

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No. 202 of 1988.

Date of decision: April 10, 1989.

Narayan Chandra Swain, son of late Daitary Swain
Bungalow Peon, Office of the Chief Work-shop
Manager, (previously designated as office of the
Chief Mechanical Engineer (W)) Carriage Repair
Work-shop, S.E. Railways, Mancheswar, Bhubaneswar-5
at present C/o Kaphileswar Dash, Central Poultry
Breeding Farm, Bhubaneswar, P.O. Nayapalli,
Bhubaneswar-12. ...

Applicant.

Versus

1. Union of India, represented through
the General Manager, South Eastern
Railways, Garden Reach Calcutta-43.
2. The Chief Workshop Manager, Carriage
Repair Workshop, S.E. Railway, Mancheswar,
Bhubaneswar-5 (previously designated as
Addl. Chief Mechanical Engineer, Work-shop).
3. The Assistant Works Manager,
Carriage Repair Workshop,
S.E. Railways, Mancheswar, Bhubaneswar-5.

... Respondents.

For the applicant ... Mr. D. Mangaraj, Advocate.

For the respondents ... Mr. R. C. Ratha,
Standing Counsel (Railways)

C O R A M :

THE HON'BLE MR. B. R. PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR. K. P. ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed
to see the judgment ? Yes.
2. To be referred to the Reporters or not ? Yes.
3. Whether Their Lordships wish to see the fair copy
of the judgment ? Yes.

JUDGMENT

K.P.ACHARYA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant challenges the order passed by the competent authority removing him from service vide Annexure-7.

2. Shortly stated, the case of the applicant is that he is a Bungalow Peon attached to the Chief Workshop Manager, Mancheswar. It was alleged against the applicant that the applicant remained unauthorisedly absent with effect from 4.4.1986 to 3.5.1986. Hence an enquiry was conducted against the applicant who was found to be guilty and ultimately removed from service. The appeal preferred by the applicant proved fruitless. Hence, this application with the aforesaid prayer.

3. In their counter, the respondents maintained that no illegality has been committed by ordering removal of the applicant from service and this was ordered after a full-fledged enquiry was conducted strictly following the principles of natural justice. Hence, the case being devoid of merit is liable to be dismissed.

4. We have heard Mr.D.Mangaraj, learned counsel for the applicant and Mr.R.C.Ratha, learned Standing Counsel appearing for the Railway Administration at some length. The applicant remained absent during the above mentioned period is admitted by him before the Enquiring Officer. But the case of the applicant is that though he had not made any written application before the competent authority yet he had orally informed his authorities. This fact

asserted by the applicant has been found in his favour by the Enquiring Officer. In Annexure-4, against column " conclusion" the Enquiring Officer holds as follows :

" It is proved that he has remained absent without giving any authentic information in the office before leaving the Headquarters. Being an uneducated Class IV servant he could not give a written application but verbally informed ACME and Mem Saheb before leaving the Headquarters."

From the entire evidence on record which was before the Enquiring Officer, he having come to such a conclusion, we have no ground to differ with him and this supports the plea of the delinquent officer. To add to all these, Mr. Mangaraj invited our attention to the appellate order passed by the Works Manager, Mancheswar contained in Annexure-9. The appellate authority has not assigned any reasons for which he accepts the case of the prosecution and dismisses the appeal. The appellate order is a cryptic one. Mr. Mangaraj relied upon a judgment of the Calcutta Bench reported in ATR 1989 (1)CAT 182 (Umafada Babu v. Union of India and others) in which the Hon'ble Judges took a view that if the appellate order is not a speaking one, then benefit is bound to go in favour of the delinquent officer and the order of conviction is liable to be quashed and hence the Hon'ble Judges in the said case quashed the punishment on this count. The very same view has been taken by us in past while considering Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968. Their Lordships of the Supreme Court in a case reported in AIR 1986 SC 1173 (Ram Chander v. Union of India and others) have been pleased to take the view that the appellate

order must contain reasons for which the findings of the disciplinary authority is maintained and without reasons being recorded the benefit is bound to go in favour of the delinquent officer. Their Lordships were pleased to observe as follows :

" The duty to give reasons is an incident of the judicial process. So, in R.P.Bhatt v. Union of India (C.A. No. 3165/81 decided on Dec. 14, 1982) : (reported in 1986 Lab IC 790) this Court, in somewhat similar circumstances, interpreting R. 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which provision is in pari materia with R. 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, observed :

"It is clear upon the terms of R. 27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the rules had been complied with and if not, whether such non-compliance has resulted in violation of any of the provisions of the Constitution of India or in the failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence of record; and (3) whether the penalty imposed is adequate, inadequate or severe, and pass orders confirming, enhancing, reducing or setting aside the penalty, or remit back the case to the authority which imposed or enhanced the penalty, etc."

It was held that the word 'consider' in R. 27(2) of the Rules implied 'due to application of mind'. The Court emphasized that the Appellate Authority discharging quasi-judicial functions in accordance with natural justice must give reasons for its decision. There was a in that case, as here, no indication in the impugned order that the Director-General, Border Road Organisation, New Delhi was satisfied as to the aforesaid requirements. The Court observed that he had not recorded any findings on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. In the present case, the impugned order of the Railway Board is in these terms:

"(1) In terms of Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968 the Railway Board have carefully considered your appeal against the orders of the General Manager, Northern Railway, New Delhi imposing on you the

penalty of removal from service and have observed as under :

(a) by the evidence on record, the findings of the disciplinary authority are warranted; and

(b) the penalty of removal from service imposed on you is merited.-

(2) The Railway Board have therefore rejected the appeal preferred by you. "

5. To say the least, this is just a mechanical reproduction of the phraseology of R.22(2) of the Railway Servants Rules without any attempt on the part of the Railway Board either to marshall the evidence on record with a view to decide whether the findings arrived at by the disciplinary authority could be sustained or not. There is also no indication that the Railway Board applied its mind as to whether the act of misconduct with which the appellant was charged together with the attendant circumstances and the past record of the appellant were such that he should have been visited with the extreme penalty of removal from service for a single lapse in a span of 24 years of service. Dismissal or removal from service is a matter of grave concern to a civil servant who after such a long period of service, may not deserve such a harsh punishment. There being noncompliance with the requirements of R.22(2) of the Railway Servants Rules, the impugned order passed by the Railway Board is liable to be set aside. "

In paragraph 24, Their Lordships were pleased to observe as follows :

" Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case 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. We wish to emphasize that 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 fair-play and justice also require that such a personal hearing should be given. "

In view of the peculiar facts and circumstances appearing in this case, the appellate authority having not given any reasons in dismissing the appeal, we think the order of conviction is bound to be quashed and accordingly we do hereby quash the order contained in Annexure-7 removing the applicant from service. The applicant be reinstated to service subject to the condition that if he has received any compensation under section 25 F of the Industrial Disputes Act, its should be returned back to the appropriate authority within two months from the date of receipt of a copy of this judgment. The applicant would not be entitled to any back wages. The applicant should be reinstated into service within two months from the date of receipt of a copy of this judgment provided that he complies with the above mentioned condition. The period of absence of the applicant from service should not be construed as break in service for the purpose of other service benefits.

5. Thus, this application stands allowed leaving the parties to bear their own costs.

Agreed
10.4.89
Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

I agree.

Agreed
10.4.89
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
April 10, 1989/Sarangi.

