IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,JODHPUR BENCH,JODHPUR.

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Date of Decision: 21-12-2001

OA 387/99

Ram Singh, Pointsman, Northern Railway, Lalgarh Station, Bikaner.

... Applicant

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Sr.Divisional Operating Manager, Northern Railway, Bikaner.
3. Asstt. Operating Manager (M), Northern Railway, Bikaner.

... Respondents

CORAM:

HON"BLE MR.JUSTICE O.P.GARG, VICE CHAIRMAN

HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

For the Applicant ... Mr.Y.K.Sharma

For the Respondents ... Mr.KamaL Dave

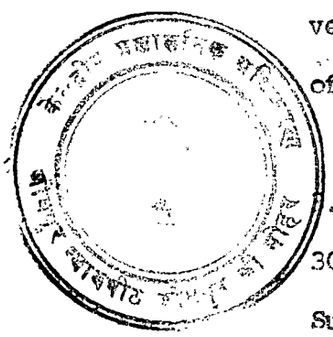
O R D E R

PER HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

The applicant is aggrieved with the order of the disciplinary authority dated 9.2.99 (Ann.A/1), imposing a penalty of reduction to lower stage in the time scale of pay, and the order of the appellate authority dated 22.4.99 (Ann.A/2), by which his appeal has been rejected. Applicant's prayer is that these two orders be quashed and set aside.

2. The applicant has assailed these orders on the ground that the

disciplinary authority and the appellate authority have not considered the facts in the right perspective and have passed the impugned orders without considering the material available on record. The orders are also non-speaking orders. Further plea of the applicant is that the provisions of Rule-9(a)(i) of the Railway Servants (Discipline & Appeal) Rules, 1968 have been flagrantly violated inasmuch as after issuing the charge-sheet he was not afforded reasonable opportunity for submitting his defence and an inquiry officer was appointed. Another ground taken by the applicant is that the inquiry officer had not held the charges as proved and even then the disciplinary authority has proceeded to impose the penalty upon him. The appellate authority is stated not to have applied its mind to the quantum of punishment and a very severe penalty, not commensurate with the nature of the alleged offence, has been imposed.



3. The facts in this case are very brief and are not disputed. On 30.8.97, a memo was issued to the applicant by the Station Superintendent Lalgarh directing him to perform shunting in M.G.Yard without any Shunting Jamadar. It was also mentioned in the memo that these are the orders of the Senior Divisional Operating Manager and are effective from 23.8.97. As an immediate response to the said memo, the applicant gave a written refusal to carry out the shunting, as directed, on the ground that the presence of Shunting Jamadar was necessary and that Shunting Jamadars are available spare but still he, as a Pointsman, is being compelled to do the shunting work and thus he questioned the authority under which he, as a Pointsman, was being

asked to do the shunting work. On his refusal, he was placed under suspension on the same day and was directed to meet AOM at 10.00 hrs. on 1.9.97. A major penalty charge-sheet was issued to him vide memorandum dated 2.9.97. A departmental inquiry was conducted and the report of the inquiry officer was given to the applicant. On receipt of explanation against the same, the disciplinary authority imposed the penalty of reduction to a lower stage in the time scale of pay from Rs.4110/- to Rs.3050/- in the grade Rs.3050-4590 for a period of two years affecting future increments of pay. The applicant preferred an appeal against the said order on 25.2.99. The appellate authority rejected the said appeal and the applicant has come before us challenging these orders.

4. We have heard the learned coucnsel for the parties and perused the records.

5. The learned counsel for the applicant vehemently argued that the applicant could not have been asked to perform shunting work in absence of a Shunting Jamadar as this was against the rules. However, the learned counsel was not able to place before us any rules which specifically provide that in absence of Shunting Jamadar the shunting cannot be done. This is more so when the respondents have stated in their reply that for a few days Shunting Jamadars were not provided in the Meter Guage Yard and the shunting operations were done under the supervision of the Yard Master, who is a senior functionary. It is not the case of the applicant that he did not refuse to carry out the work of shunting, as ordered. His plea is that he had never refused to work as a Senior Pointsman, as that is the post which he was holding. It is

admitted that he refused to perform the shunting work in absence of Shunting Jamadar. This fact has also been established by the inquiry officer in his findings. It is clear from the facts that an order had been given to the applicant to perform shunting without a Shunting Jamadar being present. He gave a written refusal to carry out these orders. No rules have been placed before us on his behalf providing that even if when a senior functionary like Yard Master is available, it is still necessary to have the presence of a Shunting Jamadar. It was stated by the learned counsel for the respondents that in railway operations there are situations when suddenly some staff may not become available for duty and alternate arrangements are made and senoirmost staff from the lower grade are asked to undertake the responsibility in such a situation. The applicant was the seniormost Pointsman in that shift of 30.8.97 and had been asked to carry out the work of shunting in MG Yard, where Shunting Jamadar was not available. The learned counsel submitted that the action of the applicant in refusing to perform the assigned duties had serious repercussions as it directly affected the train operations.

6. In so far as the refusal and the effect of refusal to perform duty is concerned, the facts are obvious. The learned counsel for the applicant raised a plea that the orders of the disciplinary authority and the appellate authority are cryptic and non-speaking. We have considered this contention. The disciplinary authority has stated in his order that in the findings the charges against the applicant have been proved beyond doubt. We have perused the findings of the inquiry officer. In conclusion, the inquiry officer has held the charges as

substantiated. He has listed five grounds because of which he concluded that the charges levelled are proved. We find inquiry officer's reason is very detailed. In such a situation. It is not necessary for the disciplinary authority to reproduce the same grounds specially when he has agreed with the findings of the inquiry officer. We consider it useful to refer to page-236 of the Fifth Edition of M.L.Jand's book on Railway Servants (Discipline & Appeal) Rules, 1968. While discussing Rule-10 and on the question of speaking orders it has been stated as under :-

"Speaking order - When Disciplinary Authority agree with the Inquiry Officer - When the Inquiry Officer has discussed all the aspects of his findings in details and has arrived at the findings after full discussion, the disciplinary authority has given a copy of the report to the employee, sought for his remarks and has considered them and then he agrees with the Inquiry Officer, he need not once again give the detailed reasons in his order of imposition of penalty."

We are of the considered view that in this case the orders of the disciplinary authority cannot be stated to be non-speaking and there is no infirmity in these orders. Since the appellate autority has upheld the orders of the disciplinary authority by rejecting the appeal, we do not consider these orders as suffering from any deficiency considering the contents of the appeal made by the applicant.

7. The learned counsel for the applicant raised a plea that the appellate authority passed the impugned orders without affording an

opportunity of hearing to the applicant, even though in his appeal he had made specific request for the same. The learned counsel stated that on this ground alone the impugned order stands vitiated and is liable to be quashed. In support of his contention the leaned counsel placed reliance on the judgement of this Tribunal dated 19.9.2001 in a batch of OAs No.289/99, 386/99, 24/2000 & 270/2000, in which this specific issue came up for consideration of the Bench. We find from the OA before us that there is no specific averment made by the applicant in the grounds to this effect that he was not afforded an opportunity of personal hearing. Having not taken the plea in the application, the applicant cannot ordinarily be permitted to raise a fresh ground during the arguments as the opposite side has not got the opportunity to counter the assertion of the applicant. Notwithstanding this, from the facts of the case where the applicant refused to carry out the work of shunting, any personal hearing, in our view, would not have made any difference. Even the legal position in this respect is against the applicant as in 1994 (Supp) (2) SCC 463, State Bank of Patiala v. Mahendra Kumar Singhal, it was held by Hon'ble the Supreme Court that in absence of any rule to the contrary, affording of personal hearing by the appellate authority is not necessary. In the orders dated 19.9.2001 reliance was placed on the principle laid down by the Hon'ble Apex Court in the case of Ram Chandra v. Union of India & Ors., AIR 1996 SC 1173. The relevant portion of the judgement in the case of Ram Chandra, which was extracted by this Tribunal in the order dated 19.9.2001, is once again reproduced below :-

"It is not necessary for our purposes to go into the vexed question whether a post decisional hearing is a substitute of

the denial of a right of hearing at the initial stage or the observance of the rules of natural justice since the majority in Tulsiram Patel's case (AIR) 1985 SC 1416 unequivocally lays down that the only stage at which a Government servant gets 'a reasonable opportunity of showing cause aginst the action proposed to be taken in regard to him' i.e., an opportunity to exonertae himself from the charge by showing that the evidence adduced at the inquiry is not worthy of credence or consideration or that the charges proved against him are not of such a character as to merit the extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case, is at the stage of hearing of a departmental appeal. 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 Railwy 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

a personal hearing should be given."

This has to be understood in the context that this (Ram Chandra's) case came up for consideration by the Apex Court much before the principle of natural justice was deliberated upon in respect of departmental proceedings by Hon'ble the Supreme Court in the case of Union of India & Ors. v. Mohd. Ramzan Khan, 1991 SCC (L&S) 612, wherein it was held that it was necessary for the disciplinary authority to provide the delinquent official with the copy of the inquiry report so as to afford him an opportunity to show-cause as to why the findings of the inquiry aginst him be not accepted by the disciplinary authority. Before Mohd. Ramzan Khan's case, the copy of the inquiry report was not being made available to the delinquent official and he had no opportunity to present his case before the disciplinary authority vis-a-vis the inquiry report. It was in that context only that the Apex Court had held in Ram Chandra's case that in such a situation the appellate authority must give a hearing to the government servant concerned. After Mohd. Ramzan Khan's case when the inquiry report is being made available to the delinquent, the question of giving a personal hearing now can be best left to the discretion of the appellate authority and the legal position now prevailing is also the same as held by the Apex Court in the case of State of Patiala v. Mahendra Kumar Singhal. The Tribunal while deciding the batch of OAs (as mentioned above) had taken note of the judgement of the Supreme Court in State Bank of Patiala v. Mahendra Kumar Singhal and also the case of Ram Chandra v. Union of India & Ors. The Bench had held in view of the facts & circumstances of the cases before the bench that the personal hearing was necessary

because of the law laid down in the case of Ram Chandra. However, in the instant case, it is not in dispute that the copy of the inquiry

report had been made available to the applicant. Thus, he had full opportunity of defending himself before the inquiry officer as also before the disciplinary authority and the appellate authority. After the principle established by the Hon'ble Supreme Court in the case of State Bank of Patiala & Ors. v. S.K.Sharma, AIR, 1996 SC 1669, any denial of documents or opportunity of being heard in person or alleged violation of rules/regulations/ statutory provisions governing inquiry have to be decided on the anvil of prejudice having been caused to the delinquent. The applicant has not been able to establish any prejudice having been caused to him on any of the grounds taken by him in the OA and also pleaded on his behalf by his learned counsel. The case is of refusal to carry out the orders and there is no doubt in our mind that this charge has not only clearly established but also accepted by the applicant. The only plea of the applicant is that he was not bound to carry out these orders as these were against the rules. The applicant has not been able to prove before us this contention of his. The learned counsel for the applicant referred to para 9018 of the Operating Manual to contend that staff is obliged to obey only those orders which are consistent with the Rules. As we have observed elsewhere in the preceeding paragraphs, the applicant has failed to establish that the orders given to him were in contravention of rules. It would be fraught with serious consequences to permit any employee to take his own decision on the correctness of the orders received by him, specifically when these are given to him in writing. Refusal to carry

out orders can have serious repercussions on the activity with which the applicant is associated. Such a disobedience can play havoc with the railway operations. The applicant has been insisting that the orders given to him should have been confirmed by the Sr.DOM. This insistance is totally unacceptable as permitting every employee to raise such pleas can result into chaos and indiscipline in the organisation and such a situation can obviously not be permitted by the department and the courts shall refrain from interfering with such administrative orders. We find no merit in the plea of the applicant and this OA deserves to be dismissed.

8. We, therefore, dismiss this OA as devoid of any merit. No order as to costs.

(A.P.NAGRATH)
MEMBER (A)

(JUSTICE O.P.GARG)
VICE CHAIRMAN

Part II and III destroyed
in my presence on 29-5-07
under the supervision of
section officer (J) as per
order dated 18/2/12

Section officer (Record)