CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 357/2003

Wednesday, this the 23rd day of August, 2006.

CORAM:

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER

T. Mohammed,
Chief Travelling Ticket Inspector(CTTI)/II,
(Sleeper), Southern Railway,
Palghat. - Applicant

By Advocate Mr TC Govindaswamy

v.

1. Union of India represented by
the General Manager,
Southern Railway,
Headquarters Office,
Park Town.P.O.
Chennai-3.

2. Additional Divisional Railway Manager,
Southern Railway,
Palghat Division, Palghat.

3. Senior Divisional Commercial manager,
Southern Railway,
Palghat Division, Palghat.

4. Divisional Commercial Manager,
Southern Railway,
Palghat Division, Palghat. - Respondents

By Advocate Mr Sunil Jose

The application having been heard on 27.7.2006, the Tribunal on 23.8.2006 delivered the following:

ORDER

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant Shri T Muhammed has filed this application aggrieved by penalty advice and the appellate order passed against him.

2. The facts in brief are that while he was working as CTTI/II/Sleeper, he was served with impugned A-3 charge memo dated 2.5.2002 issued by the DCM/II/Pgt. . According to the statement of imputations, he had abused a lady passenger, who had, in her possession, proper traveling authority. Thus, he had not shown devotion to duty and behaved in a manner, quite unbecoming of a Railway servant, thereby contravening the relevant rule of the Conduct Rules. He submitted his explanation vide A-4 document dated 20.5.2002. Rejecting the same, impugned A-1 penalty advice dated 9.8.2002 was issued by the Senior DCM/Palghat, who had concluded that the applicant had abused the lady passenger. The reason for arriving at such a conclusion was, "I have gone through the explanation given by Shri Mohammed. It is found on enquiry that the allegation of shouting and misbehavior by Shri Muhammed is true.." Accordingly his next increment was withheld for 24months (NR).Vide A-5, the applicant requested for certified copies of the complaint and the statement of the complainant. This was followed by A-6 reminder. Finding no response, he filed an appeal vide A-7 dated 24.9.2002. The main points raised in the said appeal were as follows:

i) There was no complaint regarding this from any quarter.

ii) The applicant was not furnished with a copy of any complaint and a request for furnishing the same was not acted upon as yet.

Iii) No statement of the complainant was recorded in the presence of the applicant.

iv) No material was adduced to prove the alleged misconduct.

v) The charge memo does not make specific the name of the

passenger who was humiliated.

vi) In any case, the said lady passenger did not disclose her identity.

Viii)He had an unblemished service so far.

3. This appeal was rejected vide A-2 order dated 27.2.2003 by the ADRM/Pgt. In the said document, the appellate authority had remarked that the penalty was adequate, relevant aspects were considered by the said authority in accordance with rules satisfying the requirements of the rules and the relevant rules had been complied with. On the point of reasons by which the authority had arrived in the particular conclusion in that case, the following was recorded:

"I have carefully gone through the proceedings of the case and the appeal dated 9.8.02 received on 10.10.02. Taking into account the facts and circumstances, I am convinced that the charges are proved.

A perusal of the service records of the employee reveals that he was imposed with minor and major penalties on earlier occasions for irregularities in allotment of berths and carrying persons without travel authority and manipulation of documents. As such his claim of an "unblemished service career" is far from true."

4. Assailing the above mentioned impugned orders, the applicant has sought the following main reliefs:

(a) Call for the records leading to the issue of A-1, A2 and A3 and quash the same and direct the respondents to grant all consequential benefits, as if A-1, A-2 and A-3 had not been issued at all.

5. The claimed reliefs rest on the following grounds:

i) The impugned orders are contrary to rules 11 and 22 of the Railway Servants(Discipline & Appeal) Rules, 1968 (Rules for short).

ii) Refusal to supply the requested documents would indicate

absence of misconduct.

Iii) A-3 charge memo is vague preventing the applicant to make effective explanation.

iv) A-1 order of the disciplinary authority had been issued without proper application of mind.

v) Impugned A-2 order is non-speaking, arbitrary and illegal and is violative of Rule 22 of the Rules.

6. The respondents oppose the application with the following grounds:

i) Penalty advice under A-1 was issued duly following the prescribed procedure under the Rules.

ii) The reply to the charge memo to the applicant was only a flat denial of charges with reason or explanation.

Iii) As the procedure prescribed for imposition of minor penalty only was followed, no detailed enquiry had been conducted.

7. Heard the parties and perused the documents including disciplinary action file.

8. The scope of judicial intervention by the Tribunal has been well settled by the Hon'ble Apex Court in a catena of cases. Accordingly, the Tribunal can intervene only on the question of observation of decision-making process and not of the decision itself.

9. With the above in the back drop, the following aspects relating to the said decision making process, as raised by the applicant are to be examined.

a) Whether the charge sheet (A-3) was non-specific.

b) Whether the applicant was denied access to the material documents, more specifically, whether he was denied access to the result of the enquiry alluded to.

c) Whether A-2 orders of the appellate authority was violative of Rule 22 of the Rules.

10. On the question whether the charge sheet (A-3) was non-specific, it is seen that no specifics are available about the name of the lady passenger, who was allegedly abused by the applicant. The applicant in his representation had denied any such incidence of abuse. This has been described as a flat denial by the respondents. But in the absence of more specific allegation, it is hardly expectable from the charged official to come out with any specific rebuttal. It is therefore found that the charges were not specific.

11. On the question whether the applicant was denied access to material documents, the applicant's case is that prior to filing the appeal, he had made a request that he be supplied with the complaint and complainant statement (A-5). It was when he found no response that he preferred the appeal petition. No reasons are furnished in the reply statement about such non-supply except that furnishing of such documents was not contemplated in the Rules.

12. On the question more specifically whether he was denied access to the result of the enquiry alluded to, it is seen that the penalty advice A-1 refers to an enquiry, but in the reply statement, the respondents represent that in view of the fact that this was a case of minor penalty, no detailed enquiry was conducted. The respondents will say that the disciplinary authority had conducted an interview but that was after issue of the A-3. The respondents would also say that there was no provision for a revision petition against the appellate order. This stand is contrary to the last paragraph of the orders of the Appellate Authority wherein the applicant had been given permission to make a revision petition. On a perusal of the file No.J/P.O.A.357/2003 of the Southern Railway, it is seen therein that questions had been raised about the cause of action to issue a charge sheet against the applicant and, whether there was a written or oral complaint either from the lady passenger or her husband. It transpired therefrom that there was only an oral complaint by the husband of the passenger, who himself was a Railway official. It is also found therefrom that the applicant was

merely interviewed about the complaint. The file does not make it clear whether the full details of the complaint were disclosed to him and whether the interview was held in the presence either of the lady passenger or of the husband. This would merely indicate that the applicant was deprived of the opportunity of being made aware of what exactly the charges were and of cross examination of the complainant. This interview is referred to as the enquiry in the penalty advice(A-1 document). Needless to say, the basic right of the applicant to be appraised of clearly the exact nature of allegations and to cross examine has been denied which has led to miscarriage of justice. It is found therefore he was denied access to the result of the enquiry alluded to

13. On the question whether A-2 orders of the appellate authority was violative of Rule 22 of the Rules, the applicant's case is that no reasoned orders were passed. It is seen that the applicant had raised certain grounds for preferring the appeal which had been elaborated in one of the earlier paragraphs. Under Rule 22(1), the appellate authority is mandated to consider and pass appropriate order which would mean giving of a reasoned order. On the need to write reasoned orders, It has been mandated by the Apex Court that:

> *"It is of utmost importance that after the 42nd Amendment as interpreted by the majority in Tulsiram Patel's case [(1985) 3 SCC 398], that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contention raised by him in the appeal.[Ram Chander v. Union of India, AIR 1986 SC 1173].*
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> *"The Supreme Court in Ram Chander v. Union of India, AIR 1986 (2) SC 252 held that the word 'consider' in Rule 27(2) of the CCS(CCA) Rules (Rule 22(2) of the Railway Servants(Discipline & Appeal) Rules, 1968) for the appellate authority casts an obligation*

on him to give reasons for its findings by applying his mind. A mechanical repetition of the provision of the rule in the appellate order without marshalling of evidence to sustain the finding of the disciplinary authority will not cure the legal flaw of the routine appellate order.

The appellate authority in the present case has grievously erred in having passed the impugned order without even adverting to the legal points raised by the applicant in the appeal and without substantiating the conclusion arrived at by him in the order without stating sufficient reasons in support of the same.

The appellate authorities should remember that they are dealing with very important rights of the public servants which are very valuable for them and hence they should take utmost care and caution while dealing with the appeals and make sincere efforts to find out the truth especially in departmental proceedings. The failure of the authorities in the discharge of these duties necessarily result in miscarriage of justice.

Rejection of an appeal without discussing the various points is not tenable in law.

Obviously unless the appellate authority passes a speaking order, it is not possible to know as to how the various points raised by the appellant have been considered and as to why the points raised by him were rejected. As the appellate authority did not pass in the present case order in accordance with the requiremtns of CCS(CCA) Rules, 1965, the same is not consistent with the basic requirements of law that must be fulfilled by the quasi judicial authority when hearing the appeal, namely to pass speaking orders." [Jagan Nath v. Quarter Master General (1971) i SLR 810].

"Even in the absence of rules, the natural justice requires that the points raised in the appeal should have been properly considered and due weight given thereon by the appellate authority. Appeal cannot be disposed of by writing cryptic sentence that in his opinion the punishment should stand."[Pashupati Banerjee v. Dy. Chief Engr. N.R. Rly, AIR 1960 Assam]. "

14. Under the above circumstances, it appears that the contention raised by the applicant is held as substantiated. We find that in the appellate order no worthwhile discussion of the points raised by the applicant vide A-7 appeal petition has been made. In the light of the law laid down by the Hon. Apex Court as referred to above, it is found that the appellate order is violative of Rule 22(1). In sum, it is found that

i) the charges were not specific

ii) the applicant was denied access to the result of the enquiry alluded to

iii)the appellate order is violative of Rule 22(1).

15 In view of the above findings, the O.A succeeds and the impugned orders A-1, A-2 and A-3 are quashed and the respondents are directed to grant the applicant all consequential benefits within a period of three months from the date of receipt of copy of this order. No costs.

Dated, the 23rd August, 2006.

GEORGE PARACKEN
JUDICIAL MEMBER

N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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