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CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH


ORIGINAL APPLICATION NO. 221/2003

DATE OF DECISION: 17.2.2005

CORAM

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER.

Hon'ble Mr. G.R.Patwardhan, Administrative Member.

 M.H. Khan S/o Shri H.H. Khan aged about 52 years resident of G.C.-
2001, Railway Colony, Barmer presently working as Executive
Engineer, North-West Railway, Barmer.

...Applicant

(Mr. Kuldeep Mathur, Counsel for applicant.)

VERSUS

1. Union of India, through: General Manager, North West Railway,
Jaipur.
2. The Secretary (E&P) Government of India, Ministry of Railways,
Railway Board, New Delhi.

....Respondents.

(Mr. Manoj Bhandari, Counsel for respondents.)

ORDER

Mr. J.K. Kaushik, Judicial Member



Shri M.H. Khan has, inter alia, assailed the order dated 28.05.2003 at Annexure A/1 passed by the Appellate Authority and has sought for setting aside the same. He has also challenged the order dated 23.05.2000 passed by the Disciplinary Authority whereby he has been imposed the penalty of reduction of pay by one stage in the pay scale of Rs. 7500-12000 for a period of one year with cumulative effect and has sought for setting aside the same with all consequential benefits.



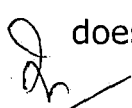
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2. We have heard the learned counsel for both the parties and have anxiously considered the submissions, pleadings and the records of this case.

3. For the purpose of deciding this case, the facts may be succinctly put in. The applicant, while holding the post of Assistant Engineer, came to be issued with a charge Memo under Rule 9 of Railway Servants (Disciplinary Appeal) Rules, 1968 along with a set of charges and list of documents as well as list of witnesses to be produced in support of charges. The applicant denied the same and an enquiry was conducted wherein the Inquiry Officer held the charges as proved. The disciplinary Authority vide order dated 23.05.2000 imposed the penalty of reduction by one stage in the pay scale of Rs. 7500-12000. He preferred an appeal which came to be rejected vide letter dated 20.05.03 Annexure A/1. The Original Application has been filed on numerous grounds enumerated in Para 5 and its sub paras. However, we are not outlying them in view of the order we propose to pass in this case.

4. The respondents have resisted the claim of the applicant and have filed very exhaustive reply controverting the facts and grounds raised in the Original Application. The same is followed by an additional affidavit in support of the reply.

5. There is no doubt that both the learned counsel for the parties have elaborately discussed the matter on merits as well on legal issues and put forward their respective versions, however, we are of the opinion that the order passed by the Appellate Authority does not seem to be in conformity with the rules and we propose to



give liberty to the Appellate Authority to pass a fresh order, since the Appellate Authority is required to apply its independent mind. Therefore, we would not like to discuss the merits of this case.

6. We have considered the rival submissions put forth by the learned counsel for both the parties. We are of the firm opinion that the impugned order passed by the appellate does not does not satisfy the scrutiny of law for the reasons mentioned hereinafter. We would do well by reproducing the relevant provisions which are required to be adhered to by the appellate authority i.e. Rule 22(2) of the Railway Servants Rules which reads as under:-

"22 (2). In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider -

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

and pass orders -

(i) confirming, enhancing, reducing or setting aside the penalty: or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case."



While in the instant case the appellate authority has not given specific findings on the three mandatory points as mentioned above, he has also not be given effective hearing as well as. Admittedly the hearing was given but by the authority who did not decide the appeal. It is trite law that one who hears must decide which has incidentally not been done in the instant case. Thus the

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principle of natural justice that justice not only to be done but must manifestly and undoubtedly seen to be done has not been adhered to. The decision making process itself has been faulty. The significance of personal hearing can hardly be overemphasised in view of the following findings of Apex Court in case of **Ram Chander V. Union of India AIR 1986 SC 1173**:

"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 against the action proposed to be taken in regard to him' i.e. an opportunity to exonerate 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 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."



7. The learned counsel for the respondents did oppose the requirement of giving personal hearing itself by the appellate authority, which is said to be discretionary. His objection is in also in consonance with the instructions regulating the procedure to be followed by the appellate authority, which has been laid down by the GOI DOPT in unequivocal term vide OM No. 11012/2/91-Estt

(A) dated 23.4.1991 that the personal hearing is a matter of

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discretion of the appellate authority. Similar position is illustrated by the Apex Court in case of **Ganesh Santa Ram Sirur V. State Bank of India AIR 2005 SC 314 (para 29)**. However, in the present case the situation is quite different. The discretion was used and applied in favour of applicant by the appellate authority who did not decide the appeal (appeal was decided by his successor), thus this issue need not struck us from proceeding further. The appellate order contains the infirmity as pointed out above. Thus the OA application deserves to be accepted on the grounds of not giving effective personal hearing as well as the order being not in conformity to the rules in force. We, therefore, do not find any necessity to examine any other grounds raised in this OA.



8. In the result, we find force in the Original Application and the same stands allowed in part. Liberty is given to the appellate authority to decide the appeal afresh in accordance with the rules/instructions in force but after giving personal hearing to the applicant. Consequences shall follow. It is scarcely necessary to mention that we have not dealt the case on its merits and all the grounds raised in the OA shall remain open. No costs.

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(G.R. Patwardhan)
Administrative Member

J.K. Kaushik
(J.K. Kaushik)
Judicial Member

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Section officer (Record)