

Central Administrative Tribunal, Lucknow Bench, Lucknow
 Original Application No. 520/2010

Reserved on 5.8.2014

Pronounced on 28/08/2014

Hon'ble Sri Navneet Kumar, Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)

N.K.Srivastava, son of late Sri P.N.Srivastava aged about 64 years employed as Section Engineer- Carriage (RDSO) C-3148, Rajajipuram, Lucknow retired on 31.7.2006

Applicant

By Advocate: Sri K.P. Srivastava

Versus

1. Union of India through the Director General, RDSO, Lucknow.
2. Director Carriage (Standards) Disciplinary Authority, RDSO, Lucknow
3. The Executive Director (Carriage)/ The appellate Authority, RDSO, Lucknow.
4. Revisional Authority, Director Administration-III, for Director General, RDSO, Lucknow

Respondents

By Advocate: Sri Narendra Nath

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present Original Application is preferred by the applicant u/s 19 of the AT Act, with the following reliefs:-

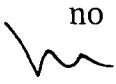
- i) to quash the punishment order of disciplinary authority dated 2.11.2005 order of appellate authority dated 24.3.2006 and the order of revisional authority dated 17.12.2009 and to direct the opposite parties to make payment of Rs. 1,00,000/- to the applicant.
- ii) any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.
- iii) cost of the application be awarded to the applicant.

2. The brief facts of the case are that the applicant was initially appointed in the respondents organizations and while in service, was served with the charge sheet dated 30th April, 2004. On 10.6.2004, the applicant submitted the reply but the disciplinary authority has passed an order on 2.11.2004 whereby reduction to the lowest stage in the time scale

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of pay for a period of one year without cumulative effect was issued and it is also submitted by the learned counsel for the applicant that the applicant has also superannuated on 31.7.2006. After receipt of the punishment order, the applicant submitted an appeal to the appellate authority and the appellate authority has rejected the appeal of the applicant. The learned counsel for the applicant has categorically stated that the rejection of appeal is bad because the same is a non-speaking and non-reasoned order and the appellate authority has not even considered the facts and grounds taken in the appeal. Not only this, the learned counsel for the applicant also pointed out that after rejection of the appeal he has also preferred the revision and the revisional authority has also passed an order on 9.12.2009/17.12.2009. The learned counsel for the applicant has also submitted that the said revisional order is also a non-speaking order because the revisional authority has also not gone through the contents of the revision petition as well as the grounds taken in the revision petition.

3. Learned counsel appearing on behalf of the respondents filed their reply and through reply, it is indicated by the respondents that the punishment, appellate as well as revisional order is passed after due consideration of facts which were available on records. Apart from this, learned counsel for respondents has also taken a ground that the punishment order was passed in the year 2004 and the present O.A. is preferred by the applicant in the year 2010, as such the present O.A. is barred by limitation and the applicant has not filed any application for condonation of delay in condoning the delay. Not only this, it is also argued by the learned counsel for the respondents that disciplinary authority duly considered the reply submitted by the applicant and in view of the facts and circumstances, the minor penalty was imposed upon the applicant for reduction to the lowest stage in the time scale of pay for a period of one year without cumulative effect. On behalf of the respondents it is also argued that the interference in the disciplinary matters is not called for as there is no procedural irregularities in conducting the enquiry, therefore, no



interference is required by this Tribunal and the O.A. is liable to be dismissed.

4. Sri K.P.Srivastava, learned counsel for applicant has filed Rejoinder Reply and through Rejoinder reply, mostly the averments made in the O.A. are reiterated and denied the contents made in the counter reply. It is once again vehemently argued by the learned counsel for applicant that both appellate as well as revisional order are non-speaking order and as per the proposition laid down by the Hon'ble Apex Court in the case of **Ram Chandra Vs. Union of India and others reported in 1986 2 SLR, 608** that "The appellate authority is under obligation to record reasons for its decision."

5. Heard the learned counsel for the parties and perused the record.

6. Admittedly, the applicant was appointed in the respondents organization in the year 1965 as Tracer and subsequently, he was promoted as Senior Design Assistant in grade Rs. 5500-9000/- . During the said period, the applicant was charge sheeted and in the said charge sheet, it is indicated that the applicant has irresponsible behavior in writing personal grievance on the official file as such an explanation was called from him. The applicant submitted a letter in regard to change of disciplinary authority and alleged biasness against the said charge. Apart from this, it is also requested for granting personal hearing. The said request was communicated by the applicant through letter dated 6.5.2004 and when nothing was heard, the applicant submitted his reply to the authorities indicating therein his stand. The disciplinary authority has passed an order through which an order of reduction to the lowest stage in the time scale of pay for a period of one year without cumulative effect was issued and the applicant was advised to submit the appeal to the appellate authority which he submitted on 14.12.2004. The applicant in his appeal has categorically stated number of facts and also raised number of grounds. After the receipt of the appeal, the appellate authority rejected the appeal by stating as under:-

"I have carefully considered the appeal put up by you in the subject case. I find no justification for any downward revision of the penalty imposed on you."

7. The applicant was not satisfied with the decision of the appellate authority preferred the revision before the revisional authority on 11.5.2005 and when the same was not decided, he submitted number of reminders and finally the revisional authority vide order dated 9.12.2009/17.12.2009 rejected the revision of the applicant on the ground that the revision petition preferred by the applicant was not within the period stipulated in Railway Servants (Disciplinary and Appeal) Rules, 1968, as such it was rejected.

8. 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. 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.**

9. The appellate authority is required to apply its mind, thereafter should have passed an order indicating the reasons of rejecting the appeal of the employee which he fail to do so while passing the appellate order.

10-. The Apex Court in **Director (Marketing) Indian Oil Corporation Ltd. & another v. Santosh Kumar, 2006 (6) SCALE 358** has been pleased to observe that:-

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.

11. Apart from this, the Hon'ble Apex Court in the case of **Ram Chander Vs. Union of India and others (supra)** 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 marshall 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 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 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."

12. As observed by the Hon'ble Apex Court in the case of Ram Chandra and Director (Marketing) Indian Oil Corporation Ltd (supra), it has been observed that the appellate authority is under obligation to record reason to its decision.

13. The bare perusal of the entire order shows that the appellate authority and revisional authority has not applied their mind and they have not discussed the grounds taken in the appeal as such it requires interference by the Tribunal.

14. Considering the submissions made by the learned counsel for the parties and observations of the Hon'ble Apex Court, we are of the considered view that the order passed by the appellate authority is a non-speaking order and has not been passed in terms of Rule 22(2) of the Railway Servants (D&A) Rules, 1968. Since the applicant has already superannuated on 31.7.2006, as such there would be no use to remand back the matter. As such the orders dated 24.3.2005 appellate order as well as 9.12.2009/17.12.2009 revisional order are quashed.

15. Accordingly, the O.A. is allowed. The consequential benefits will follow. No order as to costs.

J. Chandra
(JAYATI CHANDRA)
MEMBER (A)

HLS/-

V.K. Agrawal
(NAVNEET KUMAR)
MEMBER (J)