CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH

O.A. No. 385/1992

R.P. Basu. .... Applicant.

V/s.

Union of India & Ors. .... Respondents.

J U D G M E N T

Per: Hon'ble Mr.D.R.K. Saxena, Judicial Member.

I had the privilege of going through the judgment prepared by Brother Seth. The facts of the case are already given therein and they need not to be repeated. However, I want to add my own reasons for reaching the conclusion slightly different.

2. The impugned order of punishment passed on 31-12-91 by the punishing authority against the applicant is as follows:-

> "I have carefully considered the inquiry report and findings of the Enquiry Officer and all other documentary evidence available on record and do not agree with the findings of the Enquiry Officer and hold you guilty of the following charges :-
>
> > You have not been readily available at BEG while manning 29 UP when 65 UP got involved in an accident at BEG on 10-5-1990 and could be traced out with great difficulty. I, therefore, hold you guilty of the above charges levelled against you and have decided

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to impose upon you the penalty of reduction to the lower stage in the same time scale. You are, therefore, reduced from the stage of Rs. 1760/- to the stage of Rs. 1400/- in the scale of Rs. 1100/- 2300/- you are holding at present for a period of 5 (five) years from the date of this order with recurrent effect.

2. Under Rule - 18 of the Railway Servants (Discipline and Appeal) Rules-1968 an appeal against these orders lies to ADRM/NR/MB provided :-

(i) the appeal is submitted within 45 days from the date you receive the order, and,

(ii) the appeal does not contain improper or disrespectful language.

3. Copy of E.O. is enclosed.

4. Please acknowledge the receipt of this letter."

The first question arises whether this order of punishment can be categorized as major penalty. The second question is, if this punishment comes within the scope of major penalty, whether the procedure adopted by the punishing authority was legal or based on the principles of natural justice.

3. The perusal of the order of punishment as reproduced above, reveals the following points:-

(i) Reduction to the lower stage in the same time scale.

(ii) Reduction from the stage of Rs.1760-00 to the stage of Rs. 1400-00 in the scale

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of Rs. 1100-00 - 2300-00.

(iii) The reduction is for a period of five years.

(iv) It has recurrent effect.

4. Rule 6 of the Railway Servants (Discipline and Appeal) Rules, 1968 enumerates minor and major penalties and reduction to the lower stage in the time-scale of pay for a specified period, is included in the major penalties. It reads -

"6. Penalties:

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Railway Servant namely :-

Minor Penalties

(i) Censure;

(ii) Withholding of his promotion for a specified period;

(iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders;

(iii)(a) Withholding of the privilege of passes or Privilege Ticket- orders or both;

(iv) Withholding of increments of pay for a specified period with further directions as to whether on the expiry of such period this will or will not have the effect of postponing the future increments of his pay;

Major Penalties

(v) Reduction to the lower stage in the time scale of pay for a specified period, with further directions as to whether on the expiry of such period, the reduction

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will or will not have the effect of postponing the future increments of his pay;

(vi) Reduction to a lower time scale of pay, grade, post or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the Railway Servant was reduced and his seniority and pay on such restoration to that grade, post or service;

(vii) Compulsory retirement;

(viii) Removal from service which shall not be a disqualification for future employment under the Government or Railway Administration;

(ix) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government or Railway Administration.

Provided that in case of persons found guilty of any act or omission which resulted or would have ordinarily, resulted in collisions of railway trains, one of the penalties specified in clauses (viii) and (ix) shall, ordinarily be imposed and in cases of passing Railway signals at danger, one of the penalties specified in clauses (v) to (ix) shall, ordinarily, be imposed and where such penalty is not imposed, the reasons therefore shall be recorded in writing.

xxxxx xxxxxx xxxxxx

xxxxx xxxxxx xxxxxx "

5. In this way, the impugned order of punishment recorded by the punishing authority clearly falls within clause (v) of Rule 6 and thus it is a case of major penalty. Apart from this statutory position, the point whether the reduction to the lower stage

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with postponement of future increments amounts major penalty, was considered by the Hon'ble Supreme Court in the case Kulwant Singh Gill V/s. State of Punjab, 1990(3) All India Services Law Journal, 135, and held that withholding of increments for two years with cumulative effect as penalty, would indisputably mean that the two increments earned by the employee were cut off as a measure of penalty for ever in his upward march of earning higher scale of pay.

6. The Allahabad High Court in the case of Sadanand Pandey V/s. Chief Secretary to Government of Uttar Pradesh and Ors. (1993) 1 UPLBEC 83 also held that withholding of one increment of pay permanently, did amount to imposition of major punishment. In the present case, the applicant's pay has been reduced from Rs. 1760/- to 1400/- for five years with recurrent effect. It means that this reduction of Rs. 360/- in pay shall continue for ever. Thus the impugned punishment awarded to the applicant, is major penalty according to Rule 6 of the Railway Servants (Discipline and Appeal) Rules, 1968, and according to the interpretation given by the Supreme Court and Allahabad High Court in the cases supra.

7. Now we would consider whether the procedure of major penalty has been observed before passing the

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order of punishment. The Enquiry Officer did not hold the applicant guilty of the charge because there was no reliable and unimpeachable evidence in support thereof. The punishing authority, however, did not agree with this finding of enquiry officer and held that the charge was established. The punishing authority may agree or disagree with the conclusions arrived at by the enquiry officer but in the case of disagreement, a reasoned order ought to have been written. This view was expressed in the case Union of India V/s. Mohd. Ramzan Khan, AIR 1991 SC 471. The punishing authority wrote no order and gave no reasons as to why he was disagreeing with the enquiry officer. The concerned punishing authority also failed to give the copies of the enquiry report and reasons of disagreement to the applicant before passing the impugned order. The copy of the report of enquiry officer alone was given along with the order of punishment and thus an unique procedure unknown in the service jurisprudence, was adopted. Not only this, no second show cause notice which is mandatory in the case of major penalty, was given. The applicant was thereby deprived of a valuable right of defence. This view was taken in the case of Mohd. Ramzan Khan's supra. There can be no dispute

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that non-supply of the copy of the report of enquiry officer when he did not hold the delinquent employee guilty, does not cause any prejudice if the same is accepted by the disciplinary authority but prejudice is definitely caused when the enquiry report is not accepted without recording reasons and no copy of such order is given. This act of the disciplinary authority is arbitrary and against the principles of natural justice.

8. The law laid down in Ramzan Khan's case is that in a case of major penalty, second show cause notice shall be given. The effect of the judgment of Ramzan Khan case shall be prospective as was clarified by the Supreme Court in the case Managing Director ECIL V/s. V.B. Karuakar, 1994 Lab.I.C 762. The decision in Ramzan Khan's case was delivered on 20th November, 1990 whereas the punishment order in this case, was passed on 31st of December, 1991 and order in appeal on 3.6.92. Thus the applicability of the law laid down in Ramzan Khan's case, can not be denied.

9. The charge levelled against the applicant, was that he was sleeping inside I class compartment. Another part of the charge was that 29 UP train was detained for different periods of time on different

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railway stations and the applicant was totally unaware of the detention of train. The charge which was found established by the punishing authority, was that the applicant was not readily available at BEG and could be traced out with great difficulty. In the original charge, there was categorical assertion of the applicant having been found sleeping and thus there was an element of derilection of duty but the substituted charge simply speaks of the applicant being not readily available. It is, therefore, substantially altered. The punishing authority cannot substitute or amend the charge without affording an opportunity to the delinquent employee. Also the charge which was not subject-matter of enquiry, cannot be made the basis of punishment. It violates the principle of natural justice. The analysis made above, clearly shows that the procedure laid down for the major penalty has not been followed at several stages. It is not such a case in which there is only one defect of not giving second show cause notice because of a different legal position prevailing from before, and may now be allowed to be remadied by remanding the case for proceeding further from that stage; but there is total and flagrant violation at several stages causing substantial prejudice to the

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applicant, and thus the impugned order and appellate order are illegal ab-initio. Thus no remedial steps as argued and suggested above, can be allowed to be undertaken now by the disciplinary authorities.

10. The Supreme Court in State Bank of India & Ors. V/s. G.C.Agrawal & Ors., (1993) 1 SCC 13, lays down the law that disciplinary authority while imposing penalties major or minor, can not act on material which is neither supplied nor shown to the delinquent. Imposition of punishment on an employee on material which is not only supplied but not disclosed to him, can not be countenanced. Procedural fairness is asmuch essence of right and liberty as the substantive law itself. In view of this legal position, it would not be just and proper to allow the disciplinary authorit take up the matter afresh from the stage of second show cause notice. I hold the view that there had n been procedural fairness in this case and therefore, the view of the Brother Seth that the case be reman for the purpose, would not be proper and just. Th result is that the impugned orders of punishment a appeal are held illegal, unjust and based on viol of principles of natural justice and for that rea

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they are not sustainable in law. Accordirgly they are quashed.

(Dr.R.K. Saxena)
Member(J)

vtc.