

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 313/91
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DATE OF DECISION 13-7-92

P.Raghavan & another Applicant (s)

Mr.V.K.Ravindran Advocate for the Applicant (s)

Versus

Union of India, represented Respondent (s)
by the General Manager, Southern
Railway, Madras & 3 others.

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

CORAM :

The Hon'ble Mr. P.S.Habeeb Mohamed, Administrative Member

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? No

JUDGEMENT

MR. N.DHARMADAN, JUDICIAL MEMBER

Two Railway Station Masters of Southern Railway approached this Tribunal for the second time challenging the disciplinary proceedings and consequent punishment for their refusal to accept stitched "illfitting uniforms" for the year 82-83. This is, according to the Railway, a violation of Annexure-1 circular regarding 'wearing of uniforms'.

2. Relevant portions of Annexure-1 read as follows:-

" Any staff refusing to accept the uniforms supplied to them will render themselves liable for disciplinary action to be taken against them.

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The staff who have been supplied ill-fitting uniforms will please advise DSO's stores PGT immediately for alteration in the size or even exchange of Uniforms.

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It is brought to the notice of all SMS ASMs that avoiding/refusing to wear uniforms supplied to them will be treated as an act of deliberate disobedience and any SM ASM indulging in such behaviour will render himself liable for disciplinary action being taken against them."

3.. The charge against the applicants is that while working as ASM deliberately refused to accept the uniforms stitched to their size and supplied to them for the year 1982-83 and that they have violated Annexure-1 circular dated 20.7.81. Both the applicants have denied the charge. The first applicant stated in his objection, Annexure-IV as follows:-

" Uniform supplied to me on 15.3.83 was not to my size. The measurements recorded in my uniform card differs with the supplied uniforms. These uniforms were stitched with the different quality of pieces of clothes and therefore it seems shabby. I had already given in writing to SM/BDJ on 4.4.83, stating my inability to accept and wear the unsize, shabby uniforms. I had requested to replace with another set of fit uniforms or to arrange a Tailor to make them fit to my size. But unfortunately, no Tailor was arranged, not replaced nor any reply was given to me.

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Since I never refused to accept the uniforms and I only represented to supply to my size, I submit that I have not violated any instructions contained in the letter No.J/S.51/V of 20.7.81 and therefore other charges in your charge memo are irrelevant and not binding on me."

The second applicant stated in his objection, Annexure-V, as follows:-

" Regarding the first allegation that I did not accept the uniform stitched to my size for the year 82-83 on 19.3.84, is false.

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I met you after 17 hrs. on 19.3.84 in your room, as per your orders, and as agreed to you I went to DSO/Stores office to give measurement for the uniform at about 17/35 hrs. There was no tailor, but the clerk was waiting for me. The tailor was sent word and I waited there. Tailor came and took the measurement. There was no supply and refuse in the office. The tailor must be a magician to offer me an instant supply immediately when the measurement is taken, that too after the office hours when he was called back to take my measurement to honour your advice. I admit that I told you in the office. I will not be in a position to accept the uniform for 82-83 on 19.3.84 since it is impossible to wear them retrospectively. Sir, I am not in the habit of misusing Railway property or making money out of it. As such I could not have accepted the uniform for 82-83 on 19.3.84, which I should not wear during 1984.

Regarding the second allegation, violations of GRs arises only when the uniforms are supplied. I have already requested that the uniforms for the year 1984-85 may please be supplied to me without further delay. I am prepared to accept and wear the uniform."

4. Without conducting a proper enquiry as provided under Rule the Railway imposed a penalty of barring the increments for three years from 1.8.85 against the first applicant and one year from 1.12.84 in the case of second applicant. They filed appeal unsuccessfully and approached the High Court in O.P.5387/85, which was later transferred to this Tribunal and disposed of as per Annexure-XIV judgment dated 23.8.89 after quashing the penalty orders and directing de-novo proceedings in accordance with law from the stage of memorandum of charges.

5. Thereafter fresh proceedings were initiated which culminated in Annexure-XII and XIII penalty orders and Annexure-XVI and XVII appellate orders. The present

punishment against the applicants are, (i) penalty of withholding two sets of privilege passes against first applicant, and (ii) withholding of increment for six months (NR) against the second applicant. The first applicant has retired from service.

6. While quashing the earlier punishment orders by Annexure-XIV judgment we observed that the disciplinary authority is free to take appropriate proceedings against the applicants in accordance with law pursuant to the memorandum of charges. Dealing with the contention, that the disciplinary action was taken against the applicants only because of their participation in the Station Masters agitation against the uniform and that the refusal to accept the uniform by the applicants is a manifestation of protest against the nature and texture of the uniforms that are being given to the Station Masters, we observed:

"The disciplinary action taken against the petitioners cannot be mixed up with the agitation launched by the association of Station Masters and imposed punishment on them without examining their objections or statements in the appeal memo. That itself is a wrong approach by the respondents. The punishment order imposed on the petitioners can be viewed as individual actions initiated against the petitioners and since they have objected to the same by filing proper representations and objections they ought to have been considered either by the disciplinary authority or by the appellate authority carefully by proper application of mind to the real issue. So, according to us this is a clear case where there is no application of mind by the appellate authority while disposing of the appeal."

(emphasis supplied)

7. The impugned orders disclose that the above observations of the Tribunal did not carry xxx conviction on the authorities. Neither the disciplinary authority nor the appellate authority adverted to this specific aspect and applied their mind while considering the matter pursuant to our directions in Annexure-XIV. The reason given by the disciplinary authority, in Annexure-XII order against the first applicant is as follows:-

"The ASM was supplied uniforms on 15.3.83. He has refused to accept the uniform as stated by him as per reply to the charge sheet. This has been in gross violation to the instructions contained in the SR circular No.S/S.51/U/Dist. dated 20.7.81. The circular laid down in very clear terms the action to be taken by the ASM in case the uniform supplied to him by the administration is found ill-fitting. This has been totally ignored by Shri Raghavan. He has merely stated that since the uniform was not his size he has not accepted the same. This action of his totally un-becoming as Railway servant. Also his action is considered as a deliberate act of indiscipline. Therefore, a penalty of withholding 2 sets of priv. passes is imposed." Same is the reasoning in Ann.XIII order.

8. Disciplinary authority's conclusion and finding that the action of the applicant under the above circumstance is a "deliberate act of indiscipline" is not based on any material and has been rendered without really understanding the scope and meaning of the term "deliberate".

9. The word 'deliberate' is defined in Websters Third New International Dictionary as follows:-

"To ponder or think about with measured careful consideration and often with formal discussion before reaching a decision or conclusion, (he is deliberately what to do)".

According to Words and Phrases, Vol. IIA (All Judicial Constructions and Definitions of Words & Phrases, 1968):

"Deliberate" means formed with deliberation, in contradiction to a sudden rash act. Hawes v. State, 7 So. 302, 304, 88 Ala. 37; Martin v. State, 25 So. 255, 257, 119 Ala. 1; Mitchall v. State, 60 Ala. 26, 28.

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"Deliberate" means well-advised; carefully considered; not sudden or rash; weighing facts and arguments with a view to a choice of decision; carefully considering the probable consequences of a step; circumspect; slow in determining; to weigh in the mind; to consider the reasons for and against; to regard upon; to ponder, Cole v. List & Weatherly Const. Co., La. App., 156 So.88, 90.

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Word "deliberate" is defined as well advised; carefully considered; not sudden or rash; weighing facts and arguments with view to choice of decision; carefully considering probable consequences of step; circumspect; slow in determining; to weigh in mind; to consider reasons for and against; to consider facts maturely; to regard upon; to ponder. Employee's act in vacating seat while being transported to work and sitting on dinner pail held not deliberate failure to use protection provided as to preclude compensation for injuries when thrown from seat. McClendon v. Louisiana Cent. Lumber Co., 135 So. 754, 756, 17 L. App. 246.

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Word "deliberate" means formed or arrived at or determined upon as result of careful thought and weighing of considerations for all against the proposed action. People v. Byrd, 266 P.2d 505, 511, 42 C.2d 200.

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"Deliberately" means done in cold blood, and not in a sudden passion caused by a lawful or reasonable provocation. State v. Sneed, 4 S.W.411,412,91 Mo.552.

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"Deliberate" is synonymous with intentional. Cole v. List & Weatherly Const. Co., La.App.,156 So.88,90.

10. The definition of the word 'deliberate' indicates a positive act on the part of the person concerned coupled with a predetermination, after a formal discussion or thinking about the matter, before actually proceeding to prosecute the particular act wilfully. None of the essential ingredients are present or proved in the case of the applicants in the instant case. Even, according to the Railway, the applicants were offered 'ill-fitting uniforms' for the year 1982-83. They did not accept because the offer itself was belated, uniforms were not to their size and measurements already furnished by them and were stitched with different quality of clothes in a shabby manner. Under these circumstances they expressed their inability to accept the uniforms and requested to replace the same with another set of fit uniform conforming to their measurement taken by the tailors. The Railway was neither prepared to arrange a tailor to make them fit for their size nor did they offer correct size uniform in tune with their measurements replacing the ill-fitting uniforms.

11. The disciplinary authority never examined as to whether the refusal of the applicants under the above circumstances is wilful and 'deliberate' defaults so as to penalise them. The authority was probably influenced by the fact of agitation launched by the association of Station Masters in which the applicants are members against issue of uniform and decided to penalise the applicants without proving the essential ingredients of the offence charged against them. There is no application of mind by the disciplinary authority. On the facts and circumstances of the case we are fully satisfied that the refusal of the applicant to receive the 'ill-fitting' uniforms is not a

'deliberate' refusal liable to any penalty. The applicants have valid excuses and explanations for their act of refusal. Applying the normal reasonable standard even a layman may come to the conclusion that no offence has been committed by the applicants under the circumstances stated above.

12. The appellate authority also committed the same mistake even in spite of specific directions and observations of the Tribunal in Annexure XIV judgment. Both the appellate orders are similarly worded. It reads as follows:-

"I have gone through the case and satisfied that the speaking orders of the disciplinary authority are comprehensive enough. Considering, however, the appeal of the part dated 30.4.90 and the position that he was given COPS's award for the best ASM in 1988, I treat the case leniently and reduce the penalty to one of withholding of increment for a period of SIX months (NR)."

13. This is not a careful consideration of the contentions of the applicants in the appeal by the appellate authority in terms of the statutory duty cast upon him. This Tribunal and the Supreme Court time and again laid down the law on the issue. ~~xxx xxxxxxxxxx~~ This Tribunal in which one of us, N. Dharmadan, was party in M.Jafferikutty vs. Union of India & others, O.A. 261/91 considered this aspect in detail and held as follows:-

"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 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, NOC (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).

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 marshelling 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, 1986 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:

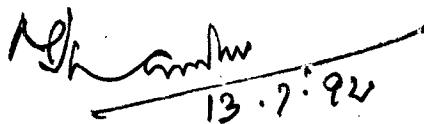
"Professor de Smith at pp 242-43 refers to the recent greater readiness of the courts to find a breach of natural justice 'cured' by a subsequent hearing before an appellate tribunal... Such being the legal position it is of utmost importance after the 42nd Amendment as interpreted by the majority in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

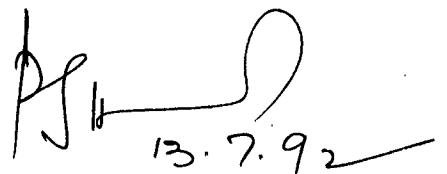
raised in the appeal memo, the appellate authority has to follow the statutory procedure prescribed in Rule 27. It dictates as to how the appeal is to be considered and disposed of by the appellate authority. The consideration of the entire evidence produced before the disciplinary authority is part 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."

14. In the light of the law laid down by the Tribunal and the foregoing discussion we are fully satisfied that the applicants are entitled to succeed in their challenge against the impugned order. The applicants are not liable to any penalty.

15. Accordingly, we quash the impugned orders and allow this application. We further direct the respondents to give the applicants all consequential benefits eligible in accordance with law as if there is no penalty order against them. In the result the application is allowed without any order as to costs.



(N.DHARMADAN)
JUDICIAL MEMBER



(P.S.HABEEB MOHAMED)
ADMINISTRATIVE MEMBER