

Central Administrative Tribunal
Mumbai Bench

OA No. 597/1998

Mumbai this the 17th day of June, 2002.

Hon'ble Mrs. Shanta Shastri, Member (Adminv)
Hon'ble Mr. Shanker Raju, Member (Judl.)

Chandrakant Yeshwant Salvi,
(Ex-Weigher Group 'C'),
Wadi Bundar, Central Railway,
R/o 1/2, Vijay Nagar,
Bandrekar Wadi,
Jogewari (E), Mumbai-400060. -Applicant

(By Advocate Shri S.N. Pillai)

-Versus-

1. Union of India through,
The General Manager,
Central Railway,
C.S.I. Mumbai-400001.
 2. Sr. Divisional Commercial
Manager, Central Railway,
C.S.I., Mumbai-400001.
 3. Addl. Divisional Railway Manager,
C.S.I. Mumbai-400001.
 4. Area Manager, Wadi Bundar,
Central Railway, Mumbai.
 5. S.V. Agnihotri,
Inquiry Officer through
General Manager,
Central Railway, C.S.I.
Mumbai-400001
- Respondents

(By Advocate Shri V.S. Masurkar)

ORDER (ORAL)

Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 10.4.97, removing him from service as well as appellate order dated 15.12.97, upholding the punishment. He seeks his re-instatement with all consequential benefits.

2. Applicant while functioning as Weigher under Goods Inspector (Outward) during the period from 1990 to November, 1993 has been proceeded against for the following charges:

ARTICLE-1

that while unloading the material from truck No. MKL-5229 which came twice on 12.2.93, he recorded fictitious readings in Forwarding Note for the timings of crane.

ARTICLE-11

that he failed to obtain signature of sender or its Agent on the Forwarding Note for the corrections/additions appearing thereon before recording the details viz. descriptions, No. of packages and quantity on the reverse of the Forwarding Note r/w RRs (detailed below):-

A-282301, 3, 6 to 10, 12 to 16, 22, 27, 34, 38 to 42, 45 to 48.
A-280/11, 13, 19 to 25, 28 to 34, 36 to 37, 42 to 52, 64, 66 to 67, 70 to 73, 76 to 82, 86 to 93 and 95 to 800.

By the above act, he failed to maintain absolute integrity and devotion to duty and acted in a manner of unbecoming of Railway servant thereby contravened Rule No. 3(1)(i) (ii) & (iii) of Railway Servant (Conduct) Rule, 1966.

3. After the examination of the witnesses and completion of the enquiry, enquiry officer through his report dated 30.9.94 held the applicant guilty of the charges. Applicant preferred his representation against the finding on 5.10.96.

4. The disciplinary authority imposed the punishment of removal from service against which an appeal preferred by the applicant was rejected vide order dated 15.12.97, giving rise to the present UA.

5. The learned counsel for the applicant Sh. Pillai though assailed the impugned orders on various legal infirmities, including perverse finding and placed reliance on a decision of the Apex Court in Kuldeep Singh v. Commissioner of Police, JJ 1998 (8) SC 603 to contend that no reasonable prudent man would have come to such a conclusion. It is stated that the misconduct was of very petty nature which could not have warranted extreme punishment.

6. At the outset, the learned counsel Shri Pillai stated that the order of the disciplinary authority as well as appellate authority are not reasoned orders. Despite realising

several contentions the disciplinary authority has not even agreed with the findings of the enquiry officer in its order yet imposed a punishment without recording reasons which cannot be sustained in view of Railway Board's letters issued in 1978 and 1982 by way of which the disciplinary authority is mandated to record reasons in support of the order.

7. It is further stated that the appellate authority^{order} is also not legally sustainable as the same is absolutely bald, without reasons and has not at all gone into the contentions of the applicant as well as the proportionality of punishment.

8. Learned counsel for the respondents denied the contentions and stated that if the disciplinary authority agrees with the finding of the enquiry officer it is not obligatory upon him to record reasons. By referring to the enquiry report it is contended that sufficient reasons have been recorded by the enquiry officer by holding the applicant guilty of the charge and once the same is agreed to the order does not suffer from any legal infirmity. In so far as appellate order is concerned, it is stated that the applicant in his appeal has not taken any fresh grounds or legal pleas which could have obligated the authority to record reasons or to controvert. It is stated there is no such requirement under the rules.

9. As on perversity and no evidence it is stated that there is some evidence in support of the allegations brought during the course of the disciplinary proceedings and as the present case is not of no evidence and the finding is not perverse it is not open for the tribunal to reappraise the

evidence or go into the correctness of the charges in a judicial review, by assuming the role of an appellate authority.

10. We have carefully considered the rival contentions of the parties and perused the material on record. Before proceeding to resolve the controversy the relevant provisions incorporated by the Railway Board, dealing with procedure while passing orders by the disciplinary as well as appellate authority are as under:

"Orders imposing the penalties of dismissal, removal or compulsory retirement-- It has been represented to the Board that it would be helpful to the employees concerned in preparing appeals and revision petitions against their dismissal, removal or compulsory retirement from service, if the punishment orders indicated the specific charges that stood substantiated, based on which the penalty was imposed. This has been accepted. The Board desire that the orders imposing the penalties of dismissal, removal or compulsory retirement should invariably indicate the specific charges that stand substantiated, based on which any of these penalties is imposed. The above instructions are applicable in case of imposition of penalties of 'Reduction' also.

Speaking Order--While imposing any of the penalties laid down in D&A Rules, speaking orders indicating the reasons for imposing a particular penalty, must be passed (see Consulting UPSC under Rule 14 also)

The same procedure should be adopted by the appellate authority while passing on appeals.

D&A cases--Need for speaking orders--As is well settled by the courts, the disciplinary proceedings are quasi-judicial in a nature and it is necessary that orders in such proceedings are issued only by the competent authority who have been specified as Disciplinary/Appellate/Revising authorities under the rules and the orders should have the attributes of a judicial order. Supreme Court in one case observed that recording of reason is obligatory as it ensures that it is as per law and not capricious.

Speaking Order--It has been observed in some of the disciplinary cases that there is an omission on the part of the disciplinary authority while imposing any of the penalties to pass speaking order indicating the reasons for imposing a particular penalty. It is therefore desired that in all disciplinary cases the disciplinary authority should invariably pass a speaking order. The same procedure also should be adopted by the Appellate while passing orders on the appeals.

11. If one has regard to the aforesaid provisions which have force of law and are mandatory to be complied with meticulously by the authorities, it is incumbent upon a disciplinary authority as a quasi-judicial authority to support its order by recording reasons. This has a logic and rationale. The enquiry officer's report is tendered to the disciplinary authority, ^{by} whom in turn complying with the decision of the constitutional Bench in *Managing Director, ECIL v. B. Karunkar*, 41 1993 (6) SC 1, a copy of the finding is to be served upon the delinquent who in turn may file a representation controverting the enquiry report. It is thereafter the disciplinary authority has to go through the contentions and to pass an order of penalty. The conclusion of the enquiry officer's as per the constitutional Bench decision is an additional material before the disciplinary authority to be acted upon. Recording reasons gives transparency to the order of the disciplinary authority as well as equal opportunity to the delinquent to have his say against the finding and being the last opportunity before imposition of punishment and more particularly when the order is appealable it becomes more important for the authority to record reasons so that it may be challenged before the higher authority. This is the object and logic behind laying down the aforesaid instructions. If the aforesaid instructions are viewed in the conspectus of the present case the order passed by the disciplinary authority is liable to be rejected at the outset solely on the ground that nowhere in the ~~order~~^{order} he has agreed upon the finding of the enquiry officer. The detailed contentions taken by the applicant in his representation against the finding have not at all been mentioned, discussed or considered. The order is absolutely bald, mechanical as well as non-speaking without

containing any reasons in support. This does not conform to the mandatory provisions laid down under the rules and is liable to be set aside.

12. In so far as the appellate order is concerned, the same is no better than the order of the disciplinary authority. Though the detailed contentions have been taken including legal infirmities as well as factual matrix but yet the same have not been considered by holding that nothing new has been there before the appellate authority. As the aforesaid instructions obligate upon the appellate authority to record detailed reasons, failure to comply with the same vitiates this order as well.

13. In view of the decision in B.C. Chaturvedi v. Union of India & Ors., JJ 1995 (8) SC 65 the Apex Court has ousted the jurisdiction of this Tribunal in a judicial review to the proportionality of the punishment and this has been left to the departmental authorities. In such a situation the requirement of recording reasons becomes essential. The appellate authority has neither recorded any reasons nor his findings on the proportionality of punishment. The applicant in this UA has also taken the specific plea as to the gravity of the charges alleged against him and the fact that no loss has been caused to the Railways but without any avail.

14. In the result and having regard to the reasons recorded above, the UA is allowed. The impugned orders are quashed and set aside. The respondents are directed to re-instate the applicant in service. However, the disciplinary authority is not precluded from passing a fresh order of penalty in accordance with law and having regard to the observations made above, if so advised. The intervening period shall be decided

by the authorities after the order is passed, strictly in accordance with rules and instructions and law on the subject. The aforesaid exercise shall be completed by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)
Member (J)

Shanta P

(Smt. Shanta Shastri)
Member (A)

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