of time the matter is adjourned to 27/4/94.</p> <p> N. B. Patel Vice Chairman</p>
27/4/94		<p> Dr. R. K. Saxena Member (J)</p> <p> V. Radhakrishnan Member (A)</p>
27-4-94		<p>Adjourned to 13-5-1994, at the request of Mr. Harshad Brhambhatt for Mr. Shailesh Brahmbhatt. Mr. Shevde is present for the respondents.</p> <p> Dr. R. K. Saxena Member (J)</p>
13/5/94		<p>ssh*</p> <p> Dr. R. K. Saxena Member (J)</p>

Date	Office Report	Order
9/6/94		<p>None is present for the applicant.</p> <p>Mr. Shevde is present. Adjourned to 22/6/94.</p> <p><i>JK</i></p> <p>(Dr. R. K. Saxena) Member (J)</p> <p><i>VR</i></p> <p>(V. Radhakrishnan) Member (A)</p> <p>*ssh</p>
22.6.94		<p>The case is adjourned only to enable the applicant to appear at the next date. seen that It is / the counsel for the applicant has filed a sick note. However, we mark that counsel for the applicant appeared in admission case No. O.A.565/93. The case, however is, therefore, adjourned to 24.6.94.</p> <p><i>JK</i></p> <p>(Dr. R. K. Saxena) Member (J)</p> <p><i>RR</i></p> <p>(K. Ramamoorthy) Member (A)</p> <p>†ssh</p>

Date	Office Report	ORDER
24.6.94		Adjourned to 27.6.94, at the request of Mr. Shailesh Brahmbhatt.
		 (Dr. R.K. Saxena) Member (J)
		 (K. Ramamoorthy) Member (A)
		*ssh
27.6.94		Adjourned to 28.6.94.
		 (Dr. R.K. Saxena) Member (J)
		 (K. Ramamoorthy) Member (A)
		ait
28.6.94		Heard Mr. Shailesh Brahmbhatt for the applicant and Mr. N.S. Shevde for the respondents. Reserved for judgment.
		 (Dr. R.K. Saxena) Member (J)
		 (K. Ramamoorthy) Member (A)
		vtc.
28.6.94		The Judgement pronounced in open Court
		 (Dr. R.K. Saxena) Member (J)
		 (K. Ramamoorthy) Member (A)
	Approval Col II	

Date

Office Report

O R D E R

17/4/95.

One more opportunity may be given to the applicant's advocate to remove the office objections. Adjourned to 8-5-1995.


(Dr. R.K. Saxena)
Member (J)


(K. Ramamoorthy)
Member (A)

as.

3/7/1995

Heard Mr. Brahmbhatt learned counsel for the party. He seeks time to remove office objections. Adjourned to 10/7/95.


(K. Ramamoorthy)
Member (A)

*AS.

10/7/1995.

At the request of Mr. Alpesh Rajpuriya for Mr. Shailesh Brahmbhatt adjourned to 18/7/1995.


(K. Ramamoorthy)
Member (A)

*AS.

18-7-95

Mr. Harshad Brahmbhatt for Mr. Shailesh Brahmbhatt was present. At the request of Mr. Harshad Brahmbhatt, adjourned to 19th July, 1995.


(K. Ramamoorthy)
Member (A)

Date	Office Report	ORDER
19-7-95	On account of request of Mr. Shailesh Brahmbhatt Member (A) adjourned to 1-8-95.	At the request of Mr. Shailesh Brahmbhatt Member (A) adjourned to 1-8-95.
1.8.95	On account of objection of Mr. Shailesh Brahmbhatt Member (A) adjourned to 14.8.1995 for removing office objection.	Adjourned to 14.8.1995 for removing office objection.
14.8.95	None present. However, in the interest of justice, adjourned to 1.9.1995.	None present. However, in the interest of justice, adjourned to 1.9.1995.
1.9.95	On account of sad demise of the Hon'ble Chief Minister of Punjab, Shri B. G. D. Gant Singh, adjourned to 22.9.1995.	On account of sad demise of the Hon'ble Chief Minister of Punjab, Shri B. G. D. Gant Singh, adjourned to 22.9.1995.

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CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 554/87
T.A. NO.

DATE OF DECISION 6-7-94

Shri Indravadan Dave.

Petitioner

Shri D.N. Mehta

Shri Shailesh Brahmbhatt

Advocate for the Petitioner (s)

Versus

Union of India and Others

Respondent

Shri N.S. Shevde

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. K. Ramamoorthy

Member (A)

The Hon'ble Dr. R.K. Saxena

Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ? No
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgment ? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes

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Shri Indravadan Ambalal Dave,
7. Aksharbaug Society,
Maminagar, Ahmedabad.

Applicant

Advocate Mr. D.N. Mehta
Mr. Shailesh Brahmbhatt

Versus

1. Union of India
(Notice to be served through
the Chairman Railway Board,
Rail Bhavan, New Delhi)
2. The General Manager,
Western Railway,
Churchgate Bombay.
3. The Divisional Railway Manager,
Western Railway, Pratapnagar,
Baroda.
4. The Senior Divisional Commercial
Superintendent, Western Railway,
Pratapnagar, Baroda.
5. The Divisional Commercial Superintendent
Western Railway, Pratapnagar, Baroda.
6. Shri I.P. Gaur
Head Travelling Ticket Examiner
Viramgam Railway Station,
Viramgam District Ahmedabad.
7. Shri C.T. Patel
Head Travelling Ticket Examiner
Railway Station, Baroda.
8. Shri M.B. Patel
Head Travelling Ticket Examiner
Railway Station, Godhra
9. Shri V.M. Jeshi
Head Travelling Ticket Examiner
Railway Station, Baroda.
10. Shri A.K. Makwana
Travelling Ticket Inspector,
Railway Station, Ahmedabad.

Advocate Mr. N.S. Sheyde

JUDGMENT
In

Date: 6-7-94

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Per Hon'ble Dr. R.K. Saxena

Member (J)

Shri Imdravadan A. Dave filed this application challenging the punishment order dated 30-4-1986, Annexure A-7, by which his increment was withheld for two years from the date whenever it was due. The applicant had preferred first Appeal to Senior Divisional Commercial Superintendent and second to Divisional Railway Manager but they were rejected by respective authorities vide orders dated 27-10-1986, Annexure A-9 and 14-9-1987, Annexure A-11, respectively. These orders passed in two Appeals ^{also} have been challenged. Besides, the applicant has also prayed for directions to get his case considered for promotion.

2. Briefly stated the facts of the case are that the applicant was Travelling Ticket Examiner (T.T.E.) on 26-10-1985 and his duty was assigned in Sleeper Coach S/8 6 - Up Saurashtra Mail. One Shri Raj Kumar got $2\frac{1}{2}$ tickets reserved on 9-10-1985 for the journey to be undertaken on 26-10-1985. He got the reservation done from Marvar Pali to Birur and he had to change the train at Ahmedabad where from he had to travel in the Sleeper Coach ^{of} 6 - Up Saurashtra Mail. On 26-10-1985 Shri Raj Kumar came to Ahmedabad by Ranakpur Express and he was to board Saurashtra Mail. His reservation was made in S/11 of Saurashtra Mail but when he arrived at the Station of Ahmedabad, he was informed by the Travelling Ticket Examiner of Coach S-11 that the quota of Marvar Pali was given in Coach No. 8 and, therefore, he (Shri Raj Kumar) should go in Coach No. S-8. On reaching Coach S-8

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which was assigned to the applicant, Shri Rajkumar, asked for berths but the applicant looking to his chart, asked Shri Rajkumar to go to Coach No. S-11. Therefore, Shri Raj Kumar again rushed to Coach No. S-11, where the T.T.E. of the said Coach again replied that the quota of Marvar Pali had been shifted to Coach No. S-8 and, therefore, he should travel by Coach No. S-8 alone. Shri Raj Kumar again came to the applicant who was T.T.E. of Coach No. S-8 and also stated that if the berths were not allotted, compliant would be launched and the train would also be withheld. It was then that the applicant allotted the reserved berths of Shri Raj Kumar to him but he, (the applicant), also expressed that his income for that day was lost. Shri Rajkumar, again faced some problem at Bombay V.T. Station where he was to catch Mahalakshmi Express, for his onward journey. He, however, made compliant, Annexure A-1, to the Railway Minister. The said compliant was sent for inquiry and it was there upon that the explanation of the applicant was called for. Having found the explanation not satisfactory, he was served with Memorandum, Annexure A-4, that the charges that the applicant had adopted un-helpful attitude towards the travelling public while on duty as T.T.E/L/In-charge of S-8 Coach of 6-Up Saurashtra Mail at Ahmedabad on 26-10-1985. It was also mentioned in the statement of imputations of mis-conduct or mis-behaviour that Marvar Pali quota of berths in 6-Up Saurashtra Mail were shifted from S-11 to S-8 Coach since 12-10-1985 and that change was supposed to be known to all T.T.Es/L working in 6-Up train. The applicant, however,

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submitted the explanation in which it was contended that he had no knowledge of the quota of Marvar Pali being shifted from Coach S-11 to S-8. In support of it, he also filed a letter of Chief Ticket Inspector, dated 23-12-1985, in which the knowledge of shifting of quota was denied by him as well. The Disciplinary Authority was not satisfied by the explanation, offered by the applicant, and ultimately passed an order of punishment, dated 30-4-1986, whereby one increment was withheld for two years. On the first appeal being preferred before, Senior Divisional Commercial Superintendent, ^{if} which was rejected on 27-10-1986. The applicant, therefore, filed second Appeal ^{also} before the Divisional Railway Manager but the same was rejected on 14-9-1987. In the meantime, promotions to Sr. Grade from amongst the T.T.Es were made but the case of the applicant was not considered on the ground that Disciplinary case of major penalty was pending against him. Therefore, feeling aggrieved by these orders, he came to the Tribunal making the aforesaid prayers.

3. The respondents contested the case by filing written statement on all important grounds of which however important points of objection are that the applicant challenged more than one orders by one application; the applicant had knowledge of shifting of a quota of Marvar Pali from Coach S/11 to S/8 and yet his attitude towards Shri Raj Kumar was unhelpful; that the inquiry against the applicant was started on the valid grounds and the proper procedure of minor penalties was followed; the punishment of withholding of one ^{1/2} increment for two years was passed after going through the entire record; and that the said

punishment was upheld by the Appellate Authority for valid reasons. It was also averred that the promotion of the applicant was not made because the case of major penalty was pending against him and in such ^a situation promotion is never considered.

4. We have heard the learned Counsel for the parties who have elaborated their points. The contention of the learned Counsel for the applicant is that the punishment order being based on no evidence and the proper procedure having not been adopted and also the defence being not considered, it may be quashed. The learned Counsel for the respondents on the other hand argued that this Tribunal cannot interfere with the punishment until and unless the procedure was found illegal. It was further contended that the evidence which was available with the Punishing Authority cannot be the subject matter of scrutiny before the Tribunal. In this connection, our attention has been drawn towards the law laid down by the Hon'ble Supreme Court in the case of Union of India Vs. Upendra Singh 1994 (1) SLR 831 where it was held that the Tribunal or the High Court can interfere only if on the charges framed (read with imputations or particulars of the charges, if any) no mis-conduct or other irregularities alleged could be said to have been made out or the charges framed were contrary to any law. We are very conscious of the law laid down in this respect and we shall not travel beyond the scope which is available to the Tribunal. As is pointed out by their Lordships of Supreme Court

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in the case of Upendra Singh, we can make scrutiny of the fact whether there was any evidence worth supporting the charge and whether the procedure adopted was legal. There is no dispute that if the procedure adopted by the Disciplinary Authority is not legal and prejudice has been caused to the delinquent employee, the Tribunal can look into this aspect and record the findings thereabout.

5. In this case the punishment is of stoppage of one increment for two years. This punishment of course comes within the scope of minor penalty. The applicant has contended in para 6 (i) that he was due to retire on 31-5-1988 (and he must have been retired and he has been retired from service). The punishment order by the Disciplinary Authority as was pointed out earlier was passed on 30-4-1986. The finality of the order of punishment could be given only when the last remedy by way of second Appeal was exhausted and the order in the said Appeal was passed. There is no dispute that this second Appeal was decided on 14-9-1987. If the punishment of stoppage of increment starts from this date i.e. 14-9-1987, the punishment should have continued even beyond the date of retirement of the applicant. From this angle when we look to Rule 11 of the Railway Servants (Discipline & Appeal) Rules 1968, we come to the conclusion that the procedure was not correctly followed. No doubt Rule 11 deals with the procedure of imposing minor penalties but sub-Rule 2 of Rule 11 created one exception. It reads ;

" (2) Notwithstanding anything contained in clause

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(b) of sub-rule (1), if in a case, it is proposed after considering the representation, if any, made by the Railway servant under clause (a) of that sub-rule to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension (or special contribution to Provident Fund) payable to the Railway servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (6) to (25) of Rules 9, before making any order imposing on the Railway servant any such penalty."

A perusal of this rule makes it quite clear that withholding of increments which is likely to affect adversely the amount of pension or special contribution to Provident Fund payable to the Railway servant, the procedure of inquiry should be as is laid down under Rule 9. The procedure prescribed under Rule 9 is with respect to major penalties. In this way, adoption of procedure of minor penalties by the Disciplinary Authority was not correct. Assuming that the punishment started running from the date 30-4-1986, which is the date of the order of the Disciplinary Authority, the effect of the punishment continues beyond the date of retirement of the applicant. The reason for this conclusion is that the withholding of the increment had to take place from the date whenever it was due. It appears from the contents of the

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applications as well as the averments made in the reply of the respondents that the increment of the applicant fell due to 1st January 1987. Naturally, the second increment fell due on 1-1-1988 and the effect of withholding of that increment of 1988 shall continue for whole of the year whereas the applicant had retired on 31-5-1988.

6. It is not that this point was mentioned only in the Rules but the Railway Board had issued circulars in this regard and the Circular R.B.'s No. E(D A) 66 RG 6-13 dated 19-4-69 (NR No 4737) was issued as early as in the year 1969, making it quite clear that the penalty of withholding of increment if had affected the amount of pension, this fact must be kept into consideration. The relevant portion of the circular of the Railway Board is as below :

"Although withholding of increment temporarily or permanently is a minor penalty yet the Railway Board have laid down that an inquiry in the manner as laid down for major penalties must always be held if the penalty of withholding of increment is of the nature given below:

(a) If the increment is to be withheld permanently (having cumulative effect) or any period, whatsoever.

(b) When increment is to be withheld temporarily for a period exceeding 3 years.

(c) When the penalty of withholding of increment irrespective of the period is likely to affect adversely the amount of pension or special contribution to Provident Fund payable to the delinquent Railway servant.

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It is evident from the foregoing provisions that if the penalty of withholding of increment for any period what-so-ever is to be imposed on the delinquent Railway Servant who is a pension optee during the last three years (now 10 months) of his service, it will affect the amount of his pension and as such inquiry must be held before imposing such a penalty on him. In cases where at the time of imposition of penalty of withholding of increment was not known that this would adversely affect the pension or special contribution to Provident Fund normally admissible to the Railway Servant, departmental inquiry would not be required to be held. The departmental inquiry should, therefore, be held in such cases in which at the time of imposition of penalty of withholding of increment temporarily for any period it is not known that it will adversely affect the amount of pension."

By this circular the Board also clarified that before initiating the departmental proceedings, this point must be considered and accordingly the procedure to be adopted. It was also made clear that since at the time of imposition of penalty it would not be known that this would adversely affect the pension, the departmental inquiry should not be required to be held in such cases. It is not only the Railway Servant (D&A) Rules 1968 lay down that the procedure in such cases, where pensionary benefits are going to be affected, penalty should not be of major penalty, the Railway Board has also issued circulars from time to time in this connection and yet the authorities in the case before us did not take care. Had the procedure of major penalty been adopted, the statements of the witnesses or of the defence would have been recorded and considered.

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Also the show-cause notice before awarding the punishment would have been given. In this way, we find that the applicant has been greatly prejudiced by ^{not} adopting the procedure which was required, under the Rules, to have been adopted.

7. The learned Counsel for the applicant also argued that if the Punishing Authority or the Appellate Authority does not write speaking order of punishment even then the prejudice is caused to the employee against whom the order of punishment is passed. In this case, there is no discussion of any evidence but at the same time ^{only as} he has been writing his speaking order instead of describing in words, it would be proper to reproduce the order itself. It reads as :

"You are hereby informed that the following penalty has been awarded to you; Withholding of increment falling normally whenever due for two years without further effect. This has ref. to this office memo of even no. of date 13-2-1986 and your Def. dt. 6-3-86 "speaking order" I have gone through the Defence, it is not convincing as such not accepted. He is considered responsible for the cause of compliant.

Name: Sdy- illegible
 Designation DCS/BRC
 Cl. cc/ET/OS/P
 Bill C/CTI ADI

(c) Under rule 18 of the Railway Servant (Discipline & Appeal) Rules 1968 an appeal against these orders lies to Sr. DCS BRC."

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8. What appears from the perusal of the order of punishment is that either the Punishing Authority was not aware about the connotation of speaking order or ~~he~~ avoided to write a speaking order. The stand as regards the order of first Appeal is almost the same. It is only three lines order. It reads as ;

" In view of the remarks of CRS-ADI the plea taken by Shri Dave appears to be an after thought. I do not find sufficient cause to revise the penalty imposed by DCS".

These orders in appeal appears to have been based on some remarks of CRS but not on the application of mind of the Appellate Authority. The contention of the respondents in their reply is that the Disciplinary Authorities are not required to record the order of punishment elaborately. We are aware of the fact that the Disciplinary authorities ~~xxx~~ cannot be expected to write judgements in the manner in which the Courts of Law do write but at the same time the purpose of writing an order is that the subject matter must be disclosed and the conclusion must have been based on some reasoning. If these basic ingredients are missing; the order even of the Disciplinary authority cannot be said to be speaking order and the prejudice is thereby definitely caused to the delinquent employee. It is not that no body in the Department knew this basic principle because when we look to the order of the second Appeal, we do find that it is a speaking order. Since the defence of the applicant has not been considered even in this order, therefore, despite the principle of merger, we cannot hold that the applicant was not prejudiced. In this way, we find that

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the respondents failed to follow the procedure prescribed under the Rules and to record the material evidence and to consider the defence of the applicant. For these reasons, the orders either of the Punishing Authority or ^{or} the Appellate Authority cannot be upheld in law.

9. The learned Counsel for the applicant also pointed out that actually there was no evidence in support of the charges framed against him. If we enter into this arena and try to scrutinise the evidence whether sufficient or in-sufficient, we would be trespassing into the field of the Disciplinary Authorities. We, therefore, refrain from making any attempt of analysis or scrutiny of the evidence.

10. So far as the point of promotion not being given to the applicant is concerned, it would be the subject matter of this application where the order of punishment has been questioned. The learned Counsel for the applicant, however, did not press this point during the arguments and we, therefore, do not express any view thereabout.

11. From the discussion made above, we come to the conclusion that the case of the applicant for quashing the order of punishment for failure of not adopting proper procedure, should be allowed. The Punishment Order dated 30-4-1986, the order dated 27-10-1986 in the first Appeal and the order dated 14-9-1987 in the second Appeal are quashed and set aside.

Dr. R.K. Saxena
(Dr. R.K. Saxena)
Member (J)

K. Ramamoorthy
(K. Ramamoorthy)
Member (A)