

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHO.A.NO.: 335 OF 2006[Patna, this Wednesday, the 8th Day of August, 2007]C O R A M

HON'BLE MR. JUSTICE P.K.SINHA, VICE-CHAIRMAN.

HON'BLE MR. AMIT KUSHARI, MEMBER [ADMN.]

Bijoy Kumar Mandal, S/o Shri Satya Narayan Mandal, resident of village – Naya Gaon, P.O.& P.S.: Jamalpur, District – Munger.APPLICANT.
By Advocate :- Shri S.N.Yadav.

Vs.

1. Union of India through the General Manager, Eastern Railway, 17, Netaji Subhash Road, Kolkata -700 001.
2. The Chief Mechanical Engineer & Reviewing Authority, Eastern Railway, 17, Netaji Subhash Road, Kolkata- 700 001.
3. The Appellate Authority-cum-Chief Works Manager, Eastern Railway Workshop, Jamalpur, Munger.
4. The Deputy Chief Mechanical Engineer [Production], Eastern Railway Workshop, Jamalpur, Munger.RESPONDENTS.

By Advocate :- Shri Mukund Jee, SC

O R D E R [ORAL]

Justice P. K. Sinha, V.C.:- The applicant while posted as Section Engineer, Heat Treatment Shop, Eastern Railway Workshop at Jamalpur was nominated as Honorary Cinema Secretary of the National Institute at Jamalpur which is run under its own bye-laws. Because of some deficit in the accounts, the applicant was served with charge memo dated 19.09.2002 vide Annexure-A/3, on the ground that he had failed to submit details of pending dues and also had failed to process their clearance as he was instructed and, subsequently, from the list submitted by the Honorary General Secretary of National Institute it appeared that there was a deficit of over Rs.2 Lakhs due to careless and



irresponsible working of the applicant which was construed as a misconduct and a departmental proceeding was initiated. Similarly, memo was issued against another employee, namely, Sahdeo Mandal who was Assistant Cinema Secretary. On completion of the inquiry the applicant was sent a copy of the inquiry report vide letter dated 20.09.2003 [Annexure-A/4] calling for his explanation. Annexure-A/5 is the order of punishment under which his next increment has been withheld for a period of three years, non-cumulative. A formal order was sent in proforma, vide Annexure-A/5.

2. The applicant thereafter filed appeal which was disposed of by the appellate authority with following order :-

"Punishment reduced to one year's increment stoppage."

3. The applicant thereafter filed an application to the Chief Mechanical Engineer, the Revisional Authority vide Annexure-A/7. Though in reference word 'review' has been mentioned but both the sides have agreed that this was an application for revision under Rule 25 of the 'Railway Servants [Discipline & Appeal] Rules, 1968 [hereinafter referred to as 'the 1968 Rules']. Annexure-A/8 is the order of the Revisional Authority, though he had mentioned himself to be the Reviewing Authority, by which he enhanced the punishment so imposed by the Appellate Authority, to stoppage of next increment by two years, non-cumulative.

4. This application has been contested on various points as submitted by the learned counsel for the applicant, such as that the punishing authority was named as the sole prosecution witness, or that for working as Honorary Secretary at National Institute which was run by its bye-laws, the



applicant could not have been proceeded against under the 1968 Rules, or that the Inquiry Officer had given no reason as to why he came to the conclusion that charge no.2 was partly substantiated against the applicant along with other office bearers of the Institute, etc. The learned counsel also disputed the method of accounting in calculating the deficit under which the bank deposit of the Institute were taken into consideration along with the dues to the distributors, I.T. Dues and other liabilities. Learned counsel submitted that this accounting method itself is faulty in which various expenses were not taken into account.

5. Presently, we do not propose to go into the merits of the case except on two legal grounds as argued by the learned counsel for the applicant on which this order needs to be passed.

6. The specific case of the applicant is that the Revisional Authority had enhanced the punishment without giving any opportunity to the applicant to submit an explanation as to why punishment should not be enhanced. The respondents in the written statement have contended that since the Revisional Authority had considered the entire record of the case and had given an order which would show application of mind, he was not obliged to issue any show cause notice to the applicant against the enhancement of punishment.

7. Proviso to sub-rule [1] of Rule 25 of the 1968 Rules, runs as follows :-

“Provided that-

[a] no order imposing or enhancing any penalty shall be



made by any revising authority unless the Railway servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed;"

Therefore, to give such an opportunity to the applicant before enhancing the punishment is a statutory obligation conferred upon the Revisional Authority, hence the respondents cannot be heard to argue that he was not obliged to do so.

For this reason, the order at Annexure-A/8 dated 25.01.2006 has to be quashed.

8. Coming back to the order of the appellate authority, the Tribunal specifically asked the learned counsel for the applicant as to whether he challenges the order of the appellate authority also who, in fact, had reduced the punishment, the learned counsel submitted that the applicant indeed so wanted because, on merits, his claim was that under law and rules no punishment could have been awarded to him whatsoever.

9. In view of such submissions, we now examine the legality of the order of the appellate authority. We have already seen that this order was in one sentence. Rule 22 of the 1968 Rules relates to consideration of the appeal which may be reproduced :

"22. Consideration of appeal :

[2] In the case of an appeal against an order imposing any of the penalties 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 findings of the disciplinary authority are warranted by the evidence on the record; and

[c] whether the penalty or the enhancing 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 enhance the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case.”

10. In view of the aforesaid rule it was argued by the learned counsel for the applicant that even in such cases in which the appellate authority adopts the reasonings of the disciplinary authority, in the case of an employee governed under the 1968 Rules, he has to consider all the three points as enumerated under sub-rule 2 of Rule 22 of the 1968 Rules. The learned counsel for the applicant has relied upon a decision of the Apex Court in the case of **Ram Chander Vs. Union of India; AIR 1986 SC 1173**. What has been held by their Lordships in this decision, is as follows :-

“Where in appeal under R[ii] against the penalty of removal under R.6[viii] imposed by the General Manager against a railway servant, the Railway Board dismissed the appeal by an order which was just a mechanical reproduction of the phraseology of R.22[2] without any attempt on the part of the Railway Board to marshal the evidence on record with a view to decide about the sustainability of the findings recorded by the disciplinary authority and, further, in the order itself



there was no indication that the Railway Board applied its mind as to whether the act of misconduct with which the railway servant concerned [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 of removal from service for a single lapse during the period of 24 years of his service, there being non compliance with the requirements of R.22[2], the order passed by the Railway Board was illegal and must be set-aside.

"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. But, 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. 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.

"It is of utmost importance after the Forty Second Amendment as interpreted by the majority in **Tulsiram Patel's case [(1985) 3 SCC 398]** that the Appellate Authority must not only give a hearing to the Govt. servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. Reasoned decision by Tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard

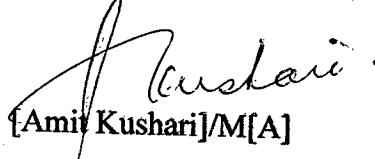


and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given.”

11. From the order of the Appellate Authority it is clear that the appellate authority has failed to consider the appeal in accordance with Rule 22 aforesaid. Therefore, the order of the Appellate Authority has also to be quashed.

12. In the result, the orders of the Appellate Authority as well of the Revisional Authority which are at Annexures—A/6 & A/8, are hereby quashed. The matter is remanded back to the appellate authority to reconsider the appeal of the delinquent employee in accordance with Rule 22 of the 1968 Rules, and record a reasoned order thereafter within a period of three months of receipt of a copy of this order. Before deciding the appeal he will also give an opportunity to the applicant to be heard in person.

Accordingly, this application is disposed of. No costs.



[Amit Kushari]/M[A]



[P.K. Sinha]/VC

skj.