IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 261/91 ~~xxx~~

DATE OF DECISION 30.06.1992

M. Jafferkutty — Applicant (s)

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

Versus

Union of India through
The General Manager,
Southern Railway, Madras. — Respondent (s)

Smt. Sumati Dandapani — Advocate for the Respondent (s)

CORAM :

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

The Hon'ble Mr. N. Dharmadan, 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 ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes
4. To be circulated to all Benches of the Tribunal ? Yes

JUDGEMENT

(Shri N.Dharmadan, Judicial Member)

The applicant is an Assistant Station Master of Railway. He is challenging the penalty order Annexure-A14 and appellate order Annexure-A17 in this application filed under Section 19 of the Administrative Tribunals Act, 1985.

2. Brief facts are as follows: The applicant is the Divisional Secretary of the All India Station Master's Association, Trivandrum Division, a trade Union not recognised by the Railway. While he was working at Quilon on 22.11.88 the applicant was rostered to work from 6.00 hrs to 10.00 hrs and 20.00 hrs to 24.00 hrs. The applicant's child, who was under treatment as an inpatient in a private nursing home, had to be taken to Kottayam urgently for further check up by 82 Exp. So he was expected to leave Quilon at 9.45 hrs. The applicant got permission from the Station Superintendent to be relieved few minutes earlier. The

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reliever Shri Gopalakrishna Pillai was asked to take over charge from the applicant so as to enable him to take his child by 82 Exp. The reliever arrived just in time and the applicant handed over the charge and proceeded by 82 Exp. with his child. But, as preplanned, the Assistant Operating Superintendent, AOS for short and Traffic Inspector travelled in the same Express upto next Station, Perinad, and a statement was received from the ASM on duty there to the effect that the applicant was leaving by 82 Exp. Thereafter at 10.45 hrs they have created a scene at the instance of the AOS at Quilon Station on the ground that there was nobody in the cabin and the cabin work remained unmanned from 9.45 hrs to 10.45 hrs. Accordingly, on the very same day, by Annexure-A1, the applicant was placed under suspension. But Annexure-A2, another order was issued on 25.11.88 placing the applicant under suspension from 24.11.88. The applicant submitted his representation to Annexure-A2 and requested to cancel the suspension. In the mean time Annexure-A3 charge memo dated 6.12.88 was also issued containing following charges:-

> "You while performing 6 to 10 hrs. duty at QLN North cabin on 22.11.88 deserted the place of duty and left by 82 Exp. at 9.49 hrs. entrusting the train passing duties to Sri K.Gangadharan, Leverman, QLN, who in the absence of Cabin ASM despatched 82 Exp. and received 19 Mail after operating the block instrument and exchanging private numbers with all concerned. You thus violated GRS (1976), S.Railway 5.01(3&4) and 10.04(1) and SR 5.01(D) and provisions of QLN Jn. SWR 3.1.1, 6.2, 6.3, 6.4.2, 6.4.3, 6.6.2 and appendix 'A' para 8.9 and 10 of the said SWR."

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The applicant submitted Annexure-A4 reply to the charges and requested for a perusal of the documents referred to in Ann.A3. By Ann.A5 the applicant was permitted to peruse the documents. Thereafter the applicant submitted his defence brief dated 22.12.88 stating that the case had been foisted on the applicant only to wreck vengeance against him due to his trade Union activities and consequent displeasure of the authorities. He has also requested to change the disciplinary authority so that the proceedings could be conducted by an independent authority. Since no order was passed on Ann.A6 the applicant filed appeal Ann.A7 before the Divisional Railway Manager. This also remained unanswered. But an Inquiry Officer was appointed as per Ann.A8 from the Vigilance Cell of Madras Division. This being an unusual practice, the applicant submitted Ann.A9 objection stating that the deviation from the normal practice of appointing an officer from the same division is suspecious. According to the applicant he has no jurisdiction to enquire into the matter. He produced Ann.A10 letter of the Railway Board dated 19.6.74 in support of the case that the enquiry should be stayed if there is allegations of bias against the enquiry officer or enquiry itself. But by Ann.A11 the applicant's request to change Inquiry Officer was rejected. Applicant's request to produce relevant Train Signal Register, TSR for short, in which both the applicant and reliever had signed indicating the handing over and taking over of the charge, was not accepted and this is clear from Ann.A12 relevant pages of the enquiry proceedings held on 18.5.89, 19.5.89, 19.6.89 and 20.6.89. Applicant submitted Ann.A13, a detailed defence statement, on 20.6.89. Without considering or accepting any of his contentions the disciplinary authority imposed a penalty of reduction of his pay of Rs.1400-2300

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fixing it at Rs.1400/- for a period of two years with recurring effect and loss of seniority as per Ann.A14. The penalty was effective from 1.11.1989 i.e. on the very next day and that too even before serving the penalty order on the applicant. The applicant did not get any opportunity to state his objection against the finding of the enquiry officer, Ann.A15. However, he filed Ann.A16 appeal against Ann.A14. But it was rejected by Ann.A17 confirming the penalty order Ann.A14. In this application filed on 18.2.91 under Section 19 of the Administrative Tribunals Act, 1985 the applicant is challenging Ann.A14 and A17 on various grounds.

3. The applicant raised the following points for our consideration:-

(i) Train Signal Registers (TSR for short) from Kundara side and Perinad side kept in the cabin would prove beyond any doubt that the applicant handed over charge to the reliever and he has not committed the offence charged against him;

(ii) Relevant documents were not produced in the enquiry and hence the enquiry proceedings and punishment are vitiated;

(iii) Penalty order is contrary to Rule 6(v) of the Railway Servants (Discipline & Appeal) Rules 1968 and the provisions of the Railway Manual;

(iv) There is no evidence to sustain the charge and

(v) Copy of the enquiry report was not given to the applicant before the decision to impose punishment.

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4. Point numbers (i), (ii) & (iv) can be considered together, The gist of the charge against the applicant is while performing 6 to 10 hrs. duty at Quilon North cabin on 22.11.88 he deserted the place of duty and left by 82 Exp. at 9.45 hrs. entrusting the train passing duties to Sri K. Gangadharan, Leverman, who in the absence of cabin ASM despatched 82 Exp. and received 19 Mail after operating the block instrument. His reliever was not present when he left the station. The applicant denied all these statements and the charge. He contended that he left the cabin only after being properly relieved by the reliever. The enquiry and punishment are the result of a prearranged plot of ~~Shri~~ Shri J.D.Goswami, Sr. DOS and other officials to foist a case against him for wreaking vengeance against him on account of the trade union activities.

5. In order to sustain the charge that the applicant deserted the cabin, his place of duty, before 10.00 hrs on 22.11.88 we need only examine the documentary evidence because the documentary evidence in this case is so strong and clinching that it can be safely relied on to prove the true position. The TSR is a very important register which would clearly and correctly disclose the movement of the trains and the part played by the operating staff in the cabin incharge of the same at the relevant time. Relevant portionsof para 1.1.5 of Block Working Manual read as follows:-

> "1.1.5. Train Signal Register. - (1) A Train Signal Register shall be maintained for each Block Instrument/Morse Instrument.
>
> (2) The Station Master on duty shall, himself, record the actual time at which the Bell Signals are given or received on the Block Instrument, in the Train Signal Register, correct to the nearest minute.

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(3) All entries shall be made in ink.

(4) All signatures shall be recorded in full and not by initials.

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(8) The time of relief and handing over of the Instruments with requisite keys for each type of Instruments, shall be recorded by the outgoing Station Master in the Train Signal Register and signed by both the Station Masters.

(9) The Station Master taking over charge shall test the Block Instrument and record the result then and there in the Train Register.

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(14) The Train Signal Register in use shall not be removed from the Cabin or Room in which the Block Instruments are kept without the orders of the Divisional Railway Manager. If reference to the Train Signal Register is required, the authorised official shall go to the Cabin or Room and take necessary extracts.

(15) The Train Signal Register shall be retained at station for one year after the half-year in which it is completed, unless ordered to the contrary."

6. The applicant relies strongly on the TSR. He submitted that in the cabin there are two TSRs, one from Perinad side and another from Kundara side. According to the applicant Shri Gopalakrishna Pillai, the reliever of the applicant, as per the instructions of the Station Superintendent, came to the cabin at 9.25 hrs and took over charge from him. He left the cabin and boarded 82 Exp. only after seeing reliever Shri Gopalakrishna Pillai signing both the TSRs from Kundara side and also Perinad side. But the peculiar feature in this case is that the Railway did not produce these registers to sustain their case. Only one TSR from Perinad side alone was produced. It contains the last entry made by the applicant at page 21 which is as follows:-

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"HOC to Shri Gopalakrishna Pillai. 125 Exp. 9.14, 9.15, 9.16, 9.16, 9.25."

There is no space to make any further entry in page 21. The first entry in the next page is "Took over charge at 10.45 hrs." This is signed by Shri Gopalakrishna Pillai. Thereafter there is no regular entry disclosing the continuation of the proceedings. The explanation given by the applicant for the absence of further entry and continuity in the register is that the same was seized by the authorities. The TSR from Kundara side was also seized. But not produced. These statutory documents cannot be removed from the cabin without orders or directions from DRM. No such order or direction is produced.

7. Since the TSR from Kundara side was not produced in the enquiry the applicant filed a petition for the production of the same contending that it is a very crucial document and it would disclose the relieving of the applicant by Shri Gopalakrishna Pillai at 9.40 hrs. The enquiry proceedings disclose that this register is missing and not traceable. This cannot be believed. A register which was seized in connection with the enquiry proceedings by the Railway authorities should not be ignored accepting the story that it is missing. After the case was heard in part we felt that the TSR from Kundara side would give the truth and we directed the learned counsel for the Railway to produce the same for our perusal granting sufficient time. But it was not produced. On this aspect the enquiry report says as follows:-

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"6.2.13 The charged employee's contention that the Kundara side TSR containing relevant entries made by SW.4 as TOC at 0940 hrs, cannot be accepted in the absence of evidence. I find the Kundara side TSR cited by the charged employee can be considered as an additional evidence but the charge has been conclusively established by substantial documentary evidence. It is true that the Kundara side TSR was not made available for verification as it was claimed that the same was not traceable."

8. This finding in the enquiry is nothing but perverse. When the applicant places strong reliance on a crucial document which was seized by the Railway authorities on 22.11.88 itself in connection with this enquiry the non-production of the same by the Railway in spite of requests can only be treated as an act purposefully done to conceal that document and the enquiry officer should have drawn adverse inference and believed the applicant's statement in that behalf. The finding of the enquiry officer that Kundara TSR is only an additional evidence cannot be sustained. As stated above, TSRs in this case are the main documentary evidence to sustain the charge against the applicant. No other document or oral evidence is necessary to sustain the charges. They are statutory documents having high evidentiary value in this case. Having regard to the nature of the charge, all other documentary and oral statements can only be treated as additional and supplementary in nature to prove the case of the parties. There is no reason why the enquiry officer failed to issue peremptory directions to the Railway to produce this crucial and important document in the enquiry particularly when it was admittedly seized by them and take an adverse inference against the Railway when they failed to produce the same before him. Under these

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circumstances we are persuaded to ~~take~~ draw such an adverse inference against the Railway in view of the importance of the TSRs in proving the case alleged against the applicant.

9. Ignoring this important documentary evidence the enquiry authority seems to have given weight to the station diary which is under the custody of the Station Master and found as follows:-

> "For the sake of argument if it is agreed that SW.4 has taken over charge from the charged employee what prevented the charged employee to make relevant entries about the last P.Number in the Station diary, duly indicating the time of his HOC and the name of the ASM, to whom the charge was given as is normally being done. It is seen from the station diary dated 22.11.88 that there is no mention about 'HOC' below the 'TOC' whereas the charged employee simply signed at the bottom."

10. According to us, having regard to the nature of the charge in this case, the Station diary cannot be treated as an important document to decide the issue arising in this case for according to us the TSRs are vital documents which can be safely relied on to decide the disputed issue of desertion of duty by the applicant alleged against him. When these documents are available which were seized by the Railway authorities and they can be produced by the Railway, why should we search for to other less important documents and evidence pertaining the matter. The suppression of TSR for Kundara by the Railway leads to the presumption that the case of the applicant that Shri Gopalakrishna Pillai was in the cabin at 9.40 hrs and relieved the applicant from duty is true.

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11. It is proved from the evidence in this case that the applicant got prior permission from Station Superintendent to leave the cabin after being relieved by the reliever if he had no enquiry on that date. The enquiry report discloses:

> "It is a fact that the charged employee was on duty from 06.00 hrs on 22.11.88 and to be relieved by 10.00 hrs. It is seen from Ex.P1 and answer to question No.10 that the charged employee was permitted to call SW.4 to relieve him if there was no enquiry for which SW.4 was booked."

In answer to question No.45 Shri Gopalakrishna Pillai admitted that the applicant informed him about the requirement to come to duty. He also informed him that the enquiry was post-poned. Other evidence available in the records indicate that Shri Gopalakrishna Pillai had come to the cabin at 9.35 hrs.

12. Under these circumstances, the only question to be ascertained is whether the applicant has handed over the charge of the cabin to Shri Gopalakrishna Pillai. This can be proved beyond any reasonable doubt by the production of two TSRs relevant for the case. One TSR available in this case indicates that the applicant has handed over the charge, but there is no entry to show that the charge was taken over by Shri Gopalakrishna Pillai before 10.00 hrs. However, since there is no continuity in the entries in that Register after the entry made by the applicant, it cannot be relied on for accepting the case of the respondents. But the other TSR which if produced would have established the correct and true position. The respondents have wilfully suppressed this valid and important document. Hence, under there circumstances, we take the view that

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the respondents have not established their case in the charge against the applicant.

13. The next submission of the applicant is that the penalty order is against Rule 6(v) of the Railway Servants (D&A) Rules and provisions of Railway Manual. Rule 6(v) reads as follows:-

> "6. Penalties:- The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Railway servant, namely:
>
> xxxx xxxx xxxx
>
> Major Penalties
>
> (v) Reduction to the lower stage in the time-scale of pay for a specified period, with further directions as to whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;"

Para 322 of the Indian Railway Establishment Manual Vol. I, 1989 revised Edition is also relevant. It is extracted below:-

> "322. Effect of reduction in pay or grade:-
>
> (i) Reduction to a lower stage in the time-scale. Reduction in pay, as distinct from reductions from a higher grade or class to a lower grade or class, does not affect a railway servant's position on the seniority list. The authority ordering reduction should invariably state the period for which it shall be effective and whether, on restoration, the period of reduction shall operate to postpone his future increments and, if so, to what extent."

14. The argument of the learned counsel for the applicant is that the penalty of reduction in pay to a lower time scale would not involve loss of seniority. The relevant portion of the penalty order as contained in Ann.A14 is as follows:-

> "Accordingly his pay is reduced to Rs.1400/- w.e.f. 1.11.89 for a period of two years(R) involving loss of seniority."

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Rule 6 while dealing with major penalties in clause (v) only states that reduction to a lower stage with further directions having the effect of postponing future increment of pay can be imposed. But it does not authorise any further direction to give effect to the loss of seniority as part of the penalty. This position is clarified in para 322 of the Manual. A plain reading of the Rule 6(v) and provisions of the manual extracted above would make it crystal clear that the penalty order in the copywrite form is contrary to the same. The learned counsel for the Railway was not able to meet this argument of the learned counsel. There is also no explanation for this irregularity in the penalty order in the reply statement filed by the Railway. Under these circumstances we accept the contention of the applicant and this point is also found in favour of the applicant.

15. The last submission of the learned counsel for the applicant is that the copy of the enquiry report was not given to the applicant before the imposition of punishment. It is true that in Union of India vs. Mohd. Ramzan Khan, AIR 1991 SC 471 the Supreme Court held that when the enquiry officer furnishes a report with or without proposal of punishment it constitutes an additional material which may prejudicially affect the delinquent employee and he is entitled to represent against it before actually being punished. But this observation was made after considering the scope and application of Article 311(2) in a case, after the Forty-second Amendment of the Constitution, in which the punishment was one of removal from service. This decision was rendered on

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20.11.1990. This case cannot be applied to the facts of the instant case for the punishment, though a major penalty, is only one of reduction of scale of pay for a period of two years which will not attract the provisions of Art. 311(2) of the Constitution of India. More over, Supreme Court in a subsequent decision in S.P.Viswanathan vs. Union of India, 1991(2) Suppli. SCC 269 made it clear that Mohd. Ramzan Khan's case has only prospective application and the proceedings completed and cases decided before 29.11.90 need not be reopened in the light of the law laid down in the above case. In the instant case the penalty order was passed on 31.10.89 and it was confirmed by the appellate authority by its order dated 19.6.90. In the light of the decision of the Supreme Court we hold that the contention of the applicant cannot be accepted and we are against him on this point.

16. Neither the disciplinary authority nor the appellate authority carefully considered the evidence in this case and decided the points arising for consideration in the light of the pleadings and evidence produced by the parties. A perusal of Ann. A14, penalty advice, shows that the authority only considered the enquiry report and came to the conclusion that the applicant is guilty. This is not correct approach. The disciplinary authority is duty bound to consider the evidence produced by the parties in the enquiry and examine whether the enquiry authority has correctly assessed the evidence and came to its findings on the various issues. The failure of the disciplinary authority to evaluate the entire evidence available in this case and

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came to its own findings vitiates the penalty imposed against the applicant. So also the appellate authority did not independently assessed the evidence. It would be useful to extract the reasoning and findings contained in the appellate order Ann.A17 to establish the careless manner in which the authority had dealt with the matter:-

> "1. that the finding of theD.A. are warranted by the evidence on records, and
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> 2. that the penalty imposed is adequate.
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> Accordingly, orders have been passed by him confirming the penalty imposed on you.
>
> 3. (a) Relevant aspects considered by the A. Authority while disposing the appeal in accordance with the Rules, satisfying the requirements of the Rules.
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> (b) Reasons by which the A. Authority has arrived at the particular conclusion in this case.
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> xxxxx xxxxx xxxxx
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> a. In the TSR of PRND side there is no evidence of the reliever taking over.
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> b. In the station diary there is no records of the reliever taking over.
>
> c. The appellant has not entered the receiving and despatching particulars of Train No.82 & 19 in the TSR.
>
> The above facts established that he left the cabin without handing over to the reliever especially when his duty was upto 10.00 hrs. There is also proof that he left Quilon by Train No.82 and the reliever clearly mention's on the appellant's absence in the cabin, when he turned up in the cabin to relieve him. In the light of the above facts, I do not consider any revision of penalty already imposed. 'Regret'."

17. 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 very sorry state of affairs to note that in spite of these pronouncements the appellate authority has not carefully considered the

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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 & Ors., 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).
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> In the Union of India vs. Panhari Saren, 1974 (1) SLR 32, the Allahabad High Court held that:
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> 'It was the duty of the Appellate Authority to peruse the whole records of the case and come to its own findings.'
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> This Tribunal held in C.Sukumaran vs. D.G., ICAR, New Delhi, 1990 (7) SLR 249, as follows:
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> '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 marshelling the evidence to sustain the findings of the disciplinary authority will not cure the legal flaw of the routine appellate order.'
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> 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:-
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> '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

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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 thepenalties 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 emphasis 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

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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 is part of the duty of the appellate authority to fulfil the statutory obligation and arrive at the decision that the findings of the disciplinary authority are warranted by the evidence on record."

18. In the light of the foregoing discussions we are fully convinced that the impugned orders, Ann. A14 and A17, are unsustainable and liable to be quashed. Accordingly, we do so and direct the respondents to grant all the service benefits to be given to the applicant in accordance with law as a consequence of the setting aside of the orders, as if there is no penalty order against the applicant.

19. In the result, the application is allowed. There will be no order as to costs.

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(N.DHARMADAN)
JUDICIAL MEMBER

30.6.92

(S.P.MUKERJI)
VICE CHAIRMAN

v/-