

Central Administrative Tribunal, Lucknow Bench, Lucknow.

Original Application No. 371/2004

This the 26th day of August, 2009

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

Jagdambika Pratap Singh aged about 44 years son of late Sri Jagdish Singh resident of 1/2/65, Salarpur, Sahadatganj, Faizabad.

Applicant

By Advocate; Sri I.M.Pandey

Versus

1. Union of India through General Manager, Northern Railway, Head Quarter, Baroda House, New Delhi.
2. Senior Divisional Commercial Manager, Northern Railway, Lucknow Division, Hazratganj, Lucknow.
3. Divisional Commercial Manager, Northern Railway, Lucknow Division, Hazratganj, Lucknow.

Respondents

By Advocate; Sri N.K. Agrawal

ORDER (ORAL)

By Hon'ble Ms. Sadhna Srivastava, Member (J)

The applicant seeks quashing of order of punishment dated 29.4.2004 contained as Annexure No.1 passed by respondent No.3 and order dated 1st July 2004 contained as Annexure No.2 passed in appeal (Annexure No.16), confirming the order of disciplinary authority.

2. The facts are that the applicant while working as Booking Clerk and manning the booking counter at Booking office, Gosainganj on 25.9.2002 committed certain irregularities. He was served with the major penalty charge sheet on 26.12.2002 (Annexure 6) for the irregularities. He filed reply to the charge sheet. In due course, the inquiry officer submitted his report on 19.1.2004 holding him guilty of charges. Copy of the inquiry report was served on the applicant. On receipt of inquiry report, the applicant filed representation. The disciplinary authority recorded the punishment order dated 29.4.2004, reducing the pay of the applicant at the minimum in the



pay scale of Rs. 4000-6000 for one year with cumulative effect. As mentioned in the punishment order, the applicant preferred an appeal to the Senior Divisional Commercial Manager (Sr.D.C.M.) Northern Railway, Lucknow on 23.6.2004. The appeal was decided by the respondent No.2 vide order dated 1st July, 2004 as contained in Annexure No.2. The applicant has challenged the impugned order on ^{various} grounds. One of the grounds argued by the applicant is that the appellate order was not passed as mandated by Rule 22 of Railway Servants (Disciplinary and Appeal) Rules, 1968.

3. Heard the counsel for the parties and perused the record of the case.
4. We will first deal with the non-compliance of Rule 22 of Railway Servants (D&A) Rules, 1968. The Rule 22 (2) reads as follows:-

“(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-

- (d) 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;
- (e) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
- (f) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders-
- (iii) confirming, enhancing, reducing or setting aside the penalty; or
- (iv) 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;

The relevant part of appellate order disposing of appeal reads as follows:-

“अपील पढ़ा। कोई नया तथा अन्य अदावत में नहीं है। अपील किना अद्यावत के नियम की जाती है।”



5. The Appellate Authority, as seen above has jumped to the conclusion in a mechanical manner, confirming the order of the Disciplinary Authority without any discussion of evidence on record. However Rule 22(2)(b) of Railway Servants (D&A) Rules, 1968 mandates the appellate authority to give reason as to how and why the findings of the disciplinary authority are warranted by evidence on record. The disciplinary authority is not required by law to give reasons while agreeing with the findings of the Inquiry Officer, but it is mandatory for the appellate authority to apply his mind to the charges, defence raised by the delinquent employee, the evidence on the basis of which the Inquiry Officer has found the charges proved or disproved. The objective behind this rule is obvious. The legislature did not want to leave everything to the judgment of inquiry officer alone. Therefore, it was provided that a senior authority must apply his mind to the facts and evidence and pass a speaking order as to the misconduct or misbehavior alleged against the employee and record a finding affirming or setting aside the conclusion arrived at by the Inquiry Officer. If the appellate authority was also allowed by law like the disciplinary authority to record agreement with the findings of the inquiry officer, the very purpose of law would get defeated. Therefore, we are of the firm opinion that the appellate order in hand has been passed in a routine manner without application of mind.

6. The Apex Court in the case of Ram Chander VS. UOI AIR 1986 SC page 1173 has held that the Appellate Authority has to give his reasons on the three points as mentioned in the Rule.

7. We have gone through the appellate order. There appears to be total non-application of mind in which the points as mentioned in Rule 22 (2)(b) of Railway Servants (D&A) Rules, 1968 have not even been touched not to say of having been considered. In such view of the matter, the order of the appellate authority cannot be upheld. The impugned appellate order dated 1st July, 2004 (Annexure No.2) is therefore, quashed. The matter is remitted back to the appellate authority who is said to be Senior D.C.M. i.e. Respondent No.2 for considering the appeal also giving an opportunity to the applicant to be heard in person and then pass reasoned order in accordance with law as

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provided under Rule 22 of 1968 Rules. Such an order should be passed within a period of 3 months from the date of receipt of copy of this order.

8. The O.A. is disposed of accordingly. No order as to costs.


(Dr. A.K. Mishra)
Member (A)


(Sadhna Srivastava)
Member (J)

HLS/-