

34

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

Monday the nineteenth DAY OF October
ONE THOUSAND NINE HUNDRED AND EIGHTY SEVEN

: PRESENT :

THE HON'BLE MR. B. N. JAYA SIMHA: VICE-CHAIRMAN
AND
THE HON'BLE MR. D. SURYA RAO: MEMBER.

ORIGINAL APPLICATION NO. 429/87

Between:-

K. S. Moses.

.....Applicants.

And

- 1) South Central Railway represented
by the Divisional Commercial Superintendent
Vijayawada, Krishna district
- 2) Senior Divisional Personal Officer, Vijayawada,
S. C. Rly, Krishna district

.....Respondents.

Application under Section 19 of the Administrative
Tribunals Act, 1985 praying that in the circumstances stated therein
the Tribunal will be pleased to call for the records per-
taining the order of removal of the applicant from
service passed on 17-6-85 by the ~~1st respondent~~
~~Divl Commercial S. Divisional Commercial Suptd~~
Vijayawada in proceedings bearing Reference No 13
/Can. /131/85 ~~concerning~~ and ~~concerned~~ by the S
Divl Personal Officer, Vijayawada, rejecting the Appeal
made on the date 24/9/85 and 23/12/85
respectively in his ref. no 13/P86/I/85/6 and in

ORIGINAL APPLICATION NO.429/87

(ORDERS OF THE TRIBUNAL)

The applicant was working as Server in the Vegetarian Refreshment Room, South Central Railway, Vijayawada. He was removed from service by an order dated 17-6-1985 of the Divisional Commercial Supt., SC Railway, Vijayawada. He preferred ^{an} appeal dated 9-7-1985, which was dismissed on 24-9-1985. Thereafter, he preferred a mercy petition, which was also dismissed on 23-12-1985. It is against these orders, that the applicant ~~seek~~ preferred this application. He seeks to question the impugned orders on the ground that no reasonable opportunity was given to him, that the inquiry officer has passed ^{an order after an} ~~an~~ with the ~~enquiry~~ ex-parte, ^{enquiry} that copies of relevant documents were not furnished to him. He contended ^S that since the enquiry was conducted ex-parte, no opportunity was given to him to defend himself. The further ground raised is that the provisions of Railway Servants (D&A) Rules do not warrant imposing of a penalty of removal from service, since the misconduct was not grave.

contd..2

2. Neither the applicant nor his Counsel is present. We have heard Shri P. Venkatarama Reddy, S.C. for Railways, who has produced the relevant records. It is seen from the record that the ~~xxx~~ applicant in his appeal dated 9-7-1985 to the Senior D.C.S. specifically referred to the quantum of punishment ^{imposed on him and urged that} ~~and~~ having regard to the nature of charges stated to have been proved, the punishment was excessive.

3. The appellate order does not deal with these contentions and it is a non-speaking order. The appellate order reads as follows :-

" In terms of Rule No.22 of R.S.(D&A) Rules, 1968, NS DCS, the appellate authority has carefully gone through your appeal along with the relevant file of papers and minuted as under :

" I have carefully studied the appeal and there is no fresh ground either in the appeal nor DAR enquiry proceedings warranting any modification of the punishment imposed. "

Please note."

The Supreme Court in 1986(2)-Sept. Ramchander vs. Union of India and others (SC) 255 has held as follows :-

" The duty to give reasons is an incident of the judicial process. So, in R.P. Bhatt v. Union of India this Court, in somewhat similar circumstances, interpreting Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which provision is in pari materia with Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, observed: (SCP.654, Para-4)

31

It is clear upon the term of Rule 27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the rules has been complied with; and if not, whether such non-compliance has resulted in violation of any of the provisions of the Constitution of India or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc., the penalty, or remit back the case to the authority which imposed the same.'

It was held that the word 'consider' in rule 27(2), of the Rules implied 'due application of mind'. The court emphasized that the appellate authority discharging quasi-judicial functions in accordance with natural justice must give reasons for its decision. There was in that case, as here, no indication in the impugned order that the Director General, Border Road Organisation, New Delhi was satisfied as to the aforesaid requirements. The court observed that he had not recorded any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. In the present case, the impugned order of the Railway Board is in these terms:

- (1) In terms of Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, the Railway Board have carefully considered your appeal against the orders of the General Manager, Northern Railway, New Delhi imposing on you the penalty of removal from service and have observed as under :
 - (a) by the evidence on record, the findings of the disciplinary authority are warranted; and
 - (b) the penalty of removal from service imposed on you is merited.
- (2) The railway Board have, therefore, rejected the appeal preferred by you.

5. To say the least, this is just a mechanical reproduction of the phraseology of Rule 22(2) of the Railway Servants Rules without any attempt on the part of the Railway Board either to marshal the evidence on record with a view to decide whether the findings arrived at by the disciplinary authority could be sustained or not. There is also no indication that the Railway Board applied its mind as to whether the act of misconduct with which the 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

Pt
22


36


lapse in a span of 24 years of service. Dismissal or removal from service is a matter of grave concern to a civil servant who after such a long period of service may not deserve such a harsh punishment. There being non-compliance with the requirements of Rule 22(2) of the Railway Servants Rules, the impugned order passed by the Railway Board is liable to be set aside. "

4. In the circumstances, we direct the appellate authority to consider the appeal of the applicant dated 9.7.1985 in the light of the directions given by the Supreme Court in Ramchander vs. Union of India, and dispose of the matter. The appellate authority shall also give an opportunity to the applicant of being heard if he so desires. The appeal will be disposed of within three months from the date of receipt of this order.

5. With these directions, the application is disposed of. There will be no order as to costs.

Dictated in the open court.


(B. N. Jayasimha)
Vice Chairman


(D. Surya Rao)
Member (J)

Dated 19th day of October 1987

mdj*



PVM (B)
VGB
26/10/92

Received on
26/10/92
DK
26/10

IN THE CENTRAL ADMINISTRATIVE
TRIBUNAL : HYDERABAD.

Order to
put in Record Slip
VGB

THE HON'BLE MR.B.N.JAYA SIMHA (VC)

AND

THE HON'BLE MR.D.SURYA RAO: (M)

DATED: 19/10/92

Central Administrative Tribunal
DESPATCH:
6 NOV 1987
HYDERABAD BENC

~~ORDER/JUDGMENT~~

O.A./T.A.No. H 29/87
(U.P.No.)

Disposed of with
directions