

**Central Administrative Tribunal Lucknow Bench
Lucknow**

Original Application No. 54/2005

This, the 17/10 day of September, 2009

**Hon'ble Ms. Sadhna Srivastava, Member (J)
Hon'ble Dr. A. K. Mishra, Member (A)**

Indra Mani Dubey aged about 49 years, son of Sri R.S. Dubey, resident of Village and Post Dostpur, District Sultanpur.

Applicant

By Advocate Sri V.S. Tripathi

VERSUS

1. Union of India, through the Secretary, Ministry of Railway, Rail Bhawan, New Delhi.
2. General Manager, Northern Railway, New Delhi.
3. Divisional Railway Manager (DRM), Northern Railway, Hazratganj, Lucknow.
4. Additional Divisional Railway Manager (ADRM)-1, Northern Railway, Hazratganj, Lucknow.
5. Senior Divisional Commercial Manager, Northern Railway Hazratganj, Lucknow.
6. Enquiry Officer/divisional Commercial Manager, Northern Railway Varanasi.

Respondents

By Advocate Sri Arvind Kumar

ORDER

By Hon'ble Dr. A. K. Mishra, Member (A)

The applicant has challenged the order dated 24.11.2004 of the Disciplinary Authority (DA) imposing a penalty of reduction in scale of pay from Rs. 5500-9000/- to the initial grade of Rs. 3200-4950 applicable for a Goods Clerk and fixing his pay at Rs. 3200/- for a period of 5 years with cumulative effect. Subsequently, through an amendment, he has impugned the appellate order dated 21.2.2005 rejecting his appeal and confirming the penalty.

2. The ground taken in challenging the appellate order is that it is mechanical in nature without proper application of mind to the points raised in his appeal petition and the grounds taken by him therein.

3. Let us take this plea of the applicant by examining the appellate order, which is extracted below:

"I have gone through the charge sheet, enquiry report, the findings of E.O., defence & appeal of Sh. I.M. Dubey, C.O. I find that the charges against him as mentioned in the SF-5 even no.DT.14.9.2001, have been proved during the course of enquiry. I find that during the course of enquiry he was provided all relied upon documents and other opportunities to defend himself. As per the record all the witnesses cited by the prosecution were cross-examined. All the points raised by him in his appeal have already been covered in this enquiry and the orders of D.A. He clearly failed to carry out his responsibilities as CMI as per the charges leveled and proved against him. I find he has been given all opportunities to defend himself as per the rules and to ensure natural justice and enquiry findings are based on statement of witnesses and evidence on record. I therefore, reject his appeal and confirm the punishment awarded to him by D.A."

4. The appeal petition dated 24.11.2004 is at Annexure 14. It is a very detailed representation raising many points and has summed up the main grounds of challenge as follows:

- i) that all the documents relied on in the Annexure to the charge sheet were not supplied to him; neither were the original statements of the prosecution witnesses No. 1,2,3 and 4 recorded by the CBI Lucknow made available for his inspection, nor certified copies thereof given to him;
- ii) that the additional documents sought for in respect of Case file No. C/153-9-96 RR and C/401-1-OS/Policy/96/JPS/VKS which would have proved the defence plea of having reported the matter well in time were neither produced before the Inquiry Officer, nor shown to him;



- iii) that the Inquiry Officer was not fair in considering the documentary evidence listed as enclosures No. 1 to 10 in support of his defence plea;
- iv) that the PWs were examined without oath, or giving them warning as prescribed;
- v) that the CBI Inspector who had recorded the statements of PWS was not called upon to depose and testify his signature;
- vi) that the inquiry report has not only relied on evidence which were not available on record but also on false statements of prosecution witnesses, details of which had been enumerated in his defence plea.

4. Rule 22 (2) of the Railway Servants (Discipline and Appeal) Rules, 1968 which prescribes the manner in which an appeal against a penalty is to be dealt with is extracted below:-

"In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider-

- (a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
- (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
- (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders-
 - (i) confirming, enhancing, reducing or setting aside the penalty; or
 - (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case."

5. It is enjoined on the appellate authority to examine whether there was any violation of principles of natural justice;



whether the assessment of the evidence by the disciplinary authority was correct and whether the penalty was adequate. In order to discharge these responsibilities particularly about confirming, or reducing, or enhancing the penalty, the appellate authority is supposed to reassess the evidence before coming to a conclusion. Accordingly, he has a duty to discuss all the grounds raised and the facts highlighted by the charged official in his appeal petition with reference to the facts on record and the analysis of the Inquiry Officer and the Disciplinary Authority. But, we find that the appellate authority has disposed of his obligation by stating that all the points raised by the applicant had been answered either in the enquiry report or in the orders of disciplinary authority. He has simply endorsed the orders of disciplinary authority without discussing the merits of the specific grounds taken in the appeal petition or analyzing the conclusions of the Disciplinary Authority on a re-assessment of evidence. Therefore, we find that the appellate order has not been passed strictly in-consonance with the statutory provisions. The grievance of applicant that there was no application of mind in respect of his appeal petition has some merit.

6. Hence, we set aside the appellate order dated 21.2.2005 and remand the matter for fresh consideration of the appeal petition filed by the applicant. The Appellate Authority may give a personal hearing to the applicant and then proceed to pass a detailed speaking order with adequate reasons for his conclusions after discussing the issues and the grounds taken in the appeal petition threadbare. The appellate authority is directed to pass a fresh order within 3 months from the date of supply of a copy of this order to him.

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7. The O.A. is disposed of with the aforesaid direction. No cost.

Aug 20 17/09/09
(Dr. A. K. Mishra)
Member (A)

Sadhna Srivastava
(Ms. Sadhna Srivastava)
Member (J)

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