

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 419/93

Wednesday, the eighth day of December, 1993

MR. N. DHARMADAN MEMBER (JUDICIAL)
MR. S. KASIPANDIAN MEMBER (ADMINISTRATIVE)

P. Ramadasan
S/o Appu
Near Kannampalli L.P. School
Thiruvanoor Road,
Kallai P.O. Calicut-3

Applicant

By Advocate Mr. P. Sivan Pillai

vs.

1. The Union of India through the General Manager, Southern Railway, Madras-3

2. The Sr. Divisional Engineer (c)
Southern Railway, Palghat

3. The Divisional Railway Manager, -do-

4. The Addl. Divisional Railway Manager, -do-

Respondents

By Mr. P.A. Mohammed, Advocate

ORDER

N. DHARMADAN

The limited prayer ~~made~~ by the applicant in this case which is filed against the final order passed by the ~~appellate~~ authority is that Annexure A-5 was passed by incompetent authority ~~without~~ considering the contentions raised by the applicant and following the procedure contemplated under Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968.

2. It is seen from the penalty advice Annexure A-3 that the applicant was directed to file appeal against the same before the DRM, Palghat. Accordingly, the applicant filed appeal before the DRM, Palghat; ~~the same has been~~ disposed of by ADRM, Palghat. According to the applicant the ADRM has no jurisdiction to dispose of the appeal filed in the year 1987 ~~before the~~ DRM, Palghat. It is

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true that the respondents have produced Annexure R-6 delegation of powers by DRM, Palghat to ADRM, Palghat to deal with appeals. But the learned counsel for the applicant submitted that the a delegatee, namely the DRM, Palghat has no jurisdiction to further delegate the power on the basis of the settled principle. However, we are not going to the merits of the case particularly when we are satisfied that the impugned order Annexure A-5 is unsatisfactory. The evidence of this case was not independently considered in the light of the provisions of Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968.

3. This Tribunal in M. Jafferkutty vs Union of India through the General Manager, Southern Railway, Madras, O.A. 261/91 considered the question raised in this case and laid down the duties and responsibilities of appellate authority under Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968. The above judgment was followed in similar cases. The relevant portion of the judgment in O.A. 261/91 is extracted below:

" The appellate authority should record its own reasons independently before approving the order of penalty. Mechanical disposal of appeal in a cyclostyled form is repeatedly deprecated by the courts and Tribunal in a number of cases. It is a very sorry state of affairs to note that in spite of these pronouncements the appellate authority has not carefully considered the appeal in a proper and fair manner. Very recently, one of us, N. Dharmadan considering the issue in the light of the provisions of Rule 27 of the CCS (CCA) Rules observed in M. Abdul Karim vs. Deputy Director, NCC (K&L) Trivandrum and others, O.A. 107/91 as follows:

*27. The appellate authority, under the CCS (CCA) Rules, 1965 has certain statutory obligation while discharging the quasi-judicial duty of considering and disposing of the appeal. It should bear in mind the provisions of Rule 27. The authority under sub-rule (2) of Rule 27, has the duty to examine the entire evidence and decide whether the findings of the disciplinary authority are warranted by the evidence which is sufficient enough to sustain the punishment imposed in the case. It is also a well established principle of law that unless the statute otherwise provides an appellate authority has the same power of dealing with all questions either of fact or of law arising in the appeal before it as that of the authority whose order is the subject of scrutiny in the appeal, see Union of India vs. Sardar Bhahadur, 1972 SLR (7) 355 (SC).

In the Union of India vs. Panhari Saren, 1974 (1) SLR 32, the Allahabad High Court held that:

'It was the duty of the Appellate Authority to peruse the whole records of the case and come to its own findings.'

This Tribunal held in C.Sukumaran vs. D.G., ICAR, New Delhi, 1990 (7) SLR 249, as follows:

'recalling its earlier ruling in R.B. Bhat vs. Union of India, AIR 1986 SC 143, the Supreme Court in Ram Chander v. Union of India and others, AIR 1986 (2) SC 252 held the word 'consider' in Rule 27(2) of CCS (CCA) Rules for the appellate authority casts an obligation to him to give reasons for its findings by applying his mind. A mechanical reproduction of the provision of the rule in the appellate order without marshalling the evidence to sustain the findings of the disciplinary authority will not cure the legal flaw of the routine appellate order.'

This Tribunal in O.A.K. 283/87 considered similar issue in connection with Rule 22(2) of the Railway Service (Discipline & Appeal) Rules, 1968 and observed as follows:-

'Under the above rule, the appellate authority has to consider whether the lower authority has committed any irregularity or illegality with regard to the procedure followed by him so as to satisfy that there is no violation of any right under the constitution or there is no miscarriage of justice. Secondly, he must examine whether the findings of the disciplinary authority after evaluating the evidence and state whether they are sustainable and are warranted by the evidence adduced in that case. Thirdly, he has a further duty to examine as to

the quantum of penalty and decide whether it is commensurate with the offence found to have been committed by the delinquent officer. Above all, he has got a more important as also a bounden duty of giving reasons in support of his decision and it is a 'incident of the judicial process'. The scope and ambit of this Rule 22(2) of Railway Servants (D&A) Rules, 1968 have been considered by the Supreme Court in *Ramchander vs. Union of India*, 1966 SC 1173. Paragraph 9 of the judgment read as follows:

"These authorities proceed upon the principles that in the absence of a requirement in the statute or the rules, there is no duty cast on an appellate authority to give reasons where the order is one of affirmance. Here, R 22(2) of the Railway Servants Rules in express terms requires the Railway Board to record its findings on the three aspects stated therein. Similar are the requirements under R.27(2) of the CCS (CCA) Rules, 1965. R.22(2) provides that in the case of an appeal against an order imposing any of the penalties specified in R.6 or enhancing any penalty imposed under the said rule, the appellate authority shall 'consider as to the matters indicated therein. The word 'consider' has different shades of meaning and must in R. 22(2) in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision."

The Supreme Court after examining all earlier decisions proceeds further and concludes in para 24 in the following:

"Professor de Smith at pp 242-43 refers to the recent greater readiness of the courts to find a breach of natural justice 'cured' by a subsequent hearing before an appellate tribunal.... Such being the legal position it is of utmost importance after the 42nd Amendment as interpreted by the majority in *Tulsiram Patel's case* that the appellate authority must not only give a bearing 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."

28. Unlike in the case of an appeal filed under the provisions of the Civil Procedure Code, before the appellate court strict enforcement of pleadings cannot be insisted in a departmental appeal to be filed under Rule 27 of CCS (CCA) Rules. When an appeal is properly filed invoking the appellate jurisdiction notwithstanding the specific grounds

raised in the appeal memo, the appellate authority has to follow the statutory procedure prescribed in Rule 27. It dictates as to how the appeal is to be considered and disposed of by the appellate authority. The consideration of the entire evidence produced before the disciplinary authority to fulfil the statutory obligation and arrive at the decision that the finding of the disciplinary authority are warranted by the evidence on record."

4. In the light of the above finding, we are unable to sustain Annexure A-5 impugned order. Accordingly, we set aside the same and remit the matter back to the DRM, Palghat for appropriate disposal of the appeal by him in accordance with law.
5. The application is allowed to the extent indicated above.
6. There shall be no order as to costs.


(S. KASIPANDIAN)
MEMBER (ADMINISTRATIVE)

kmn


(N. DHARMADAN)
MEMBER (JUDICIAL)
8.12.93