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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

THURS DAY THE TENTH DAY OF AUGUST

ONE THOUSAND NINE HUNDRED AND EIGHTY NINE

:PRESENT:

THE HON'BLE MR. B. N. JAYASIMHA, VICE-CHAIRMAN
AND

THE HON'BLE MR. D. SURYA RAO, MEMBER (JUDL)

AND

THE HON'BLE MR. D. K. CHAKRAVORTY, MEMBER (ADMN.)

AND

THE HON'BLE MR. S. NIRASIMHA MURTHY, MEMBER (JUDL).

TRANSFERRED / ORIGINAL/MISCELLANEOUS/CONTTEMPT/APPLICATION
NO 590 OF 1989.

BETWEEN:-

K. John Doosman

.....Applicants

(Applicants in T.A/O.A

No. 590 OF 1989

on the file of the
Tribunal).

AND

1) Union of India Per General Manager,
South Central Railway, Railnigayam,
Secunderabad.

2) Sr. Divisional Commercial Superintendent,
Broad Gauge, South Central Railway,
Railnigayam, Secunderabad.

3) Divisional Commercial Superintendent,
Broad Gauge, South Central Railway,
Railnigayam, Secunderabad.

.....Respondents
(Respondents in de-)

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The applicant herein who was working as a T.T.E. in South Central Railway, has filed this Application questioning the order⁶ No.C/C/568/P/315/86 dated 1-11-88 passed by the 3rd Respondent and the confirming order No.C.C.508.P.315.86 dated 12-12-88 passed by the 2nd Respondent imposing upon him the penalty of reduction in the grade of T.T.E. (Rs.1200-2400) to the grade of T.C. (Rs.950-1300) and fixing the pay at Rs.950/- for a period of 2 years with cumulative effect. Various contentions have been raised questioning the legality and validity of the orders of the 3rd Respondent. One among the grounds raised is that the order passed by the 2nd respondent is not a speaking order. The application can be disposed of on this ground alone.

The Supreme Court in Ram Chander Vs. Union of India and others reported in A.T.R. 1986 (2) SC 252 held as follows:

"4. The duty to give reasons is an incident of the judicial process. So, in R.P.Bhatt Vs. Union of India (AIR 1986 SC 143) 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 (SCC p.654, para 4)

It is clear upon the term of Rule 27(2) that the appellate authority is required to consider that (1) whether the procedure laid down in the rules has been complied with; and if not, whether such non-compliance has resulted in

(A)

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 or enhanced the penalty."

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 Roads 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. While following the decisions of the Supreme Court in R.P.Bhatt's case and the decisions in AIR 1977 SC 567 and AIR 1966 SC 671, the Supreme Court in Ram Chander's case further held as follows:

"9. These authorities proceed upon the principle that in the absence of a requirement in the statute or the rules, there is no duty cast on an appellate authority to give reasons where the order is one of affirmation. Here, R.22(2) of the Railway Servants Rules in express terms requires the Railway Board to record its findings on the three aspects stated therein. Similar are the requirements under R.27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

(Signature)

R.22(2) provides that in the case of an appeal against an order imposing any of the penalties specified in R.6 or enhancing any penalty imposed under the said rule, the appellate authority shall 'consider' as to the matter's indicated therein. The word 'consider' has different shades of meaning and must in R.22(2) in the context in which it appears, mean and objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision."

In the present case, before the impugned order of the Railway Board is in these terms:

"Sub: Appeal against the order of penalty of reduction from the grade of 1200-2040 (RSRP) to the grade of 950-1500 (RSRP) fixing the pay at the bottom, imposed by DCS/SC (BG) - Regarding.

Your appeal has been carefully gone through the punishment given to you vide this office Lr.No.CC.568 P.315.86 dated 01-11-88 stands."

Following the above decision of the Supreme Court in Ram Chander's case, it follows that this application has to be allowed. The matter is remanded to the appellate authority for reconsideration and passing of an order in accordance with the Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968.



To

① General Manager,
South Central Railway, Railw:layam, Secunderabad.

② Sr. Divisional Commercial Superintendent,
Broad gauge, South Central Railway,
Railw:layam, Secunderabad.

③ Divisional Commercial Superintendent,
Broad gauge, South Central Railway,
Railw:layam, Secunderabad.

④ One copy to Mr. G. Ram Chander Rao, Advocate,
34-498, Barkatpura Chaman, Hyderabad - 500027.

⑤ One copy to Mr. N. R. Devaraj, se for Railways, CAF, Hyderabad.

⑥ One copy to Hon'ble Mr. D. K. Chakravarty, member (A), CAF, Hyderabad.

⑦ One spare copy.

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Received 10/10/89
AT: 12.10

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Before parting with this case, we must observe that time and again cases of this nature are arising wherein the appellate authorities are not properly exercising the appellate powers as required by law as laid down by the Supreme Court. On several occasions this Tribunal had occasion to remand cases to the appellate authorities for not complying with the requirements of the dicta as laid down by the Supreme Court in Ram Chander's case. Despite that, the same error keeps repeating as in the present case. Due to remand considerable hardship is caused to the aggrieved parties. The party in question after filing an appeal has to ~~be~~ wait under Section 21 of the Central Administrative Tribunals Act, for six months. Thereafter if he gets a laconic, non-speaking order which is remanded there would be further delay in adjudication of the grievance. Normally however a speaking appellate order is necessary as it would be of assistance to the Tribunal. Further quite often if a proper speaking order is passed ^{there} may not be any need for party to approach the Tribunal. We would, therefore, direct that to avoid recurrence of these defects in appellate orders, the General Manager may draw attention of all appellate authorities to Ram Chander's case so as to ensure strict compliance thereof.

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(D. SURYA RAO)
MEMBER (J)


(D. K. CHAKRAVORTY)
MEMBER (A)

NOTE:-

A copy of this order, G.O. S.C.R. should be marked to mhb/Secd. Dated: 10th August, 1989. S. Venkateswara
DEPUTY REGISTRAR (J)