

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.961/92

Date of order: 10.7.1995

Duli Chand : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.J.K.Kaushik : Counsel for applicant

Mr.Manish Bhandari : Counsel for respondents

CORAM:

Hon'ble Mr.O.P.Sharma, Member(Adm.)

Hon'ble Mr.Ratan Prakash, Member(Judl.)

PEP HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Duli Chand has prayed that order dated 17/21.10.86 (Annx.A1) being the charge sheet issued to the applicant, penalty order dated 24.3.90 (Annx.A2) imposing penalty of reduction to the lower grade at the initial pay, order dated 6.12.91 (Annx.A3) rejecting the appeal of the applicant against the penalty order and letter dated 18.3.92 (Annx.A4) rejecting the revision application of the applicant may all be quashed with all consequential benefits.

2. The applicant's case is that a charge sheet under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, dated 17/21.10.86 was issued to the applicant. Thereafter an enquiry was held in which the charge against the applicant was held as established. The disciplinary authority vide order Annx.A2 dated 24.3.90 imposed on the applicant the penalty of reduction to lower grade of initial pay of Gangman permanently. The applicant's appeal against the aforesaid penalty order was dismissed by the appellate authority vide the order dated 6.12.91 (Annx.A3). Thereafter, the applicant preferred a Revision Application, which was also dismissed by the concerned authority by order dated 18.3.92 (Annx.A4). The applicant has raised various grounds in the O.A for assailing the orders

passed by the authorities concerned. One of the grounds taken by him is that copy of the enquiry report was not supplied to him alongwith the order imposing penalty, and thus no opportunity was given to him to represent against the findings of the Inquiry Officer, before imposition of the penalty. Another ground raised by him is that the appeal preferred by the applicant was abruptly rejected by the appellate authority vide the order dated 6.12.91 (Annex.A3) and none of the points raised by the applicant in his appeal was considered by him.

3. The respondents have maintained that the proceedings were correctly conducted in this case and that all orders were passed in a proper manner.

4. During the arguments, the learned counsel for the applicant argued only on the two points referred to above, on which the action of the respondents has been assailed. He drew attention to the instructions Annex.A18 dated 10.11.89, issued by the Railway Board on the subject of supply of copy of the Inquiry Officer's report to the charged Railway servant before passing of the final order by the disciplinary authority. It has been stated in the said instruction that a copy of the enquiry report should be furnished to the charged railway servant to enable him to make submissions in regard to the findings of the Inquiry Officer before the disciplinary authority passes order imposing penalty. According to the learned counsel for the applicant, these instructions were issued by the Railway Board even before the judgment of the Hon'ble Supreme Court in the case of Mohd. Ramsan Khan was delivered and since these are the Railway Board's own instructions, these should have been followed by the Railway authorities. Therefore, the applicant was entitled to a copy of the enquiry report to enable him to make submissions regarding the findings of the Inquiry Officer, before the disciplinary

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authority ~~pass~~^{ed} order imposing penalty on the applicant. He added that the order Annx.A3 dated 6.12.91 by which the applicant's appeal has been disposed of is a cryptic one and in any case it does not contain the appellate authority's findings on all the 3 points mentioned in Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, which are; whether the procedure laid down in the Rules was complied with, whether the findings of the disciplinary authority are warranted by the evidence on record and whether the penalty imposed is adequate, inadequate or excessive. He has therefore stated that the orders passed by the authorities concerned are not sustainable and these may be quashed.

5. The learned counsel for the respondents stated that in Managing Director ECIL, Hyderabad & Ors. Vs. B.Karunakar & Ors. (1993) 25 ATC 704, the Hon'ble Supreme Court has held that in cases where a copy of the enquiry report was required to be supplied to the charged official but it had not been supplied, the procedure to be followed would be that the Court or the Tribunal should cause a copy of the report to be supplied to the aggrieved employee if he has not already procured it before coming to the Court or the Tribunal and give him an opportunity to show cause how his case was prejudiced because of the nonsupply of the report. Thereafter the Court or the Tribunal should itself consider the matter after hearing the parties and if it holds that a prejudice was caused to the concerned employee because of nonsupply of the copy of the enquiry report before passing of the order of the disciplinary authority, it should set aside the penalty order. However, where the Court or the Tribunal comes to the conclusion, after hearing the parties, that no prejudice would have been caused to the concerned employee because of nonsupply of such copy, it should not interfere with the order of penalty. He, therefore, prayed that the Tribunal itself may consider the matter after hearing

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the parties rather than remit the matter to the disciplinary authority by setting aside the order of penalty.

6. We have heard the learned counsel for the parties and have gone through the records. We consider it necessary to give ~~on the~~ findings only on the points which were argued before us by the learned counsel for the applicant. We find that the appellate authority was required to give specific findings on each of the three points mentioned in Rule 22(2) of the aforesaid rules. While it may be said that some finding regarding the adequacy of the penalty imposed has already been given by the appellate authority, there are no clear and categorical findings with regard to the first two points mentioned in Rule 22(2) of the rule. Therefore, the order of the appellate authority is set aside with a direction that the appellate authority shall decide the matter afresh having regard to the 3 points mentioned in Rule 22(2) of the Rules and give a clear and categorical findings on each of these points.

7. Regarding nonsupply of copy of the enquiry report before the passing of the order by the disciplinary authority, we are of the view that in view of the provisions of Anxx.A18 dated 29.12.89, a copy of the enquiry report should have been supplied to the applicant before passing of order by the disciplinary authority. However, now that we have the judgment of the Hon'ble Supreme Court in Managing Director, ECIL's case, it is not necessary for us to set aside the order of the disciplinary authority. Ordinarily this Tribunal should itself have considered the submissions of the parties in the light of the directions of the Hon'ble Supreme Court in Managing Director, ECIL's case and taken appropriate decision in the matter. However, since the order of the appellate authority has been set aside with a direction that he should pass a fresh order, it is appropriate that the applicant makes his

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submissions regarding the finding in the enquiry report also to the appellate authority, who shall consider these while considering the appeal afresh, having regard to the points mentioned in Rule 22(2) of the aforesaid Rules. The applicant already has a copy of the enquiry report with him, which was supplied to him alongwith the penalty order. The applicant may make his written submissions to the appellate authority with regard to the findings and the conclusions of the Inquiry Officer within a period of one month from the date of the receipt of a copy of this order. If the applicant desires a personal hearing by the appellate authority, he may also make a request in this behalf. On receipt of the written submissions of the applicant on the Inquiry Officer's report and the request for personal hearing, if any, the appellate authority shall consider the whole matter and it may give an opportunity to the applicant to explain his case personally before him. The appellate authority shall consider the matter afresh in the light of our above directions within a period of two months from the date of receipt of the submissions by the applicant regarding the findings and conclusions in the report of the Inquiry Officer. For this purpose, the order of the appellate authority is set aside. The order of the revising authority will also stand set aside.

8. The O.A. is disposed of accordingly with no order as to costs.



(Ratan Prakash)

Member (Judl)



(O.P. Sharma)

Member (Adm.).