

CENTRAL ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

OA No.579/1998

Coram: Hon'ble Mrs. Shanta Shastry - Member (A)
Hon'ble Mr. Shanker Raju - Member (J)

Mumbai, dated this the 20th day of June, 2002

Mangesh Khatu
Electrical Chargeman
assenger Reservation System
Booking Office at Bombay Central
on Western Railway, Mumbai .. Applicant

(Shri R.Ramamurthy, Advocate)

versus

Union of India, through
1. General Manager
Western Railway, Churchgate, Mumbai
2. Divisional Electrical Engineer(G)
Western Railway, Mumbai Central
3. Assistant Electrical Engineer(Power)
Western Railway, Mumbai Central
4. Chief Electrical Foreman(RAC)
Western Railway, Mumbai Central .. Respondents

(Shri V.S. Masurkar, Advocate)

ORDER (oral)

Shri Shanker Raju, Member(J)

Applicant impugns respondents' minor penalty of censure dated 9.10.96 as well as appellate order dated 5.11.96, upholding the punishment order and has sought all consequential benefits, including treatment of suspension period from 28.3.96 to 23.4.96 as spent on duty for all practical purposes.

2. Applicant who was working as A.C. Power House at PRS, Mumbai Central on the allegation that he has disallowed entry to ACM (R) to pass through the Power Room and also misbehaved with him and served upon a minor penalty chargesheet. Applicant preferred his representation and was placed under suspension on 28.3.96 and was re-instated on 23.4.96. Disciplinaty Authority by an order dated 9.10.96, after according a personal hearing to the applicant, though warned him to be more careful in future, in the format of the order imposed a punishment of censure against which an appeal was preferred, which was turned down on 22.7.97, giving rise to the present OA.

3. Learned counsel for the applicant has assailed the impugned order on the ground that despite treating the period of suspension as spent on duty, he has not been disbursed the difference of salary till date.

4. It is contended that after being satisfied with the explanation tendered by the applicant to the disciplinary authority he has been warned to be more careful in future which is not a punishment as envisaged under Rule 6 of the Railway Servants (Discipline & Appeal) Rules, 1968, but yet the same has been treated as a censure. He placed reliance on a Railway Board's letter dated 11.1.57 to contend that a warning does not amount to a formal punishment of censure. By resorting to rule 11 (i) (a) of the Rules ibid it is contended that it is mandated upon the disciplinary authority to record a finding on each imputation of misconduct and also stated that as per Board's letter dated 17.2.86 even in a minor penalty brief reasons are to be communicated. In this backdrop it is stated that as the order of the disciplinary authority, imposing the punishment is passed without recording any reason the same is not legally sustainable.

5. It is also stated that the applicant having regard to the fact that he has not stopped any entry and rather ACM (R) who tried to get entry has not disclosed his identity preferred a detailed appeal before the appellate authority and had also requested for a personal hearing. The same has not been afforded to him. By drawing our attention to Rule 24 it is stated that in the event a personal hearing is asked for the same should not be denied to a delinquent official and more particularly in the present case when the appellate authority

has considered extraneous material it was necessary and warranted in the circumstances. By denying the same applicant has been greatly prejudiced.

6. It is further stated that the appellate authority has gone beyond the scope of the allegations and in his order he has stated that there was another person present, i.e., CRI, which weighed heavily in his mind to uphold the punishment, but this matter has not been put to the applicant which has deprived him a reasonable opportunity to rebut the same. It is lastly stated that the order passed by the appellate authority is not a reasoned order.

7. On the other hand, respondents' counsel denied the contentions and stated that though the reference to the warning is only part of the reasons recorded but as a minor penalty chargehseet was served upon the applicant he has been imposed a minor penalty of censure. It is further stated that the period of suspension has been treated as spent on duty by letter dated 22.10.96 which was acknowledged by the applicant. According to him, as per Rule 24 (1) personal hearing is not required in case of minor penalty but simultaneously maintained that to grant personal hearing is the discretion of the appellate authority. As he has not found any justification to grant the same applicant cannot claim it as a matter of right.

8. It is further stated that applicant has committed a grave misconduct by not allowing entry to a Senior Officer, which shows his negligence and dereliction in performance of duties for which the penalty imposed is commensurate with the misconduct.

9. We have heard the learned counsel for the parties and perused the material on record. In so far as the grievance of the applicant for not deciding the suspension period, the same has been redressed by the respondents by their letter dated 22.10.96, treating the period of suspension as spent on duty, which has been acknowledged by the applicant. Hence this relief has become infructuous. However, the contention that the difference of salary has not been paid, the respondents should take immediate steps to pay to the applicant in accordance with rules his legitimate dues. Regarding the punishment imposed upon the applicant we find that a notice for minor penalty was served upon the applicant on 16.7.96, which culminated into a reasoned order, whereby after going through the defence and finding that no witness was mentioned in the case the disciplinary authority has only issued a warning to the applicant to be more careful in future. As a warning as per Railway Board's letter ibid is not a punishment the reference in the form of a penalty to a minor penalty of censure is not well founded and is not sustainable. We hold that having warned the applicant to be more careful in future the same has not been entered in the confidential report of the applicant which has not forthcoming from the respondents despite penalty, cannot be treated as a censure.

10. As regards the issue of not recording reasons by the disciplinary authority Rule 11 (1) (d) readwith the circular of 1986 ibid mandates the disciplinary authority to give brief reaons in support of the order passed even in case of minor penalty. As no reason has been recorded the order is contrary to the rules and the letter of the Railway Board. Being a non-speaking order the same cannot be sustained.

11. In the appellate order respondents have taken an extraneous matter by referring to the fact that one more witness i.e., CRI was present when ACM (R) was not given entry. The aforesaid fact has not been incorporated in the memorandum of minor penalty as such the applicant has been deprived of a reasonable opportunity to rebut the same. In this view of the matter the appellate order too cannot be sustained in law. Moreover, as provided under Rule 24 and having regard to the fact that the applicant has prayed for a personal hearing specifically in his appellate memorandum the same has not been accorded to him without stating any justification or reasons. As per respondents' reply such a hearing is discretionary but the discretion has to be exercised judicially. Applicant has sought personal hearing to explain mitigating circumstances under which he denied entry. As the officer has not disclosed his identity applicant has not allowed him entry. In this view of the matter and more particularly when the appellate authority has taken into consideration extraneous matter the discretion exercised is not justifiable and the applicant should have been accorded a personal hearing. This renders the appellate order as not sustainable.

12. In the result and having regard to the reasons recorded above, the OA is allowed. The impugned order of minor penalty as well as the appellate order are quashed and set aside. Respondents are directed to pay to the applicant within two months from the date of receipt of a copy of this order, in pursuance of their own order dated 22.10.96, treating the period of suspension as spent on duty, the difference of pay and allowances in accordance with law. No costs.

S. Raju
(Shanker Raju)
Member (J)

'San.'

Sh. Shanta Shastray
(Smt. Shanta Shastray)
Member (A)