

IN THE HIGH COURT OF JUD

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH  
AT HYDERABAD

~~MON~~ DAY THE FIRST DAY OF JUNE  
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. 313/87.

BETWEEN:-

Mr. P. V. L. N. Sarmay

.....APPLICANT.

AND

1. Senior Divisional Operating Superintendent,  
South Central Railway, Vijayawada, Krishna Dist
2. General Manager, South Central Railway,  
Rail Nilayam, Secunderabad, A.P.
3. Government of India, represented by  
Secretary, Ministry of Railways, Rafi Marg,  
New Delhi.

.....RESPONDENTS.

Application under Section 19 of the Administrative  
Tribunals Act, 1985, praying that in the circumstances stated  
therein the Tribunal will be pleased to issue an order  
or direct to call for the records from  
the file of the 1st and 2nd respondents  
and communicated to the applicant on  
behalf of the 2nd respondent by the first  
respondent in his order No. P(T) 619/optg,  
dt. 6.3.87 of the 2nd respondent confirming  
the order of the 1st respondent in Ss.  
Sr. D.O.P. BZA's order No. B/P. Con. 418/86  
dated 19.6.86 and quash the same.

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Original Application No.313 of 1987

The applicant herein filed this application questioning the order No.B/P.Con.418/86 dated 19.6.1986 issued by the Senior Divisional Operating Superintendent, South Central Railway, Vijayawada and Krishna District (Respondent-1) treating the entire service rendered by the applicant prior to 26.2.1986 as break-in-service consequent on his having participated in Bharat Bandh and consequent on his absence from duty on the said date.

2. The applicant has preferred an appeal dated 24.7.1986 to the General Manager, South Central Railways, Secunderabad (Respondent-2) raising various contentions including the fact that he had never taken part in the *said* Bandh at all. He was informed by the Chief Personnel Manager by his letter No.P(T) 619/OPTG dated 6.3.1987 which reads as follows :-

" Your representation dated 24.7.86 against the break-in-service imposed on you vide DRM/BAZ's Order No.B/P.Con.418/86 dated 19.6.86 has been examined. It is regretted that your request for cancellation of the order of break-in-service cannot be agreed to."

3. We have heard Sri.V. Rama Rao, learned counsel for the applicant and Sri.N.R.Devraj, Standing Counsel for Railway.

*of the appellate authority*

4. It is obvious that the above order is not a speaking order, ~~when~~<sup>n</sup> none of the contentions raised by the applicant in his appeal have been dealt with by the appellate authority. This is in violation of Rule 22 of the Railway Servants Discipline and Appeal Rules. In this connection, the observations of the Supreme Court made in Ramchander vs. Union of India (ATR 1986(2) SC 255) are as follows :-

" 3. Rule 22(2) of the Railway Servants Rule provided as follows :

- 22(2). In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule the appellate authority shall consider.
- (a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice,
  - (b) whether the findings of the disciplinary authority are warranted by the evidence on the record, and
  - (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

and pass orders---

- (i) confirming, enhancing, reducing or setting aside the penalty; or
- (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case.

4. 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

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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: (SCC P.654, para4)

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 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

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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 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."

*we have to set aside the appellate order dated 6-3-87.*

5. In the circumstances, <sup>we have to set aside the</sup> we direct the appellate authority - General Manager, South Central Railway to consider all the contentions raised by the applicant in the appeal petition dated 24.7.86 as well as <sup>those</sup> raised in this application before this Tribunal and pass a speaking order dealing with <sup>each of</sup> the contentions. This order shall be passed within four weeks from the date of receipt of this order. A copy of ~~the~~ application shall also be furnished to the General Manager. If the applicant desires a personal hearing, he shall be given an opportunity to submit his case in person also <sup>by the appellate authority.</sup>

Dictated in the open court.

*B. N. Jayasimha*  
(B. N. Jayasimha )  
Vice Chairman

*D. Surya Rao*  
(D. Surya Rao )  
Member

Dated this the 1st day of June 1987

IN THE CENTRAL ADMINISTRATIVE  
TRIBUNAL: HYDERABAD.

THE HON'BLE MR. B. N. JAYA SIMHA (V.C.)  
AND  
THE HON'BLE MR. D. SURYA RAO: (M).

DATED:- 1-6-1987.

ORDER/JUDGMENT

O.A. NO. / T.A. NO. 313 / 87  
(W.P. NO )

*Responded with directions  
Allowed*

