

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

.....
DATE OF ORDER : 11.8.99 . .

O.A.NO. 304 OF 1997

Jai Narain S/o Roopa Ram aged about 55 years, R/o
Ada Bazar, Ganglaw-ki-ghati, Jodhpur Presently
working as C.T.I., in the office of the D.C.T.I.,
Northern Railway, Jodhpur.

.....APPLICANT.

VERSUS

1. Union of India through the General Manager,
Northern Railway, Baroda House, New Delhi.
2. Additional Divisional Railway Manager,
Northern Railway, Jodhpur Division,
Jodhpur.
3. Divisional Commercial Manager, Northern
Railway, Jodhpur Division, Jodhpur.

.....RESPONDENTS.

.....

CORAM :

HON'BLE MR. A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR. N.P.NAWANI, ADMINISTRATIVE MEMBER

.....

Mr. S.K.Malik, Advocate, present on behalf of
applicant.

Mr. S.S.Vyas, Advocate, present on behalf of the
respondents-department.

.....

PER MR. A.K.MISRA :

The Applicant has filed this Original
Application with the prayer that the impugned orders

2m

dated 2.5.1997 (Annex.A/1), 22.7.1997 (Annex.A/2) and Memorandum dated 12.3.1997 (Annex.A/3), be quashed and the respondents be directed to refund the amount, if any, with-held by them in view of Annexs. A/1 and A/2 along with interest at the rate of 24% per annum.

2. Notice of the O.A. was given to the respondents who have filed their reply to which no rejoinder was filed.

3. We have heard the learned counsel for the parties and gone through the case file.

4. The applicant, who at the relevant time, was working as Chief Ticket Inspector Grade 2000-3200, was issued a minor penalty chargesheet by respondent No. 3 vide Memorandum dated 12.3.1997, Annex.A/3. On demand by the applicant, the respondent No. 3 did not supply any copies of complaint, statements of witnesses and inquiry report, to the applicant and awarded penalty of stoppage of increments for two years with cumulative effect, vide order Annex.A/1. Against the order passed by the Disciplinary Authority, the applicant preferred an appeal to the Appellate Authority which without assigning reasons and speaking order disposed of the appeal vide Annex.A/2 maintaining the order of the Disciplinary Authority. The applicant has challenged the aforesaid action of the respondents on the ground of non-supply of vital

San

documents, passing cryptic and non speaking order by the Disciplinary Authority and by the Appellate Authority and on the ground that the disciplinary proceedings were not conducted as desired by the Railway Servants (Discipline & Appeal), Rules, 1968, (for short "the Rules").

5. The respondents have filed their reply in which it is stated that there was a complaint against the applicant about the mis-behaviour with the passenger which was inquired into and the applicant was chargesheeted for minor penalty. The applicant was required to give his defence with reference to the chargesheet but instead of filing reply within the stipulated time, applicant went on delaying the departmental proceedings on the ground of supply of documents etc. The documents were not required to be supplied to the applicant as he was required to answer minor penalty case. Since the order of penalty is only with-holding of increments for two years, no detailed order was required to be passed by the Disciplinary Authority. The appeal was considered in the ~~pragmatic~~ perspective by the Appellate Authority and the appeal was found to be without substance. No detailed and reasoned order was required to be passed by the Appellate Authority. The case is without any substance and deserves to be dismissed.

6. Both the learned counsels for the parties elaborated their arguments on the lines of their pleadings which we have considered.

Zm

7. Sub Rule (2) of Rule 11 of the Rules is quoted hereunder :-

(2).Notwithstanding anything contained in Clause (b) or sub-rule (1) 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 Rule 9, before making any order imposing on the Railway servant any such penalty.:

This Sub Rule clearly indicates that in case increments of pay with cumulative effect are withheld for any number of period than an inquiry is required to be held in the manner laid down in Sub Rule (6) to Sub Rule (25) of Rule 9, before imposing a penalty on the Railway servant. In the instant case, the Disciplinary Authority has ordered vide Annex.A/1 in the following terms :-

"अतः वेतन श्रेणी संख्या 2000-3200 में आपका वेतन 2240 रुपये से बढ़ाने वाली आपकी वेतन वृद्धि जो सामान्यतः 1-1-98 को मिलती है, दो साल के लिए रोक दी गई है जिसके कारण भविष्य में मिलने वाली वेतन वृद्धियां स्थगित हो जायेगी।"

This order clearly shows that two increments with cumulative effect were stopped by way of punishment to the applicant. But in the instant case, no procedure as contemplated by Sub Rule (2) was adopted and this, in our opinion, has vitiated the proceedings in the disciplinary case.

3m

8. From the Memorandum accompanying the detailed imputation shows that on complaint by one Shri Tribhuwan, the present proceedings were initiated but the copy of this complaint was not supplied to the applicant and thus the applicant was not in a position to reply the chargesheet. In the imputation, it is stated that applicant mis-behaved with the passanger whereas in the complaint Annex.R/1, it is stated by the passanger that the applicant was on duty in a drunken state and had mis-behaved with him while the applicant was highly intoxicated. The complaint Annex.R/1 is in detail. Thereafter, there was an investigation by the Public Grievance Inspector, who had submitted his detailed report to the concerned authorities which probably resulted into the present chargesheet. Therefore, it cannot be said that by asking the relevant documents, the applicant was delaying the proceedings but the Disciplinary Authority has passed the punishment order in a cryptic way by observing "denial of charges is not accepted. Efforts to get photo copy of complaint and statements is only time wasting tactics and is not essential in minor penalty cases". This observation of the Disciplinary Authority in view of the punishment awarded, is difficult to sustain. The fact of receiving a written complaint by the department is mentioned in the annexure to the chargesheet and, therefore, in our opinion, the copy thereof should have been supplied to the applicant or he could have been directed to inspect the same by affording him an opportunity in this regard. But

gmu

this was not done by the Disciplinary Authority. In our view, the order passed by the Disciplinary Authority is a non speaking order and is in violation of Sub Rule (2) of Rule 11 of the Rules, and, therefore, deserves to be set aside.

9. Vide Annex.A/2, the applicant was informed that the appeal has been turned down by the Appellate Authority but no reasons have been communicated to the applicant for rejecting his appeal. It is difficult to believe that a considered and reasoned order was passed by the Appellate Authority. The respondents have annexed Annex.R/3 with their reply stating to be a decision of the Appellate Authority. We have gone through this order also. This order itself shows that the Appellate Authority failed to appreciate the import of detailed inquiry as envisaged by Sub Rule (2) of Rule 11 of the Rules, in view of punishment of stoppage of two increments of applicant with cumulative effect by the Disciplinary Authority. It appears that the Appellate Authority has considered the entire case as if applicant was to prove his innocence in respect of the charges instead of department proving the charges against the applicant. Thus, the appellate order too suffers from grave illegality and deserves to be set aside.

10. From the complaint of the passanger, it appears that the applicant had mis-behaved with the passanger while he was on duty in a drunken state, therefore, even while setting aside the entire

2/m

departmental inquiry, we would like to keep the subject open for the department for a de novo inquiry against the applicant on the charges based on the complaint of the passanger.

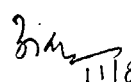
11. In view of the foregoing discussions, we come to the conclusion that the impugned orders Annexs. A/1 and A/2 are required to be set aside and the O.A. deserves to be accepted partly.

12. The O.A. is, therefore, partly accepted. The orders Annexs. A/1 dated 2.5.1997 and A/2 dated 22.7.1997 are hereby quashed. The respondents are directed to release the with-held increments of the applicant immediately and return the amount so with-held to the applicant but in the circumstances, without any interest, within a period of three months from the date of communication of this order.

13. It is further ordered that the department shall be free to take disciplinary action against the applicant on the basis of Annex.A/3 dated 12.3.1997 issued on the complaint of the passanger Shri Tribhuwan by conducting a departmental inquiry as per rules.

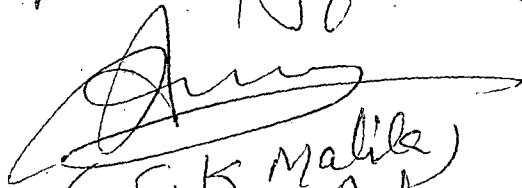
14. The parties are left to bear their own costs.


(N.P.NAWANI)
Adm.Member


11/8/99.
(A.K.MISRA)
Judl.Member

.....

Rec copy of order.



(S. K. Malik)
Asst.
Counsel for Applicant.

17/8/99

Recd copy
S. K. Malik
18.8.99.

Part II and III destroyed
in my presence on 14.5.06
under provision of
section 17(2) as per
order of 16/5/06


Section Officer (Records)