

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH LUCKNOW

ORIGINAL APPLICATION No. 66 of 2008

ORDER RESERVED ON 5.8.2014

ORDER PRONOUNCED ON 28/08/2014

HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

Suman Kumar Gupta aged about 49 years S/o Shri H. D. Gupta, Mohalla Ram Nagar Lakhimpur, District Lakhimpur Kheri.

Applicant

By Advocate :Sri M. A. Siddiqui.

VERSUS

1. Union of India through the General Manager, North Eastern Railway Gorahpur.
2. The DRM, North Eastern Railway, Ashok Marg Lucknow.
3. The Senior D.C. M., North Eastern Railway, Ashok Marg Lucknow.
4. The D.C. M. North Eastern Railway Lucknow.

Respondents

By Advocate: None

ORDER

By Hon'ble Sri Navneet Kumar, Member(J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:

“A. The Hon'ble Tribunal be graciously pleased to quash Annexure A-4 which is the order of the Disciplinary authority and Annexure A-6 which is the appellate order.

B. The Hon'ble Tribunal be further please to set aside the punishments imposed upon the applicant, with consequential effects.

C. Any other order/direction as considered proper by the Hon'ble Tribunal be passed in favour of the applicant.

D. Cost of the application be awarded to the applicant."

2. Since no one has put in appearance, on behalf of the respondents as such, after invoking Rule 16(1) of the CAT (Procedure) Rules 1987, the learned counsel for the applicant was heard and orders were reserved.

3. The brief facts of the case are that the applicant was initially appointed in the respondents organisation in 1983. Subsequently, the applicant was granted temporary status. The applicant was working as Mobile Booking Clerk at Gola Gokran Nath Station and when he took charge from another Mobile Booking Clerk on 7.9.1999, noticed that Nineteen MST ex Gola Gokran Nath to Bankey Ganj Tickets were not available from number 08931 to 08949. The applicant made a remark in the diary which was noted by Shri Sarvesh Kumar and thereafter, the matter was reported to the then Senior Authority Shri R. L. Meena. Subsequently, on 19.9.1999, Sri Meena gave Rs. 1425/-, the cost of the aforesaid missing M.S.T to the applicant and ordered to make up account and accordingly the applicant accounted the same. Subsequently, the short falls report was submitted and thereafter, the matter was

taken up by the vigilance department and on advise of the vigilance , the applicant was served with a major penalty charge sheet on 28.3.2006. The applicant submitted his explanation to the said charge sheet and also denied the charges levelled against the applicant. It is also indicated by the applicant that when the vigilance check was conducted on 14.9.1999, he was not on duty. The applicant has asked for certain documents such as booking office diary for 7.9.1999 and D.T.C. Book of the relevant dates. Not only this, the learned counsel for the applicant has also submitted that he has also asked for production of Sri. R.L. Meena for examination /cross examination, but he was not produced for the inquiry. Not only this, it is also submitted by the applicant that the documents so demanded by him were also not made available for perusal. The inquiry officer submitted his inquiry report and the copy of which was handed over to the applicant. The applicant submitted his representation and finally the disciplinary authority under the influence of the vigilance has awarded the punishment of reduction of pay of Rs. 4390 to 3200/- for a period of three years with postponing future increments. The applicant preferred the appeal under Rule 19 of (D & A) Rule 1968, the said appeal of the applicant was rejected ignoring the ground taken in the appeal by means of a

non speaking order. It is also argued by the learned counsel for the applicant that it was the duty of the authorities to provide the documents to the charged officer but the appellate authority has mentioned that the applicant could himself take the photo copies of the DTC, booking office diary which is not correct. Sri M.A. Siddiqui, learned counsel for the applicant vehemently argued that since the fair inquiry has not been conducted as such, it requires interference by this Tribunal.

4. Respondents have filed their reply and through reply, it is indicated by the respondents that missing MSTs were brought forwarded in DTC Book by applicant although entry regarding missing of these MSTs were also made in booking office diary as per the statement of Sri S. N. Mishra P.W. On behalf of the respondents, it is categorically stated in the counter reply that since the matter was under investigation with C.V.C., hence after receiving their advice the case of the applicant was considered by disciplinary authority and charge sheet was issued and the respondents counsel has also indicated in their counter reply that the applicant demanded three additional documents out of which one was given to him and two documents could not be given to him as it was not available at station. Apart from this, it is also pointed out that due

opportunity was given to the applicant before passing the order. As such, no interference is called for by this Tribunal.

5. On behalf of the respondents, one supplementary counter reply was also filed through which it is indicated by the respondents that when the matter came to the notice of Vigilance Department by way of complaint on investigation was carried out, it was found that as per TIA report, 19 MSTs bearing No. 00931 to 00949 were found missing from booking office, Gola Kokaran Nath. The value of these lost MSTs amounting to Rs. 1425/- was deposited on 20.9.2009 and the cash was sent to Cash Office and the disciplinary authority has passed the clear order after considering all the relevant material on record.

6. On behalf of the applicant, rejoinder as well as the supplementary rejoinder is filed and through rejoinder, the contents of the O.A. are reiterated where as the contents of counter reply and supplementary counter reply are denied.

7. The learned counsel for the applicant has also relied upon Annexure CR-3 to the counter reply which clearly says that the booking office diary of 7.9.1999 and D.T.C. Book from 1.9.1999 to 20.9.1999 was demanded by the applicant but the same was not

available in the office, as such, the same could not be given to him. It is once again argued by the learned counsel for the applicant that since the inquiry conducted by the respondents is not fair inquiry as such it requires interference by this Tribunal

8. Heard the learned counsel for the applicant and perused the record.

9. The applicant was working in the respondents organization was served with a charge sheet indicating there in that when the applicant was working as Mobile Booking Clerk on 14.9.1999 at Gola Gokran Nath, nineteen MST from 08931 to 08949 were missing. Along with the charge sheet, the statement of imputation of misconduct as well as the list witnesses and documents were mentioned. Soon after, the service of the charge sheet, the applicant given a written representation on 24.4.2006 indicating therein that when on 7.9.1999, he took charge from another clerk namely Sri S. K. Shukal, At that point of time 19 MSTs tickets from Gola Gokran Nath to Bankey Ganj were not available. The applicant has also indicated this fact that he has made a categorically statement in the Station diary and also told the same to Sri R. L. Meena , Coaching Superintendent. It is also stated by the applicant that while he was posted on 19.9.1999, Sri R.L. Meena has handed over him a sum of Rs. 1425/- and asked him to

deposit the same in his cash. It is also pointed out by the applicant in the representation dated 24.4.2006 that he may be given the copies of station diary as well as the DTC book. Thereafter the inquiry officer submitted his report indicating there in that the charges levelled against the applicant stands proved. The copy of the inquiry report was also given to the applicant and he has submitted the reply and also indicated this fact that the relied upon documents were not provided to him as such, the entire proceedings is vitiated and is liable to be quashed. The Disciplinary Authority without looking into this fact passed the impugned punishment order of reduction of pay of Rs. 4390 to 3200/- for a period of three years with postponing future increments. The applicant preferred the appeal, but the appellate authority has also without taking into consideration the grounds taken in the appeal rejected the appeal of the applicant.

10. The bare perusal of the Annexure No. CR-3 which is an order sheet of the disciplinary proceedings clearly shows that the applicant has asked that the booking office diary of 7.9.1999 and D.T.C. Book from 1.9.1999 to 20.9.1999, be produced during the enquiry, but the same was not provided to the applicant. Not only this, it is also categorically submitted by the respondents in their counter reply that the matter was

under investigation with CVC and after receiving the advise, the matter was considered by the disciplinary authority and the charge sheet was issued to the applicant. Not only this, the respondents have also fail to indicate in their counter reply that whether Sri Meena, the coaching superintendent was produced before the inquiry officer or not. It is also to be pointed out that the applicant has preferred the detailed appeal and the appellate authority has passed the order in a very cryptic manner.

11. Bare reading of the appellate order as well as revisional order, it is clear that the same have not been passed after application of mind and the respondents have just passed the orders in a mechanical manner ignoring Rule 22(2) of Railway Servant(D&A) Rules. The bare perusal of Rule 22 (2) of Railway Servants (D&A) Rules, 1968 reads as under:-

“Rule 22. Consideration of appeal

- (1)
- (2) **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 finding 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."

12. The Hon'ble Apex Court in **Director (Marketing) Indian Oil Corporation Ltd. & another v. Santosh Kumar, 2006 (6) SCALE 358**, the Hon'ble Apex Court

has been pleased to observe as under:-

"11. A perusal of the order passed by the Appellate Authority would only reveal the total non-application of mind by the Appellate Authority. We, therefore, have no other option except to set-aside the order passed by the Disciplinary Authority and the Appellate Authority and remit the matter for fresh proposal to the Disciplinary Authority. The Disciplinary Authority shall consider the detailed representation made by the respondent and also consider the detailed report of the Enquiry Officer and the records placed before him in its proper perspective and decide the matter afresh on merits. The Disciplinary Authority is directed to consider the entire case only on the basis of records already on record. The respondent is not permitted to place any further material or record before the Disciplinary Authority. The order passed by the High Court is set-aside the direction issued by the High Court ordering re-instatement into service with continuity in service and all consequential benefits. The Disciplinary Authority is also directed to dispose of the matter, within three months from the date of receipt of this order, after affording an opportunity to both the parties. The Civil Appeal is disposed of accordingly. No order as to costs."

13. Apart from this, the Hon'ble Apex Court in the case of **Ram Chander Vs. Union of India and others** reported in 1986(2) SLR, 608 also observed that Appellate Authority is under obligation to record reasons for its decision. The Hon'ble Apex Court observed as under:-

“5. To say the least, this is just a mechanical reproduction of the phraseology of R.22(2) of the Railway Servants Rules without any attempt on the part of the Railway Board either to marshal the evidence on record with a view to decide whether the findings arrived at by the disciplinary authority could be sustained or not. There is also no indication that the Railway Board applied its mind as to whether the act of misconduct with which the appellant was charged together with the attendant circumstances and the past record of the appellant were such that he should have been visited with the extreme penalty or removal from service for a single lapse in a span of 24 years of service. Dismissal or removal from service is a matter of grave concern to a civil servant who after such a long period of service, may not deserve such a harsh punishment. There being non-compliance with the requirements of R.22(2) of the Railway Servants Rules, the impugned order passed by the Railway Board is liable to be set aside.

9. These authorities proceed upon the principle 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 affirmation. 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 Central Civil Services (Classification, Control & Appeal) 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.

24. There has been considerable fluctuation of judicial opinion in England as to whether a right of appeal is real a substitute for the insistence upon the requirement of a fair hearing or the observance of natural justice which implies the duty to act judicially. Natural justice does not require that there should be a right of appeal from any decision. This is an inevitable corollary of the fact that there is not right of appeal against a statutory authority unless the statute so provides. Professor H.W.R.Wade in his *Administrative Law*, 5th edn., at p. 487 observed :

"Whether a hearing given on appeal is an acceptable substitute for a hearing not given, or not properly given, before the initial decision is in some cases an arguable question. In principle there ought to be an observance of natural justice equally at both stages.... If natural justice is violated at the first stage, the right of appeal is not so much a true right of appeal as a corrected initial hearing: instead of fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial."

After referring to Megarry, J.'s dictum in a trade union expulsion case holding that, as a general rule, a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in the appellate body, the learned author observes :

"Nevertheless it is always possible that some statutory scheme may imply that the 'appeal' is to be the only hearing necessary."

14. As observed by the Hon'ble Apex Court in the case of State of U.P. Vs. S. K. Sinha 2010 (2) SCC 772 that

"employee should be treated fairly in any disciplinary proceedings." The bare perusal of the paper book, clearly shows that the documents so demanded by the applicant were not provided to him. Apart from this, the witness which was asked by the applicant was also not produced. The order passed by the Appellate Authority is not a speaking order. Under such a circumstances, we are convinced to interfere in the present O.A.

15. Accordingly, the O.A. is allowed. The impugned order dated 24.5.2007 as well as order dated 22.8.2007 are quashed. The applicant is entitled for consequential benefits. No order as to costs.

J. Chandra
(JAYATI CHANDRA)
MEMBER (A)

Navneet Kumar
(NAVNEET KUMAR)
MEMBER (J)

vidya