

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 23 OF 1987.
~~T.A. No.~~

DATE OF DECISION

18-6-92

B.C. Mistry,

Petitioner

Mr. D.K. Mehta,

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondents

Mr. N.S. Shevde,

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. D.L. Mehta, Vice Chairman.

The Hon'ble Mr. B.B. Mahajan, Member (A).

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

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B.C. Mistry,
Asstt. Station Master,
Rly. Quarters,
Palej (Dist. Bharuch).

..... Applicant.

(Advocate: Mr. D.K. Mehta)

Versus.

1. Union of India,
(Notice to be served through
the General Manager,
Western Railway, Churchgate,
Bombay.)
2. Divisional Railway Manager,
Baroda Division,
Divisional Office,
Baroda.
3. Sr. Divisional Operating
Superintendent, Baroda Division,
Divisional Office, Baroda. Respondents.

(Advocate: Mr. N.S. Shevde)

J U D G M E N T

O.A.No. 23 OF 1988

Date: 18-6-92

Per: Hon'ble Mr. B.B.Mahajan, Admn. Member.

Heard Mr. D.K. Mehta, learned counsel for the applicant and Mr. N.S. Shevde, learned counsel for the respondents.

2. Mr. B.C. Mistry has filed this application under section 19 of the Administrative Tribunal Act, 1985, against the order dated 9.6.87 of the disciplinary authority imposing penalty of stoppage of increments for a period of two years with future effect and order dated 1.10.1987 of the appellate authority rejecting the appeal against the order of the disciplinary authority.

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3. The applicant who was Assistant Station Master at Palej Railway Station was working as Acting Station Master/Station Superintendent at that station on 3.7.1984. A season ticket was found missing on that date. The charge sheet was served on the applicant vide memorandum dated 10.9.1986 regarding sale of the ticket and its ~~fraudulent~~ ^{failure} accounting manipulation in the record and ~~to~~ maintain absolute integrity. A departmental enquiry was held into the charges, The enquiry officer in his report held that the charge regarding issue of the ticket in question by the applicant was not substantiated but he held the charge regarding manipulation in the record and making of forged entry at a later date as established. After considering the enquiry report the disciplinary authority vide the impugned order dated 9.6.1987 imposed the penalty of stoppage of next increment for a period of two years with future effect. The applicant submitted the appeal against this order on 25.7.87. The appeal was rejected by the appellant authority vide his impugned order dated 1.10.1987. The applicant has prayed for quashing the orders passed by the disciplinary authority as well as appellate authority and for issue of directions to the respondents authorities to give him all consequential benefits. The main grounds

Done



taken are that the conclusions of the enquiry officer regarding proving of the charges is erroneous and that the order had been passed by the disciplinary and appellate authority without applying their mind and that the penalty imposed is excesssive and that he has been subjected to discrimination as Shri D.S. Rawal, who was mainly responsible for the lapses had been let off with a simple warning. The respondents have contested the application and have denied all the allegations.

3. We have heard the learned counsel for the parties.

4. It has been held by the Hon'ble Supreme Court in State of Andhra Pradesh V/s. Sree Rama Rao (AIR 1963 SC 1723) (para 7) that "High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may

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reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence". The same ratio will apply to the proceedings before the Tribunal. It has not been shown that the enquiry has been held by the authority which was not competent to do so or that the procedure prescribed in the behalf has not been followed or that the rule of natural justice have been violated or that there is no evidence at all on with the conclusions of the inquiry officers/ could have been formed. We cannot, interfere with the findings of the enquiry officer about holding certain charges against the applicant on proved.

5. So far as the order of the disciplinary authority is concerned, it has been held by the Hon'ble Supreme Court in Tara Chand Khatri Vs. Municipal Corporation of Delhi, (1977 SCC(L&S)151, (Para 18) that while it may be necessary for a disciplinary authority to state the reason in support of its order if it differs from the conclusions arrived at and the recommendation made by the enquiry officer it would be laying down the proposition a little too broadly to say that even an order of concurrence must be supported by

Praveen

(B)

reasons. In the present case, the disciplinary authority in the impugned order has specifically stated that he had accepted the findings of the inquiry officer. The order cannot, therefore, be struck down on the ground that it does not indicate the reasons for accepting the findings of the inquiry officer.

6. In so far as the order of the appellate authority is concerned, the plea of the applicant is on a stronger footing. Rule 22(2) of the Railway Servants Conduct and Appeal Rules in express terms requires the appellate authority to record its findings on the following aspects:

(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 of the enhanced penalty imposed is adequate, inadequate or severe;

It has been held by the Hon'ble Supreme Court in Ram Chander V/s. Union of India, (AIR 1986 SC 1173)

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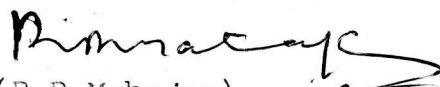
that the word 'consider' in the context of this Rule 22(2) in which it appears, means an objective consideration by the Appellate Authority after due application of mind which implies the giving of reasons for its decision (para-9). While the judgment was in a case of removal from service, its ratio would apply to all appeals against orders of punishment under Rule 22(2) *ibid*. The impugned order of the appellate authority does not indicate that the various points raised by the applicant in his memorandum of appeal dated 25.7.87(Ann.A-4) had been duly considered. While it has been denied in the written statement filed by the respondents that the appellate authority had passed the orders without dealing with any of the grounds stated in the memo of appeal, they have not produced any evidence to show that those grounds had been considered even though they have not been discussed in detail in the impugned order. They have not produced the relevant record where the appeal was considered in order to rebut the allegations of the applicant in this behalf. It, therefore, appears that the various grounds mentioned by the applicant in his memorandum of appeal had not been duly considered by the appellate authority before rejecting the appeal.

Proven


7. In view of the above, we allow the

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application partly, set aside the impugned order dated 1.10.1987 passed by the appellate authority and direct that a fresh order may be passed by the appellate authority within three months of the receipt of this order after duly considering the various points mentioned by the applicant in his memorandum of appeal (Ann.A-4). Since we are remitting the case to the appellate authority for a fresh decision, we do not wish to express an opinion at this stage on the pleas of the applicant regarding the quantum of punishment or hostile discrimination against him. The appellate authority would ofcourse have to consider whether the findings of the disciplinary authority are warranted by the evidence on record as required by the Rule 22(2) of Railway Servant (Discipline & Appeal) Rules and the observations in this order shall not be treated as expression of opinion on this issue which may be binding on the appellate authority. Parties to bear their own costs.


(B.B. Mahajan)
Member (A)

18/6/82


(D.L. Mehta)
Vice Chairman