CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

LUCKNOW CIRCUIT BENCH

Registration O.A. No.320 of 1989 (L)

Sushil Chandra Agarwal ..... Applicant

Versus

Union of India & Others ..... Opposite Parties.

Hon.Justice Kamleshwar Nath, V.C.
Hon.K.J.Raman, Member (A)

(By Hon.Justice K.Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 is for quashing an order of punishment contained in Annexure-A1 dated 11.9.87 and its confirmation by the appellate order contained in Annexure-A2 dated 27.2.1989.

2. On 1.6.87 the applicant was working as Chief Controller in the office of Divisional Railway Manager, Northern Railway, Lucknow. Train 9 UP used to run between Varanasi and Lucknow via Faizabad and Barabanki. Train 113 UP used to run between Varanasi and Lucknow via Sultanpur. On 1.6.87, 9 UP arriving from Sealdah was late and a question which was to be dealt with by the applicant was whether a slip coach which normally was to be attached to 9 UP at Varanasi, should wait for the arrival of 9 UP and attached thereto, or should be annexed to 113 UP which originated from Varanasi. The slip coach was meant to proceed to Delhi and would have been attached to 83 UP at Lucknow.

3. The applicant directed the slip coach to be attached to 9 UP and not to 113 UP. He was served with

a minor penalty chargesheet dated 1.6.87, Annexure-A3 stating that although the applicant was aware that 9 UP was running two hours late and he ought to have anticipated late running of that train, he should have got it attached to 113 UP so that the slip coach might not have missed connection at Lucknow. The applicant furnished the reply, Annexure-A4 in which he said that the coach in question was a part of 9 UP between Varanasi and Lucknow and had no bearing with 113 UP. It was added that in the past whenever there was a miss connection between 9 UP and 83 UP the coach was always to be attached by 166 UP. It is said that those orders had not been revised or modified.

4. The disciplinary Authority passed the impugned order dated 11.9.87, Annexure-A1 in which he said that he had considered the applicant's reply but the applicant "had not replied to the basic question that the slip coach should have been attached at Varanasi itself. This shows lack of initiative". He therefore awarded the punishment of withholding increment for two years.

5. Annexure-A5 is the applicant's memo of appeal. The appellate authority passed the impugned order, Annexure-A2 stating that the findings of the Inquiry Officer are according to the record but it reduced the punishment to withhold the increment for six months.

6. We have heard the learned counsel for the parties and have gone through the affidavits exchanged between the parties. The learned counsel for the

applicant contends that there were no orders to attach the coach by 113 UP and that since the coach was normally a part of 9 UP, it catered for the passengers who travelled via Faizabad and Barabanki whereas 113 UP travelled between Varanasi and Lucknow via Sultanpur. The up shot is that the passengers who wanted to travel via Faizabad and Barabanki would have been inconvenienced if the coach was attached by 113 UP.

7. It may be that the Disciplinary Authority thought that the applicant lacked initiative inasmuch as he chose to retain the coach for 9 UP rather than attaching it with 113 UP, but the basis of the order is something which is not easily intelligible. We have extracted his findings and it will be noticed that he had simply said that the applicant had not replied to the basic question that the slip coach should have been attached at Varanasi itself. Undoubtedly, the coach was attached at Varanasi and that is what was required to be done. The question was not as to whether it was to be attached somewhere else but whether it was to be attached by 9 UP or 113 UP. The Disciplinary Authority by observing that the applicant did not reply the question that the coach should have been attached at Varanasi has entirely misdirected himself; it is an indication of non application of mind. We are not concerned what the Disciplinary Authority may have had in the back of his mind; what is of importance is the application of his mind, as it appears from the orders passed by him. That is what is meant by the principles of an order to be a speaking order. True enough in a proceeding

for minor punishment, the details associated with a major penalty proceedings are not to be gone through by the Disciplinary Authority; but he has to address himself to the real controversy, bring it out in his order and record a reasoned decision. We are of the opinion that the impugned punishment order lacks these elements and therefore cannot be sustained.

8. Even the appellate order suffers from a similar infirmity.

9. In view of what we have stated above, the impugned penalty order deserves to be quashed. We do not consider it necessary to have the proceedings reopened. In the first instance, the chargesheet speaks of misconduct as contemplated in Rule 3(ii) and 3(iii) of the Railway Servants (Conduct) Rules. Sub Rule (iii) deals with conduct which is unbecoming of a railway servant. It is not shown how the impugned fault of the applicant could be construed as an act unbecoming of a railway servant. Clause (iii) therefore could not have been mixed up with Clause (ii).

10. It also appears to us that the appellate authority thought that even the punishment of withholding two increments was excessive, and he chose to reduce it to six months. We think that the reopening of the case would lead to unnecessary harassment.

11. The petition is allowed and the impugned orders dated 11.9.87, Annexure-A1 and dated 27.2.89, Annexure-A2 are quashed. Parties shall bear their costs.

Member (A) Vice Chairman

Dated the 5th April, 1990.
RKM