

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHO.A No. 445 / 2008Monday, this the 17th day of August, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

A.Divakaran,
S/o K.Anandan,
Luggage Porter, Southern Railway,
Trivandrum Division.Applicant

(By Advocate Mr TC Govindaswamy)

v.

1. Union of India represented by the General Manager, Southern Railway, Head Quarters Office, Park Town.P.O. Chennai-3.
2. The Chief Personnel Officer, Southern Railway, Head Quarters Office, Park Town.P.O. Chennai-3.
3. The Chief Commercial Manager, Southern Railway, Head Quarters Office, Park Town.P.O. Chennai-3.
4. The Divisional Railway Manager, Southern Railway, Palghat Division, Palghat.
5. The Sr. Divisional Commercial Manager, Southern Railway, Trivandrum Division, Trivandrum-14.
6. The Additional Divisional Railway Manager, Southern Railway, Trivandrum Division, Trivandrum-14.Respondents

(By Advocate Mr Sunil Jose)



This application having been finally heard on 17.8.2009, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is aggrieved by the Annexure A-1 penalty order dated 16.8.2005 by which he was imposed with the punishment of compulsory retirement from service with effect from 20.8.2005, the Annexure A-2 order dated 19.9.2006 by which the appellate authority has upheld the disciplinary authority's order and the Annexure A-3 order dated 22.1.2007 passed by the revisional authority modifying the penalty to that of reinstatement in service followed by reduction to the post of Luggage Porter at the pay of Rs.2550/- in scale of Rs.2550-3200 for 38 months with cumulative effect but with the permission to draw increment on completion of one year qualifying service and for restoration to the original grade of Senior Commercial Clerk in scale Rs.4000-6000 on expiry of the period of 38 months. On restoration, his future increment in the higher grade of Rs.4000-6000 will be postponed but his seniority in the said grade will be regained. The intervening period between the date of compulsory retirement and the date of reinstatement will also be treated as "non-duty".

2. Applicant challenged the orders on various grounds. The first ground raised him was that the Senior Divisional Commercial Manager who issued the Annexure A-1 order in his capacity as disciplinary authority was not competent to issue that order in terms of the definitions of the terms "appointing authority" and the "disciplinary authority" as contained in Rule 2 of the "Railway Servants (Discipline & Appeal) Rules, 1968" which are as under:

"2. Definitions.-

(1) In these rules, unless the context otherwise requires -

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(a) "appointing authority" in relation to a railway servant means -

- (i) the authority empowered to make appointments to the service of which the railway servant is, for the time being, a member or to the grade of the service in which the railway servant is, for the time being, included, or
- (ii) the authority empowered to make appointments to the post which the railway servant, for the time being holds, or
- (iii) the authority which appointed the Railway servant to such Service, grade or post, as the case may be, or
- (iv) Where the Railway servant having been a permanent member of any other Service or having substantively held any other permanent post, has been in continuous employment under the Ministry of Railways, the authority which appointed him to that service or to any grade in that service or to that post:

Whichever authority is the highest authority.

(b) "Commission" means the Union Public Service Commission,

(c) "disciplinary authority" means-

- (i) in relation to the imposition of a penalty on a Railway servant, the authority competent, under these rules, to impose on him that penalty;
- (ii) in relation to Rule 9 and clauses(a) and (b) of sub-rule (1) of Rule 11 in the case of any Gazetted Railway Servant, an authority competent to impose any of the penalties specified in Rule 6;
- (iii) in relation to Rule 9 in the case of any non-gazetted railway servant, an authority competent to impose any of the major penalties specified in Rule 6;
- (iv) in relation to clauses (a) and (b) of sub rule (1) of Rule 11, in the case of a non-gazetted railway servant, an authority competent to impose any of the penalties specified in Rule 6.

(d) "head of the department" for the purpose of exercising the powers as appointing, disciplinary, appellate or revising authority, means the authority declared to be head of the department in terms of clause (21) of Rule 103 of Volume I of the Indian Railway Establishment Code(Fifth Edition-1985);

(e) "Railway servant" means a railway servant as defined in clause 43 of Rule 103 of Volume 1 of the Indian Railway Establishment Code (Fifth Edition-1985) and includes any such railway servant on foreign service or whose services are temporarily placed at the disposal of any other department of the Central Government or a State Government or a local or other authority;

(f) "Service" means a service under the Ministry of Railways;

(g) "Schedule" means a schedule appended to these rules.

(2) All other words and expressions used but not defined in these rules and defined in the Indian Railways Act, 1890(9 of 1890) shall have the meanings respectively assigned to them under that Act."

In this regard, the learned counsel for applicant, Shri TC Govindaswamy invited our attention to Annexure A-4 Office Order dated 6.2.1992 promoting him as Commercial Clerk in scale Rs.975-1540 on out of turn basis on sports account

issued by the Senior Divisional Personnel Officer with the approval of the competent authority and the Annexure A-5 Office Order dated 19.11.1993 by which he was promoted as Senior Commercial Clerk in the scale Rs.1200-2040 (pre-revised) issued by the Divisional Personnel Officer, Palghat with the approval of the competent authority. The contention of the applicant was that the "competent authority" to approve his appointment was the General Manager and as such no penalty by way of reduction in rank, compulsory retirement, removal or dismissal could have been imposed upon him by any other authority below the rank of General Manager.

3. However, the respondents have submitted in para 8 of their reply that even though the empanelment of the applicant or similarly placed sports persons for appointment in Railways require the approval of General Manager of the Zonal Railway, it does not imply that the appointing authority of all such sports persons is the General Manager. They have, further submitted that after the approval of empanelment by General Manager, the persons are appointed against posts by the concerned Appointing Authority. In the case of the applicant, his initial grade was Luggage Porter, which is a Group 'D' post governed by the Group'D' cadre rules pertaining to such posts. His subsequent promotions were that of Commercial Clerk and Senior Commercial Clerk and they were governed by the cadre rules pertaining to such higher Group C posts. They have also submitted that the Senior Divisional Commercial Manager is the competent authority to appoint persons upto Group C level under the Commercial Department of Railways. The applicant's averment that the General Manager is his appointing authority is not true and they have submitted that the said contention has now been invoked only for the sole purpose of misleading this Tribunal to seek for judicial interference on the ground of illegality in the procedure.



4. The learned counsel for the applicant however, denied the aforesaid contentions of the respondents and reiterated his stand that his appoint authority is the General Manager.

5. The other contention of the learned counsel for applicant was that the appellate order was passed in violation of Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968. According to him, the applicant has raised several grounds including the ground of jurisdiction of the disciplinary authority who imposed the penalty of compulsory retirement in his Annexure A-15 appeal dated 21.9.2005, but none of them have been addressed by the appellate authority.

6. The respondents denied the aforesaid contention on behalf of the applicant in para 15 of their reply and submitted that the appellate authority concurred with the decision of the disciplinary authority in view of the gravity of irregularities committed by the applicant in the course of handling public money for which the following charges were issued to him:

"Charges: Shri A Divakaran, Sr. CC/ERNF while working as Sr.CC/UAM had failed to maintain absolute integrity, show devotion to duty and acted in a manner unbecoming of a Railway Servant in that:

- (i) He had not cancelled the two J-RT bearing numbers 95246 and 05247 by T.No.6606 of 15.9.02 Ex.Uam-MAS which were rendered for cancellation on 15.9.02.
- (ii) He demanded and accepted Rs.69/- extra over and above the Railway dues of Rs.981/- for the issues of one II AC ticket ex. MTP-MAS bearing number 17287 by T.No.6606 of 18.9.02.
- (iii) He had an excess of Rs.69/- in the Railway cash.

Thus he had violated Rule No.3.1(i)(ii) and (iii) of Railway Services(Conduct) Rules, 1966."

They have also submitted that the Annexure A-2 appellate order is sufficient to



meet the cause as the disciplinary authority has already passed a reasoned and detailed order.

7. We have considered the aforesaid 2 contentions pressed by the learned counsel for the applicant in this case. We have also considered the submissions made by Shri Sunil Jose, learned counsel for the respondents. As regards the competence of the authority to pass the order of compulsory retirement is concerned, though the applicant has raised the contention that his Appointing Authority was General Manager, Southern Railway and the order issued by the Senior DCM/Trivandrum was null and void in his appeal dated 21.9.2005, the appellate authority has not considered it at all. The appellate authority has also not considered the other objections raised by the applicant in his appeal. In our considered view, the appellate authority has the duty to consider all the relevant points raised in the appeal and to pass a speaking order. Further, the Appellate Authority's order shall be in conformity with Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968 which is 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."



8. At this juncture, it is necessary to peruse the Appellate Order and, therefore, it is reproduced as under:

"Southern Railway
Divisional Office,
Confidential Section,
Trivandrum.

No.V/VO/PC/T/2002/09/331/PGT/FR-12 dt.19.9.2006.

Shri A Divakaran,
Ex. Sr. CC/CKI,
Residing at Door No.63/74,
St.Mary's Hill,
Nazareth Convent Road,
Ooty, Nilgiris Dist.
Tamil Nadu.

Ref: Your appeal dt.21.9.2005

The undersigned being the Appellate Authority has considered your appeal cited above in terms of Rule 22(2) of Rly. Servants (D&A) Rules, 1968.

I have gone through the representation dt. 21.9.2005 submitted by Shri A Divakaran, Sr. CC/CKI against the penalty of compulsory retirement from service imposed by Sr. DCM and connected papers in the file and passed the following orders:

The charges against the appellant are very serious in nature. One of the charges, which has been proved, is that he has not cancelled the two tickets which were tendered for cancellation. The second charge is that he has demanded and accepted Rs.69/- extra over and above the Railway dues of Rs.981/-. However this charge is proved only to the extent that he has accepted Rs.69/- extra over and above the railway dues of Rs.981/-.

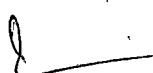
Considering the gravity of the case involved, maximum punishment is warranted. Hence I do not find any reason to reduce the penalty already awarded by the Disciplinary Authority. I confirm the penalty.

Accordingly the penalty of compulsory retirement from service w.e.f. 20.8.2005 imposed by Sr.DCM vide V/VO/DC/T/2002/09/331/PGT/FR-12 dt.16.8.05 is confirmed.

You may prefer Revision Petition if any before CCM the Revisionary Authority for revision of your case within 45 days from the date of receipt of this advice.

Please acknowledge receipt.

Sd/-
Name: H.S.Mushathick



Design: Addl. Div. Rly. Manager

Copy to: Sr.DCM, S. DFM/TVC
Ch.OS/Tfe/PS/TVC
CVO/MAS & Party."

A reading of the above appellate order would show that the authority concerned has not observed requirements of said Rule 22(2) at all. It does not contain any reasons or any application of mind. The appellate authority had to consider whether the procedure laid down in the rules has been complied with, whether the findings of the disciplinary authority was warranted by the evidence on record and whether the penalty was adequate or inadequate or severe. It was only thereafter the disciplinary authority could confirm, enhance or reduce or set aside the penalty or remit the case to the authority which impose the penalty. In our considered opinion, the Annexure A-2 appellate order lacks requirements as prescribed in Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules 1968 as extracted above.

9. The Apex Court's judgment in the case of **Ram Chander v. Union of India and others** [1986 SCC (L&S) 383] is directly on Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968 wherein it has been held as under:

"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 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 charge 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 give a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fairplay and justice also require that such a personal hearing should be given. In the result, the appeal must succeed and is allowed. The judgment and order of a learned Single Judge of the Delhi High Court dated August 16, 1983 and that of the Division Bench dismissing the Letters Patent Appeal filed by the appellant in limine by its order dated February 15, 1984 are both set aside, so also the impugned order of the Railway Board dated March 11, 1972. We direct the Railway Board to hear and dispose of the appeal after affording a personal hearing to the appellant on merits by a reasoned order in conformity with the requirements of r.22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968, as expeditiously as possible, and in any event, not later than four months from today."

10. The Apex Court again in **Chairman, Disciplinary Authority, Ranilakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney and others** [(2009) 1 SCC (L&S) 806] held that an order of affirmation passed by the Appellate Authority should reveal its application of mind. The relevant part of the said judgment reads as under:

"4. Shri Dhruv Mehta, learned counsel appearing for the appellant relied on a decision of this Court in the case of State Bank of Bikaner & Haipur & Others vs. Prabhu Dayal Grover reported in (1995) 6 SCC 279 and contended that an order of affirmation does not require any reasons.

5. In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in Prabhu Dayal Grover's case (supra) has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority.

6. The view we are taking was also taken by this Court in **Divisional Forest Officer vs. Madhusudan Rao**, JT 2008 (2) SC 253 (vide para 19), and in **Madhya Pradesh Industries Ltd. vs. Union of India**, AIR 1966 SC 671, **Siemens Engineering & Manufacturing Co. Ltd. vs. Union of India**, AIR 1976 SC 1785 (vide para 6), etc.

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7. In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.

8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N.Mukherjee vs. Union of India reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless 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.

9. No doubt, in S.N.Mukherjee's case (supra), it has been observed (vide para 36) that:

"..The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge."

The above observation, in our opinion, really means that the order of affirmation need not contain an elaborate reasoning as contained in the order of the original authority, but it cannot be understood to mean that even brief reasons need not be given in an order of affirmation. To take a contrary view would mean that appellate authorities can simply dismiss appeals by one line orders stating that they agree with the view of the lower authority.

10. For the same reason, the decision of this Court in State of Madras vs. Srinivasan, AIR 1966 SC 1827 (vide para 15) has also to be understood as explained by us above.

11. Hence, we agree with the High Court that reasons should have been contained in the appellate authority's order, but we cannot understand why the High Court has set aside the order of the disciplinary authority, in addition to setting aside the appellate order.

12. Hence, this appeal is partly allowed and the impugned judgment of the High Court to the extent that it has set aside the order of the disciplinary authority is set aside, and the matter is remanded to the appellate authority to decide the appeal filed by respondent No.1 afresh in accordance with law after affording an opportunity of being heard to respondent No.1 and also by passing a speaking order. The said appeal shall be decided very expeditiously. No order as to costs."

11. In view of the above position, we quash and set aside the Annexure A-2 Disciplinary Authority's order dated 19.9.2006 and the Annexure A-3 order in Revision dated 12.1.2007 and remit this case back to the appellate authority to pass a reasoned and speaking order considering all the points raised by the



applicant in his appeal dated 21.9.2005. While doing so, in the interest of justice, we make it clear that since the revisional authority has already reduced the penalty imposed by the disciplinary authority as upheld by the appellate authority, no penalty order more than the one imposed by the revisional authority shall be imposed upon the applicant, if the above authority comes to the conclusion that some penalty is to be imposed upon him. The appellate authority shall pass its order within a period of three months from the date of receipt of this order after affording an opportunity for personal hearing, to the applicant, if he so desires. If the applicant is still aggrieved, he may file a revision petition against the same within one month thereafter and the Revision Authority shall consider the same and pass a speaking and reasoned order in accordance with the rule within two months from the date of such petition.

12. With the aforesaid direction the O.A is disposed. There shall be no order as to costs.



K NOORJEHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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