

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. NO. 371/93

Monday, this the 14th day of February, 1994

SHRI N. DHARMADAN, MEMBER (J)  
SHRI S.KASIPANDIAN, MEMBER(A)

V. Baburaj Vallasserai,  
Khalasi, TFO/RE,  
SR, Podanur

.. Applicant

By Advocate Shri P. Sivan Pillai.

V/s

1. Union of India through  
The General Manager,  
SR, Madras-3.
  2. The Asst. Elect. Engineer,  
Railway Electrification,  
SR, Salem Jn.
  3. Dy. Chief Electrical Engineer,  
-do-
  4. The Chief Project Manager,  
Railway Electrification,  
Madras.
  5. The Divnl. electrical Engineer,  
SR, Palghat.
  6. Addl. Divnl. Railway Manager,  
SR, Palghat.
  7. The Divnl. Railway Manager,  
SR, Palghat.
  8. Sri Joshua Premsingh,  
Divnl. Safety Officer/Railway  
Electrification, Divisional Office,  
Palghat.
- .. Respondents

By Advocate Shri Thomas Mathew Nellimoottil.

ORDER

N. DHARMADAN

Applicant is a Tower Wagon Driver. He is aggrieved  
by the penalty advice, Annexure-A8, dated 5.6.92 and the  
appellate order, Annexure-A10, dated 15.2.93.

2. Applicant received the following charges:-

"You, while working as the Driver of the Tower Wagon No.RU 4513 on 1.5.91, were not vigilant and careful in that you passed the UP starter No.5A at danger at MGSJ and failed to control the tower wagon which resulted in the trail through on Point No.7A at MGSJ yard.

You have thus violated Rule 3-81(i)(a) and (b) of General Rules, 1976."

3. When the applicant denied the charges and filed Annexure-A11 objections, proceedings were initiated by the disciplinary authority for conducting enquiry. In the enquiry, the enquiry officer found the applicant guilty of the charges only in respect of the first portion. Accepting the findings in the enquiry, the disciplinary authority imposed the penalty of reduction of his pay from the scale of pay Rs.1200-1800 to the scale of pay Rs.750-940 for a period of two years without having the effect of postponing his future increments and loss of seniority. Annexure-A8 is the penalty advice. He filed Annexure-A9 appeal against the penalty which resulted in Annexure-A10 order passed by the appellate authority. The reason stated in the order is as follows:-

" I have gone through the appeal of the employee. The points brought out by him have already been dealt with by the Enquiry Officer and considered by the authority which imposed the penalty.

He has put in only one and a half months service as Tower wagon driver, and I reduce the penalty of reduction to the lower post of Diesel Loco Khalasi to one year instead of two years. After the said period he may be given opportunity for some driving training on a tower wagon under proper supervision and get certificate before being put on duty again as tower wagon driver."

4. The learned counsel for applicant raised the following points:-

- i) The second respondent who issued the charge is not competent to initiate disciplinary proceedings against the applicant;

- ii) The disciplinary authority acted at the instance of the sixth respondent and hence there is abdication of statutory functions.
- iii) The applicant was not given reasonable opportunity to peruse the records and there is violation of principles of natural justice.
- iv) The procedural formalities under Rule 22(2) of Railway Servants (Discipline and Appeal) Rules, 1968 have not been followed in this case.
- v) Findings of the disciplinary proceedings are not supported by evidence and hence the order is perverse.

5. From a careful reading of the appellate order it is clear that the appellate authority has not examined the contentions raised by the applicant. His main case in the appeal is that the disciplinary authority is incompetent to initiate the proceedings and issue the charges. This is very crucial and important issue, cuts at the root of the matter. It has not been adverted to by the appellate authority. The order is laconic and stereotyped. It will not stand the scrutiny of any Court or Tribunal. It does not even satisfy the requirement of Rule 22(2) of Railway Servants (Discipline & Appeal) Rules, 1968.

6. This Tribunal in more than one occasion dealt with the application and scope of the above rule and laid down the law indicating that the appellate authority should record its own reasons independently before approving the order of penalty and satisfy whether punishment would commensurate<sup>with</sup> the gravity of the offence. It is true that the appellate authority has reduced the penalty from two years to one year but it has not discharged the statutory duties and obligations. No reason has been given considering the grievance and contentions raised by the applicant bearing in mind the principles contained in the above rules. In the decision in M. Jafferikutty vs. Union of India through the General Manager, Southern Railway, Madras (OA 261/91), this Tribunal 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 Tribunals 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, NCC (K&L), Trivandrum & others, OA 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 marshalling 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, 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 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:

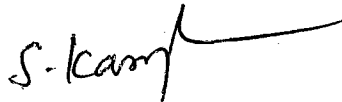
"Professor de Smith at pp 242-43 refers to the recent greater readiness of the courts to find a breach of natural justice 'cured' by a subsequent hearing before an appellate tribunal.... Such being the legal position it is of utmost importance after the 42nd Amendment as interpreted by the majority in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

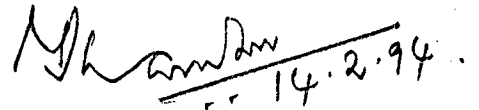
raised in the appeal memo, the appellate authority has to follow the statutory procedure prescribed in Rule 27. It dictates as to how the appeal is to be considered and disposed of by the appellate authority. The consideration of the entire evidence produced before the disciplinary authority is part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

7. In the light of the aforesaid discussions, we are of the view that Annexure-A10 order dated 15.2.93 cannot be sustained. Accordingly, we set aside Annexure-A10 and remit back the case to the appellate authority for a fresh consideration and disposal of the appeal bearing in mind the above observations. This shall be done within a period of four months from the date of receipt of a copy of this order.

8. The application is accordingly allowed to the extent indicated above. There will be no order as to costs.



( S.KASIPANDIAN )  
MEMBER(A)



( N.DHARMADAN )  
MEMBER(J)