

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

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Original Application No. 908/89

Yogesh Kumar Singh ... Applicant

v/s

Union of India & Ors. ... Respondents

CORAM : Hon'ble Vice-Chairman, Shri U.C.Srivastava
Hon'ble Member (A), Shri M.Y.Priolkar

Appearances:

Mr. M.S.Ramamurthy, Advocate
for the applicant and
Mr. P.M.A.Nair, Advocate
for the respondents.

ORAL JUDGEMENT: Dated : 19.8.1991

(Per. M.Y.Priolkar, Member (A))

This application is directed against the order dated 26.10.1988 passed by the 2nd Respondent imposing the penalty of reduction from the post of Senior T.T.E. in the Scale of Rs.1200-2040 (RPS) to the post of Ticket Collector in the Scale Rs.950-1500 (RPS) on pay of Rs.950/- p.m. for a period of three years with the effect of postponing future increments and the order dated 7.9.1989 passed by the 3rd respondent, in appeal, confirming the said order dated 26.10.1988. Although a number of grounds have been urged in the application in support of the reliefs prayed, after hearing the learned counsel of both sides, we are of the view that this application deserves to succeed on the short ground alone of non-observance of Rule 25 of the Railway Servants Discipline and Appeal Rules, 1968.

2. The relevant portion of Rule 25 of the Railway Servants Discipline & Appeal Rules, 1968 reads as follows:-

"25. Revision - (1) Notwithstanding anything contained in these rules -

- (i) the President or
- (ii) the Railway Board, or
- (iii) the General Manager of a Zonal Railway or an authority of that status in any other Railway unit or administration, in the case of a Railway Servant under his or its control, or
- (iv) the appellate authority not below the rank of a Deputy Head of the Department or a Divisional Superintendent in cases where no appeal has been preferred, or
- (v) any other authority not below the rank of a Deputy Head of Department or a Divisional Superintendent, in the case of a Railway servant serving under its control;

May at any time, either on his or its own motion or otherwise, call for the records of any inquiry and revise any order made under these rules or under the rules repealed by rule 29 and may, after consultation with the Commission where such consultation is necessary -

- (a) confirm, modify or set aside the order; or
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
- (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or
- (d) pass such other order as it may deem fit."

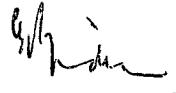
The proviso to this Rule clearly lays down that "no order imposing or enhancing any penalty shall be made by any revising authority unless the railway servant has been given reasonable opportunity of making a representation against the penalty proposed." Admittedly the penalty of withholding of privilege of one set of pass had been imposed on the applicant by the disciplinary authority. But the Senior Divisional Commercial Superintendent

purporting to act as revising authority, by order dated 26.10.1988 enhanced the penalty and reduced the applicant to the post of TC in the lower scale on pay of Rs.950/- p.m. for a period of three years with the effect of postponing future increments. Before enhancing the penalty a show cause notice dated 16.2.88 was served on the applicant which merely stated that the punishment already awarded was inadequate and this penalty was proposed to be enhanced to one of the major penalties under Rule 6(v) to (ix) of the Railway Servants (D&A) Rules, 1968. Not only no reason has been given for disagreeing with the penalty imposed by the disciplinary authority but even the specific higher penalty which was proposed to be imposed by the revision authority has not been mentioned in this show cause notice. In our view, therefore, this notice cannot be considered to be one which is obligatory under proviso 'a' of Rule 25 of the Railway Servants (L&A) Rules to be given to the railway servant so that he has a reasonable opportunity of making representation against the proposed penalty. On this ground alone the application deserves to succeed.

3. In addition, it is also admitted that the copy of the enquiry officer's report was furnished to the applicant along with the order imposing the enhanced punishment. As held by the Supreme Court in the case of Union of India & Ors. v. Mohā. Ramzan Khan, AIR 1991 SC 471, in all cases where enquiries are held a copy of the enquiry report should be furnished to the employee along with an intimation to him as to the penalty proposed to be levied so that he has the opportunity

of making a representation against the proposed penalty. Non-compliance with this will amount to violation of principles of natural justice.

4. On both these grounds we set aside the order dated 26.10.1988 of the Senior Divisional Commercial Superintendent imposing the enhanced penalty on the applicant as also the appellate authority's order dated 7.9.1989 confirming the said order dated 26.10.1988. There shall be no order as to costs. The respondents shall however have the liberty to proceed with this disciplinary case if they so wish, from the point the illegality has occurred.



(M.Y. Priolkar)
Member (A)



(U.C. Srivastava)
Vice-Chairman