IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 238 1990

DATE OF DECISION 11.2.1991

P.K.Mahesh Rao — Applicant (s)

Mr.P.Sivan Pillai — Advocate for the Applicant (s)

Versus

UOI rep. by General Manager, S.Railway, Madras & 2 others — Respondent (s)

Mr.M.C.Cherian — Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

The applicant who is a Diesel Assistant in the office of the Loco Foreman, Southern Railway, Erode, has filed this application under Section 19 of the Administrative Tribunals Act, praying that the Annexure-A3 order dated 29.3.1989 of the Assistant Mechanical Engineer, Southern Railway, Palghat (the second respondent), imposing on him a punishment of withholding of annual increment for a period of 2 years, and the Annexure-A5 order communicating the decision of the third respondent, Sr. Divisional Mechanical Engineer, rejecting his appeal against the Annexure-A3 order may be quashed, and that the respondents

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may be directed to restore the annual increment due to him on 1.5.1989 in the time scale of pay of Rs.950-1500. The facts of the case can be briefly stated as follows.

2. While working as Diesel Assistant the applicant was served with a charge sheet by the second respondent dated 9.2.1989 alleging that he gave a message to Power Controller claiming rest in the name of the Driver without the knowledge and consent of the driver of the train. The applicant on 21.3.1989 submitted an explanation denying the allegations contained in the charge sheet. He also requested that, a copy of the original message alleged to have been given by him may be supplied to him so as to enable him to establish his innocence. Annexure-A2 is a copy of this explanation submitted by him. After receipt of this explanation, the second respondent issued the impugned order at Annexure-A3, without giving him a copy of the message requested for and holding that the denial by the applicant of having sent a message was only an after thought. Aggrieved by this order, the applicant submitted a memorandum of appeal to the third respondent. In this appeal memorandum, the applicant had stated that, though he had requested for a copy of the original message, the Disciplinary Authority had hurriedly issued a penalty order without even giving him an opportunity to submit a written statement effectively after perusing the document by him. The applicant in the appeal

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memorandum has challenged the Annexure-A3 order on the ground that it suffers from arbitrariness and lack of jurisdiction. This appeal was disposed of by the third respondent and the order was communicated to the applicant by Annexure-A5 upholding the Annexure-A3 order. The applicant has filed this application questioning the legality, propriety and correctness of these two orders. The grounds on which the applicant challenged these orders are that, reasonable opportunity was not given to the applicant to make a proper representation before ~~passing~~ the impugned order was passed by the second respondent, and that the impugned orders ~~being~~ were passed on consideration of materials which were not disclosed to him are opposed to the principles of natural justice and rules on the subject.

3. In the reply statement, the impugned orders have been justified on the ground that, as the punishment awarded being only a minor punishment, it was not necessary to hold an enquiry, and that the punishment order as well as the appellate order though not detailed ones did contain the reasons which lead to the conclusions arrived at.

4. We have heard the counsel on either side and have also carefully perused the documents produced.

5. The allegations on which the Annexure-A1 charge was based was that the applicant while performing

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the duties of Diesel Assistant of goods train No. CED ex PGT-ED on 26.1.89, on arrival at PLMD at 1.20 hours, gave message to Power Controller claiming rest there, in the name of driver without the knowledge and consent of the latter. On receipt of the charge memo, the applicant submitted a letter, Annexure-A2 dated 21.3.1989 totally denying the charge against him and requesting that, he may be supplied with the message alleged to have been given to enable him to establish that the message alleged was given by the driver himself. It is not disputed that no reply was given to the applicant to Annexure-A2 letter, and that the impugned order at Annexure-A3 was issued without holding any enquiry. According to Rule 11 of the Railway Servants Discipline and Appeal Rules, 1968, holding an enquiry is mandatory only if it is proposed to impose on the Railway Servant a punishment to withhold increments of pay and if such withholding of increments is likely to effect adversely the amount of pension or ~~xxxxxx~~ contribution to Provident Fund payable to the Railway servant, or to withhold increments of pay for a period exceeding 3 years or to withhold increment of pay with cumulative effect of any period. The punishment imposed is only withholding of increment for a period of 2 years and it is not stated that this withholding have any cumulative effect. Therefore, holding an enquiry in such a case is only discretionary. So the fact that

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an enquiry was not held will not as per rules vitiate a punishment order issued under Rule 11 in cases like the punishment awarded in this case. But when the delinquent Railway servant had made a request for inspection of documents relating to the charge and had sought an opportunity to establish his innocence, it is incumbent on the Disciplinary Authority to apply his mind to the request and should not reject the request solely on the ground that an enquiry is not necessary. It is only after getting the explanation submitted by the delinquent Railway servant, the Authority is to decide whether to hold an enquiry or not indicating the reasons. In this case the Disciplinary Authority has not chosen to do so without enabling the applicant to submit an explanation after inspecting the message. In this connection the circular No.49/86 issued by the Railway Board is relevant. It reads as follows:

> "P.B.Circular No.49/86:
>
> Copy of letter No.E(D&A)86 RG 6-3 dated 11th February 1986 (R.B.E.No.17/86) from the Dy.Director, Estt.(D&A), Railway Board, New Delhi, addressed to General Manager, All Indian Railways, etc.
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> A copy of the Department of Personnel and Training's O.M.No.11012/18/85-Estt.(A) dated 28th October, 1985, on the above subject is appended. The contents of the same may be brought to the notice of all concerned for compliance. Rules 16(1) and 16(1-A) of the C.C.S(CCA) Rules, 1965 mentioned therein correspond to Rules 11(1) and Rule 11(2) respectively of the R.S.(D&A) Rules 1968, regarding procedure for imposition of Minor penalties.
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> Extract from the Department of Personnel and Training's O.M.No.11012/18/85-Estt.-(A) dated 28th October 1985.

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Rule 16(1) holding of inquiry in specific circumstances-Recommendations of Committee of National Council (J.C.M):

"The undersigned is directed to say that the Staff Side of the Committee of the National Council (J.C.M) set up to consider revision of C.C.S.(CCA) Rules, 1965, suggested that Rule 16(1) should be amended so as to provide for holding an inquiry even for imposition of minor penalty, if the accused employee requested for such an inquiry.

"2. The above suggestion has been given a detailed consideration. Rule 16(1-A) of the CCS(CCA) Rules, 1965 provides for the holding of an inquiry even when a minor penalty is to be imposed, in the circumstances indicated therein. In other cases where a minor penalty is to be imposed, Rule 16(1) ibid leaves it to the discretion of disciplinary authority to decide whether an inquiry should be held or not. The implication of this rule is that on receipt of representation of Government servant concerned on the imputations of misconduct or misbehaviour communicated to him, the disciplinary authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding a detailed inquiry and from an opinion whether an inquiry is necessary or not. In a case where a delinquent Government servant has asked for inspection of certain documents and cross examination of the prosecution witnesses, the disciplinary authority should naturally apply its mind more closely to the request and should not reject the request solely on the ground that an inquiry is not mandatory. If the records indicate that, notwithstanding the points urged by the Government servant, the disciplinary authority could after due consideration, come to the conclusion that an inquiry is not necessary, it should say so in Writing indicating its reasons, instead of rejecting the request for holding inquiry summarily without any indication that it has applied its mind to the request, as such an action could be construed as denial of natural justice.

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"3. Ministry of Agriculture etc. are requested to bring these instructions to the notice of all disciplinary authorities under their control.
(No.P(A)227/P/Vol.XVI dated 24th March 1986)"
(emphasis added)

It is obvious from the above circular that when a delinquent Railway servant requests for inspection of documents and an opportunity to establish his innocence, it is incumbent on the Disciplinary Authority to consider his request and to decide whether holding of an enquiry is necessary or not and to indicate in the order that the request of the delinquent has been considered and that the authority has applied its mind to it. Scanning through the impugned order at Annexure-A3, we do not find such application of mind to the request of the applicant for a copy of the message alleged to have been given by him and for a chance to establish his innocence, & It is worthwhile to to extract the relevant part of the impugned order which reads as follows:

"Reference your explanation dated 12.3.89 in reply to the memorandum for minor penalty of even number dated 4.2.89, your increment from Rs.970/- to Rs.990/- in grade Rs.950-1500 which is normally due on 1.5.89 is withheld for a period of 24 (Twenty four) months without the effect of postponing future increments.

REASONS: While you were performing the duties of DSL Asstt. of goods train in CED, ex PGT-ED on 26.1.89, on arrival at PLMD at 1.20 hrs. gave message to PRC claiming rest there, in the name of driver, without the knowledge and consent of the driver of the train, which is highly irregular, since driver is in charge of loco and working train. This has resulted in detention to train and PLMD for 7 hrs and 5 mts.

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2(a) Relevant aspects considered while disposing the case in accordance with the rules satisfying the requirements of the rules. Prescribed procedure has been complied with.

2(b) Reasons by which the disciplinary authority has arrived at the particular conclusion:

Considered the party's explanation. The denial of having sent the message is only an after thought. His annual increment is withheld for a period of two years(NR)

3. The above penalty has been awarded by the undersigned and appellate authority is Sr.DME. Appeal hereon if any, is to be presented to the appellate authority within 45 days from the date receipt of the advice.

You are to acknowledge this."

This order does not indicate whether Disciplinary Authority has applied its mind or not to the request of the applicant for a copy of the message alleged to have been given by him and which is denied by him. It has also been not stated that the Disciplinary Authority has decided not to hold enquiry considering the facts and circumstances of the case. This is in clear violation of the instructions contained in the Railway Board's circular extracted above. Regarding the imposition of minor penalty the Railway Board has given clear instructions in circular No.R.B's No.E(D&A)56 RG 6-14 dated 20.12.55:

"Imposition of penalty- The disciplinary authority shall then take into consideration the written statement of defence, if any, submitted by the delinquent Railway servant and also the record of the inquiry, if any, held in terms of the foregoing para, and shall determine the particular minor penalty, if any, that should be imposed on the delinquent Railway servant. If the penalty determined by

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such authority is the one which it cannot impose on the Railway servant concerned in accordance with the Schedule of Powers, it shall pass on the papers for orders of such authority which is competent to do so. (R.B's No.E(D&A)61 RG 6-2 of dated 6.2.65) It should, however, be noted that the authority passing the papers to higher authority for orders should.not express its views which may influence or prejudice the mind of the higher disciplinary authority.

Speaking orders- The disciplinary authority imposing the penalty must apply its mind to the facts, circumstances and record of the case and then record its findings on each imputation of misconduct or misbehaviour, The disciplinary authority should give brief reasons for its findings to show that it has applied its mind to the case. The reasons recorded by the disciplinary authority shall be of great help to the delinquent Railway servant in preferring his appeal. The disciplinary authority, must not pass non-speaking and cryptic orders, because the orders of imposition of penalty being appealable must be speaking orders. When the explanation of the delinquent has not been considered satisfactory, the competent authority must invariably record reasons for rejecting the explanations Sketchy and cryptic orders have been held by the court of law to be non-speaking and as such illegal.

The Railway Board has again issued a circular No.E(D&A) 86 RG 6/1 of 20.1.86;RBE 5/86 which reads as follows:

"D&AR cases-need for speaking orders- As is well settled by the courts, the disciplinary proceedings are quasi judicial in a nature and it is necessary that orders in such proceedings are issued only by the competent authority who have specified as Disciplinary/

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> Appellate/Revising authorities under the rules and the orders should have the attributes of a judicial order. Supreme Court in one case observed that recording of reasons is obligatory as it ensures that it is as per law and not capricious."

The only statement contained in the impugned order Annexure-A3 regarding the explanation submitted by the applicant to the memorandum of charges and his request for a copy of the message alleged to have been given by him is in paragraph 2(b) which reads as follows:

> "Considered the party's explanation. The denial of having sent the message is only an after thought."

For what reasons the Disciplinary Authority has reached this conclusion that the denial of having sent the message is an after thought is not discernible from the order. Therefore, the Annexure-A3 order is cryptic and non-speaking. Further it is mandatory that the Disciplinary Authority should enter a finding on each allegations of misconduct. Going through the impugned order we are not in a position to find that the Disciplinary Authority has recorded that the applicant is guilty of the misconduct. Apart from saying that the denial is only an after-thought, it has not been stated that the charge has been established. So the impugned punishment order at Annexure-A3, apart from being cryptic and non-speaking does-not contain the necessary ingredients which must be stated in a punishment order. We are, therefore, of the view that the Annexure-A3 order is unsustainable in law. The Annexure-A5

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appellate order is also as cryptic and non-speaking as the Annexure-A3. Further it also suffers from an infirmity that an alleged statement by the driver which was not made known to the applicant by attaching a copy with the memorandum of charges has been relied upon by the Appellate Authority to support and uphold the finding of the Disciplinary Authority. The reasons by which the Appellate Authority has concluded that the findings of the Disciplinary Authority are warranted by evidence is seen recorded in paragraph 3(b) of the impugned order, Annexure-A5 as follows:

> "The original message is the words evolved through the mouth of charged employee and hence cannot be produced for verification. Every word of the appeal proves the arrogance. Drivers statement is the proving document for the administration and hence the punishment imposed is adequate and holds good."

This "proving document" has not been supplied to the applicant. The Appellate Authority should not have placed any reliance on any such statement which was not supplied to the applicant. Therefore, we are of the view that the appellate order, Annexure-A5 is vitiated and unsustainable.

6. In the conspectus of facts and circumstances, we allow the application, quash the impugned orders Annexure-A3 and A5 and direct the respondents to restore the Annual Increments due to the applicant as on 1.5.1989 in the scale of Rs.950-1500 with effect from 1.5.1989. There is no order as to costs.

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(A.V.HARIDASAN)
JUDICIAL MEMBER

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(S.P.MUKERJI)
VICE CHAIRMAN

11.2.1991