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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

O. A. No. 222/Jodhpur/2009

Date of decision: 05.11.2012

CORAM :

**HON'BLE MR. G. SHANTHAPPA, JUDICIAL MEMBER  
HON'BLE MR. B.K.SINHA, ADMINISTRATIVE MEMBER.**

Kuldeep Chand S/o Shri Sultan aged about 56 years, resident of Kothi No. L-62, New Railway Colony, Lalgarh, Near Railway Workshop, Bikaner, at present employed on the post of Head Ticket Inspector at Lalgarh Railway Station, NWR, Bikaner.

.....Applicant

**[Mr. Mahesh Bora & Ms. Sushma Dhara, Advocates]**

**Versus**

1. Union of India through the General Manager, North Western Railway, Jaipur Zone, Jaipur.
2. Chief Commercial Manager, North West Railway, Jaipur Zone, Jaipur.
3. Additional Divisional Railway Manager, North Western Railway, Bikaner Division, Bikaner.
4. Sr. Divisional Commercial Manager, North Western Railway, Bikaner Division, Bikaner.

.....Respondents

**[Mr. Vinay Jain, Advocate]**

**ORDER**

**[PER HON'BLE MR. G. SHANTHAPPA, JUDICIAL MEMBER]**

The above application is filed under Section 19 of the Administrative Tribunals Act, 1985, challenging the legality and propriety of the Memorandum of Charges dated 27.12.2005 (Annex.A/1), order of the disciplinary authority dated 23.05.2007 at Anex.A/2, order of the appellate authority dated 15.01.2008 (Annex.A/3) and the order of the revisional authority dated 12.08.2008 (Annex.A/4).



2. We have heard the learned counsel for the respective parties.

3. While arguing the case, the counsel for applicant submits the applicant is not challenging the inquiry proceedings conducted by the inquiry officer. The learned counsel for the applicant restricted the arguments in respect of the impugned order passed by the disciplinary authority and the appellate authority dated 23.05.2007 and 15.01.2008 respectively. The said orders are not reasoned orders and not passed in accordance with the Railway Servants (Discipline & Appeal) Rules. The learned counsel for the respondents submits that the impugned order has been passed by the disciplinary authority. He has assigned the reasons for accepting the findings of the inquiry officer and exercised the powers vested in him. The appellate authority has considered the appeal dated 09.07.2007 and accepted the decision taken by the disciplinary authority since no new grounds are mentioned in the appeal. Though, the appellate authority has enhanced the penalty he has exercised the powers vested under Rule 22 (2) of the Railway Servants (Discipline & Appeal) Rules.

4. We have carefully considered the submission of the learned counsel for the either side and perused the impugned orders and applied the relevant rules of the Railway Servants (Discipline & Appeal) Rules.



5. As contended by the applicant, the disciplinary authority has not passed a reasoned order in accordance with Rule 10 of the Railway Servants (Discipline & Appeal) Rules. It is relevant to extract the order passed (opinion) by the disciplinary authority.

**"The defence given by you for charges leveled is not acceptable because the five charges are found proved. Railway would have suffered a loss of railway revenue amounting to Rs. 2736/-, Rs.1079/-, Rs. 3815/-.**

**I therefore, held you guilty of the charge(s) viz. as leveled vide SF-5 of even no. dated 27.12.05 against you and have decided to impose upon you the penalty of reduction to a lower post / grade / service. You are, therefore, reduced to the lower post/grade/service of TC in the scale of Rs. 3050-4590 from JIT grade 5500-9000 at pay Rs. 3050/- without cumulative effect for the period of five years."**

6. We have carefully examined the said order in which, the first para relates to the charges levelled against the applicant vide SF-5 Charge Memo dated 27.12.2005 wherein six charges were imposed upon the applicant. The second para relates to the finding in the inquiry report. Out of six charges, charge No. 1 is not proved and charge Nos. 2 to 6 are proved. The third para which is extracted above, in which the disciplinary authority has opined informed that the defence given by the applicant for the charges levelled, is not acceptable because these five charges are found proved. It is stated that the Railways would have suffered a loss of the Railway Revenue amounting to Rs. 2,736/- Rs. 1,079, Rs. 3,815/-. I,



therefore, held the applicant guilty of the charges as levelled vide SF-5 and impose the penalty.

7. We have to apply the relevant Rules how to accept the inquiry report. Rule 10 of the Railway Servants (Discipline & Appeal) Rules, regulates action of the inquiry report. Rule 10 (5) is relevant which is extracted hereunder :-

**"10(5) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 6 should be imposed on the Railway servant, it shall make an order imposing such penalty and it shall not be necessary to give the Railway servant any opportunity of making representation on the penalty proposed to be imposed :**

**Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Railway servant."**

8. Under the said provision, the disciplinary authority has to assign the reasons on the charge memo as also the defence taken by the applicant. The applicant had submitted his representation to the charge memo and has also given a representation to the inquiry report. These arguments raised in defence were not considered while passing the impugned order. While accepting the findings of the inquiry report, the charges No. 2 to 6 are accepted as proved and the defence and the explanation given by the applicant is not acceptable. It is the duty of the disciplinary authority to assign the



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reasons. Hence, we are of the view the impugned orders of the disciplinary authority is not a reasoned and considered order.

9. We have carefully examined the orders of the appellate authority dated 15.01.2008. The applicant submitted his appeal dated 09.07.2007 (Annex.A/6) wherein, he has taken many legal grounds. The legal grounds are not considered by the appellate authority. It is the contention of the applicant that the penalty has been enhanced but, no notice of disagreement was served, while enhancing the penalty. It is mandatory under the rules that dis-agreement note should be supplied and an opportunity has to be given to the delinquent official. It is relevant to extract the reasons assigned by the appellate authority.

10. The powers vested under Rule 22 (2) (a) of the Railway Servants (Discipline & Appeal) Rules that how to decide the appeal. While considering the appeal, it is the duty of the appellate authority who shall consider whether the procedure laid down in these rules has been complied with or not, whether such non-compliance has resulted in the violation of any provisions or in the failure of justice and whether the penalty or enhanced penalty imposed is adequate, inadequate or severe and pass orders, confirming, enhancing, reducing or setting aside the penalty. In the present case, as admitted by the counsel for the



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respondents, the penalty has been enhanced. If that be the case while enhancing the penalty, proviso to Rule 22 (2) regulates that if the appellate authority proposes to enhance penalty, the appellant has to be given a reasonable opportunity of making a representation against such enhanced penalty. As per Railway Board Order No. E 41/G 41/2 26741 every order should be of such character as to indicate that the grounds of his appeal have been understood and that an independent judgment has been brought to bear on the merits of the case. The relevant proviso to Rule 22 is quoted below :

**"22(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;**

**(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:**

**(v) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 11, of making a representation against such enhanced penalty."**

11. After careful consideration of the opinion of the appellate authority and the Rule 22 (2) (a) read with Proviso (5) it is evident the appellate authority has not

given disagreement notes to the applicant and it is on this account that the appellate authority has violated the said rule.

12. We have carefully considered the orders of the revisional authority. It is relevant to extract the orders of the revisional authority:

"मैंने आपके द्वारा प्रस्तुत पुनरीक्षण याचिका एवं संपूर्ण डी ए आर केस का अध्ययन किया । आपके पुनरीक्षण याचिका में कोई नया तथ्य प्रस्तुत नहीं किया है । आपकी लापरवाही से **Revenue Loss** हुआ है एंव 6 में से 5 ओप सिद पाए गए हैं ।

मानवीय आधार पर अपीलीय प्राधिकारी (अपर मंडल रेल प्रबन्धक / बीकानेर) द्वारा भास्ति को कम किया गया है । अत अपीलीय प्राधिकारी द्वारा दिए दण्ड को मैं यथावत रखने का आदेस प्रदान करता हूँ ।"

13. In the reply statement, the respondents have not justified the reasons given to support their stand while issuing the impugned orders, the competent authority has to assign the reasons. As observed in the earlier para, the contention of the applicant, the impugned order is cryptic, no reasons are assigned, whimsical, capricious. We have to test the impugned order is a reasoned order as held by the Hon'ble Supreme Court. We are of the view that the impugned order is not a speaking order as held by the Hon'ble Supreme Court. The reasoned order should be as held by the Hon'ble Supreme Court in the case of **Ram Chandra v. Union of India** reported in 1986 (2) SLR-608, **Apparel Export Promotion Council v. A.K. Chopra** reported in 1999 SCC (L&S) 405 and **Narinder Mohan Arya v. United India Insurance Co.Ltd.** reported in (2006) 4 SCC 713. The authority must give reasons even while affirming the order of Disciplinary Authority. In our opinion, an order of

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affirmation need not contain elaborate reasons, but that does not mean that the order of affirmation need not contain any reasons whatsoever. The order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming or reversing or modifying the order of the Disciplinary Authority. The purpose & disclosure of reasons is that the people must have confidence in the judicial or quasi-judicial authorities, unless the reasons are disclosed, how can a person know whether the authority has applied its mind or not". Also, giving of reasons minimizes chances of arbitrariness. Hence it is an essential requirement of the rule of law that some reasons at least in brief must be disclosed in a judicial or quasi judicial order, even if it is an order of affirmation. The reasoned order should be in accordance with the judgment of the Hon'ble Supreme Court reported in 2004 (7) SCC 431- ***Cyril Lasrado (Dead) by Lrs. and Others v. Juliana Maria Lasrado & Another:***

***"12. Even in respect of administrative orders. Lord Denning, M.R. in Breen v. Amalgamated Engg. Union observed. (AII ER p.1154h). "The giving of reason is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree it was observed : "Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis n recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the***

***courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."***

14. We have already decided that the orders of the disciplinary authority and the appellate authority are illegal and not in accordance with the Railway Servants (Discipline & Appeal) Rules, no reasons are assigned, consequently, the orders of the revisional authority are also illegal.

15. For the foregoing reasons we are of the considered view the applicant has established that the impugned orders i.e. the orders of the disciplinary authority, the orders of the appellate authority, the orders of the revisional authority are illegal and against the law, the same are therefore liable to be quashed.

16. The respondents are not justified while supporting the impugned orders. Considering the facts and circumstances of this case, after quashing the impugned orders of the disciplinary authority, appellate authority and the revisional authority, we think fit that it is a fit case to remit the matter to the disciplinary authority to pass a reasoned and

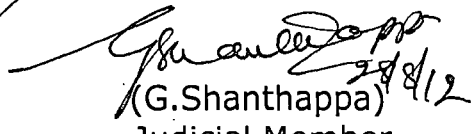


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speaking order in accordance with the Railway Servants (Discipline & Appeal) Rules, within a period of three months from the date of receipt of a copy of this order.

17. With the above observations, the O.A. is disposed of with no orders as to costs.

  
(B.K. Sinha)  
Administrative Member

  
(G. Shanthappa) 28/8/12  
Judicial Member

jrm