

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A.NO. 419 of 1990.

Date of Decision: 06/08/1990

.....

Between:

Mr.Sriramulu.

..Applicant

and

1. Deputy Director, Medical Services,
Head Quarters, Andhra, Tamil Nadu,
Kerala, Karnataka and Gujarat areas,
Madras-600009.
2. Deputy Director, Medical Services,
Head Quarters, Southern Command,
Pune-411001.
3. Lt.Col.N.K.Debata,
Inquiring Officer, Officiating
Commanding Officer, Military,
Hospital, Golconda, Hyderabad.

..Respondents.

....

APPEARANCE:

For Applicant: Mr.A.C.Lakshmana Char, Advocate

For Respondents: Mr.E.Madan Mohan Rao, Addl.SC for the
Department.

....

C O R A M:

HON'BLE SHRI B.N.JAYASIMHA: VICE CHAIRMAN

HON'BLE SHRI D.SURYA RAO: MEMBER(JUDICIAL)

.....

(Judgment of the Bench delivered by Shri D.Surya Rao,
Member(Judl.)

..

1. The applicant herein was a Civilian Chowkidar,
attached to Military hospital, Golconda. In this application
he seeks to question the orders of compulsory retirement
issued by the 1st respondent in order no.829/1/M-3
dated 24-10-1989. The case of the applicant is that while

..2..

while he was working as Chowkidar in the military hospital, three charges were framed against him by an order dated 3-8-1988. The first charge ~~is that~~ that the applicant who was on duty on 30-4-1988 at 3-15 hours ~~he~~ was found sleeping in the corridor in front of the office. The 2nd charge is that he was found sleeping at 2.45 hours on 4-5-1988 by Major SN Reddy i.e. in the intervening night of 3-5-88 and 4-5-1988. ~~And~~ The 3rd charge is that the applicant failed to sign the night duty roster at the interval of every two hours i.e. 24-00 hours on 3-5-88, etc. The applicant submitted his explanation on 9-8-1988 denying the charges of sleeping. Regarding the 3rd charge, the applicant stated that it was practice to take the rosters ^{to} where the chowkidars are on duty for signature for convenience. An enquiry was ordered and the enquiry officer submitted his report. On receipt of Enquiry Officer's report the impugned order dated 24-10-1989 was passed compulsorily retiring the applicant from service. Various grounds are raised in this application questioning the order of compulsory retirement. It is further contended that the applicant has preferred an appeal to the Appellate authority i.e. the Deputy Director of Medical Services, Southern Command, Pune-respondent no.2, but no orders are passed on the said appeal. He assails the action of the appellate authority ^{of} in not disposing/the appeal as bad in law. The applicant, therefore, seeks quashing of the impugned order dt.24-10-89.

2- We have heard Shri Lakshmana Char, learned counsel for the applicant and Shri Madan Mohan Rao, Standing Counsel for the department.

..3..

3. Shri Lakshmana Char has produced a copy of the order No.220302/MHG/PC/M 3(B), dated 29th May, 1990 issued by the Deputy Director of Medical Services, Pune, disposing of the appeal of the applicant. He submits that this appeal was disposed of after the filing of the application. The said order dated 29-5-90 reads as follows:

"1. Refer to your letter no.729/1/Sriramulu/M3 dated 26-2-90 forwarding a copy of application of the above named individual.

2. Appeal under Rule 24 of CCS (SCA) Rules 1965 of the above named individual against the punishment awarded by DDMS Headquarters ATNKK & C Area has been examined in detail by me. Punishment awarded is justified. The appeal of the individual is rejected.

3. The individual may please be informed accordingly."

Shri Lakshmana Char states that the order of the appellate authority is not a speaking order and ^{nor he has not} ~~it has never~~ dealt with any of the contentions raised by the applicant in his appeal dated 1-11-1989. He relies upon the decision of the Supreme Court in Ram Chander Vs. Union of India and others reported in A.T.R. 1986 (2) SC 252.

4. We have considered the above submissions. It is obvious that the appellate authority has not given any reasons for rejecting the appeal of the applicant. The Supreme Court in Ram Chander's case cited above held as follows:

contd...4

"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 material 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 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 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."

..5..

Following the above decision of the Supreme Court, it follows that this application has to be allowed and the matter remanded to the appellate authority for reconsideration and passing of an order in accordance with the Rules. The matter is accordingly remanded to the appellate authority for fresh disposal of the appeal in the light of the directions given above by the Supreme Court. It is open to the applicant to agitate this matter and all other matters raised by him in his grounds of appeal and in the present application before us before the appellate authority. The appellate authority will also give the applicant a personal hearing if he so desires. The appellate authority will do so within a period of three months from the date of receipt of this order.

5. In the result, the application is allowed to the extent indicated above. In the circumstances of the case there will be no order as to costs.

B.N. Jayasimha
(B.N.JAYASIMHA)
VICE CHAIRMAN

D. Surya Rao
(D.SURYA RAO)
MEMBER (JUDL.)

(Dictated in open Court)
Dt. August 6, 1990

SQH*

Deputy Registrar
DEPUTY REGISTRAR (JUDL.)

To

1. The Deputy Director, Medical Services, Head Quarters, Anonra, Tamilnadu, Kerala, Karnataka and Gujarat Areas, Madras - 9.
2. The Deputy Director, Medical Services, H.Qrs. Southern Command, Pune-1
3. Lt.Col.N.K.Debata, Inquiring Officer, Officiating Commanding-Officer, Military Hospital, Golconda, Hyderabad.
4. One copy to Mr.A.C.Lakshmana Char, Advocate.
1-1-385/44, Gandhinagar, Hyderabad.
5. One copy to Mr. E.Madanmonan Rao, Addl.CGSC. CAT.Hyd.Bench .
6. One spare copy.

pvm.

WVS
MVS
20/8
3
CHECKED BY

APPROVED BY

TYPED BY R

COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. B. N. JAYASIMHA : V.C.

AND

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

AND

THE HON'BLE MR. J. NARASIMHA MURTY : M (J)

AND

THE HON'BLE MR. R. BALASUBRAMANIAN : M (A)

DATE: 6/8/90

ORDER/JUDGMENT:

E.A./ R.A./ C.A./ No.

in

T.A. No.

W.P. No.

O.A. No.

419/90

Admitted and Interim directions issued
Allowed.

Dismissed for Default.

Dismissed as withdrawn.

Dismissed.

Disposed of with direction.

M.A. Ordered/Refused

Central Administrative Tribunal
No order as to costs

