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CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH :
AT HYDERABAD.

O.A. NO.718 OF 1995.

DATE OF ORDER: 28 -4-1998.

BETWEEN:

SK. SULAIMAN

.. APPLICANT

A N D

1. The Divisional Commercial Superintendent,
S.C.Railway, BG, Secunderabad-500025.
2. The Sr.Divisional Commercial Superintendent,
S.C.Railway, BG, Secunderabad-500025.
3. The Divisional Railway Manager-II,
S.C.Railway, BG, Secunderabad-500025.
4. Union of India represented by the
Chairman, Railway Board, Rail Bhawan,
New Delhi-110001.

.. RESPONDENTS

Counsel for Applicant : Mr.C.Suryanarayana

Counsel for Respondents: Mr. V. Bhimanna,CGSC

CORAM :

Honourable Mr.R. Rangarajan, Member (Administrative)

Honourable Mr. B.S.Jai Parameshwar, Member(Judicial)

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(Per Hon. Mr. B. S. Jai Parameshwar, Member (J))

1. Heard Mr. C. Suryanarayana, the learned counsel for the applicant and Mr. V. Bhimanna, the learned Standing Counsel for the respondents.
2. This is an application under Section 19 of the Administrative Tribunals Act. The application was filed on 5.6.1995.
3. The facts giving rise to this O.A. may, in brief, be stated thus:
 - (a) During the year 1990-91 the applicant was working as TTE/SC.
 - (b) On 2.1.1991 the applicant was manning S.3 and S.4 Coaches of 7008 Express train between Secunderabad and Vijayawada. It is alleged that in the performance of his duties in the said Express train, the applicant committed certain acts unbecoming of a railway employee.
 - (c) The applicant was placed under suspension with effect from 4.1.1991 contemplating disciplinary action against him.
 - (d) On 11.2.1991 the DCS/BG/SC served the Memorandum of Charges in Proceedings No. Con/SC/C/7/91 (Annexure-1) and initiated disciplinary action under DAR Rules, 1968. The misconduct/misbehaviour levelled against the applicant reads as follows :

Statement of Articles of Charges framed against

Sri Shaik Suleman, TTE/SC.

Article-I.

That Sri Shaik Suleman while working as TTE/SC and manning S-3, S-4 coaches by 7008 express on 2-1-91 between Secunderabad and Vijayawada, committed serious misconduct in that, during a vigilance check on 2.1.91, he demanded and collected Rs.35/- as against the requisite berth charge of Rs.25/- i.e. Rs.10/-

extra over and above the charges for his pecuniary gain towards the allotment of berth No.71 in S-3 coach in favour of Sri Y.Naganna holding II class M/E ticket No.17930 Ex.SC to VSKP.

Thus Sri Shaik Suleman failed to maintain absolute integrity and contravened Rule 3(1)(i) of Indian Railway Services (Conduct) Rules 1966.

Article-II.

That Sri Shaik Suleman while working as TTE/ SC/BG, during the month of January,1991, committed serious misconduct and misbehaviour, in that, while he was on duty by 7008 Express of 2-1-91 between Secunderabad and Vijayawada, during a vigilance check he resorted to non-cooperation and destroyed incriminating material evidence, which would indicate his failure to maintain absolute integrity and also behaved in an unruly manner threatening and man-handling VI.I.s and Sri Y. Naganna, occupant of berth No.71 in S-3 coach, in an attempt to overcome the post check consequences.

Sri Shaik Suleman, TTE/SC thus acted in a manner unbecoming of a Railway Servant and contravened Rule 3(1)(iii) of Indian Railway Service (Conduct)Rules,1966.

(e) The applicant through his letter dated 23.8.1991 submitted his explanation to the Charge Memo and denied the charges. The letter is at Page 58 of the O.A. (Annexure-11).

(f) A detailed inquiry was conducted into the charges. The Inquiry Officer submitted his report dated nil. The Inquiry Officer recorded his finding on Item No.1 as Partly proved and on Item No.2 of the Charge Memo as proved. The copy of the report of the Inquiry Officer is at Annexure-19 B (pages 98 to 108 of the OA). A copy of the report of the Inquiry Officer was furnished to the applicant. On 17.2.1992 the applicant submitted his explanation to the report of the Inquiry Officer.

(g) The disciplinary authority after considering

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the findings recorded by the Inquiry Officer and the explanation offered by the applicant, agreed with the findings recorded by the Inquiry Officer and by his proceedings of even number dated 11.1.1993 (Annexure-21 at page 114 of the OA) imposed the penalty of reversion to the lowest post which reads as under :

" On careful consideration of the enquiry report and for the reasons mentioned above, I accept the findings of the enquiry officer and hold Sri Sk. Suleman guilty of the charges to the extent proved in the enquiry. The offence committed by the employee is serious in nature and deserve deterrent punishment. I therefore decide to impose on him the penalty of reversions from the post of HTTE in Grade Rs.1400-2300(RSRP) to the lowest post of TC in Grade Rs/950-1500(RSRP) fixing his pay at Rs.1150/- per month for a period of 5 years with cumulative effect and loss of seniority."

(h) Against the said punishment order, the applicant preferred an appeal before the Senior DCM/BG/SC. The appeal memorandum is dated 24.2.1993. The copy of the Memorandum of Appeal is at Annexure-22 at page 116 of the O.A. The appellate authority by his proceedings of even number dated 29.4.1993 observing as under :

" I do not agree with the arguments put forth by delinquent employee. There are undisputable evidence available in the record to prove the guilt of the delinquent employee. However, compared to the gravity of offence committed, I feel that the penalty imposed is in excess. To meet the ends of justice I consider to modify the penalty of reduction from the post of HTTE in grade Rs.1400-2300(RSRP) to the lowest post of TC in grade Rs.950-1500 (RSRP) fixing his pay @ Rs.1150/- per month for a period of 5 years with cumulative effect and loss of seniority imposed by DCM vide orders dated 11.1.93 to that of reduction from the post of HTTE in grade Rs.1400-2300(RSRP) to the post of TTE in grade of Rs.1200-2040(RSRP) fixing his pay at the bottom of the grade i.e. Rs.1200/- per month for a period of 5 years without the effect of postponing his future increment."

modified the punishment imposed on the applicant.

(i) Against the order of the appellate authority dated 29.4.1993, the applicant submitted a Revision Petition dated 11.11.1993 to the ADRM/II/SC. The copy of the revision petition is at Annexure-25 (at page 122 of the OA). The Revising Authority by his proceedings of even number dated 30.1.1995 further modified the

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punishment which reads as follows :

" Accordingly, the penalty of reduction from the post of HTTE Gr.Rs.1400-2300/RSRP to TC Grade Rs.950-1500/RSRP on pay Rs.1150/- for a period of 5 years (cumulative) with loss of seniority imposed by DCM/SC vide even letter, dtd.11.1.93 stands modified to that of reduction from the post of HTTE Gr.Rs.1400-2300/RSRP to the post of TTE grade Rs.1200-2040/-RSRP on pay Rs.1200/- for a period of 5 yrs(NC) by Sr. DCM, the Appellate Authority vide letter No. even dtd 39.4.93 shall hold good."

4. The applicant has filed this O.A. challenging the orders dated 11.1.1993, 29.4.1993 and 30.1.1995 passed by the disciplinary, appellate and revising authorities respectively.

5. The applicant has challenged the impugned orders on the following grounds :

(i) The Inquiry Officer assumed the role of, and functioned as, the Presenting Officer inasmuch as he himself conducted the examination of the witnesses.

(ii) The assessment and analysis of evidence by the Inquiry Officer is not only unwarranted, but interpretations and comments are not based on the evidence on record and hence his findings are perverse and unsustainable.

(iii) The Inquiry Officer failed to appreciate that the charges against the applicant are based on false statements of the witnesses examined in support of the charges.

(iv) It is a case of no evidence.

(v) The finding of the Inquiry Officer that the applicant was guilty of the Item No.2 of the Charge Memo was not based on the real facts but on false statements of the witnesses, one of whom was given undue credibility because of his alleged respectable status as retired Additional Superintendent of Police as though people with respectable status and in high positions do not

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state or speak falsehood.

(vi) The Inquiry Officer failed to appreciate that it was the behaviour of the Vigilance Staff, the informer and the decoy that constituted misconduct inasmuch as it was they who had attempted to prevent the applicant's movement in the discharge of his duties. The obstruction caused by the RPF Constable was evidently an obstruction caused to a public servant in the discharge of his duties. Therefore the I.O. ought to have appreciated the conduct of the applicant in removing the obstacle placed against his movement and if that allegation is true, then he was justified for the discharge of his legitimate duties.

(vii) The disciplinary authority did not apply its mind before recording the acceptance of the findings of the I.O.

(viii) The appellate authority did not apply its mind to all these aspects while considering his appeal.

(ix) Neither the appellate authority nor the revising authority passed any orders to regulate the periods of suspension of the applicant in spite of his appeals and representations.

Thus the applicant submits that the orders are not sustainable and are liable to be quashed.

6. The respondents have filed their counter stating that the enquiry was conducted as per the DAR Rules and following the principles of natural justice; that sufficient and adequate opportunity was given to the applicant; that the authorities have properly analysed the evidence placed on record; that the authorities have properly appreciated the findings recorded by the Inquiry Officer; that no extraneous

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material was influenced to reach the said conclusion; ^{that} and there are no grounds to interfere with the impugned orders.

7. The applicant has produced the copies of the depositions of the witnesses examined during the enquiry. Even in the O.A. he has given his own appreciation of evidence and his own conclusions to show that the findings recorded by the Inquiry Officer are perverse.

8. The applicant has also taken the contention that the appellate authority while considering his appeal has not given reasons and also not followed the statutory formalities indicated in Rule 22(2) of the DAR Rules, 1968. In fact after going through the order of the appellate authority, we expresed our agreement with the learned counsel about this contention and suggested that we would be remitting the matter back to the appellate authority to reconsider the appeal in accordance with the rules and dispose of the same by a speaking order. Even then the learned counsel for the applicant contended that we have to decide the O.A. on merits.

9. In support of his contention, the learned counsel for the applicant relied upon the observations made by the Hon'ble Supreme Court in the case of Central Bank of India v. Prakash Chandra Jain, reported in AIR 1969 SC 983 wherein it was held that the technical rules of evidence do not apply to domestic enquiry and the Tribunal can disregard the findings recorded by the Inquiry Officer only if the findings are perverse. The test of perversity is that the findings may not be supported by any legal evidence at all. This decision was given while considering the scope and powers of the Tribunal constituted under the Industrial Disputes Act.

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10. The learned counsel in support of the same contention relied upon the decision of the Hon'ble Supreme Court of India in the case of Union of India v. Paramanand, reported to AIR 1989 SC 1185 to contend that the Tribunal can interfere with the findings of the Inquiry Officer or the competent authority where they are arbitrary or utterly perverse.

11. The learned counsel for the applicant relying upon the two decisions cited above, attempted to persuade us to decide the O.A. on merits rather than remitting the same back to the appellate authority. We have considered his submission deeply. We feel that acceptance of the suggestion made by the learned counsel would tantamount to appreciating or re-analysing the evidence placed by the disciplinary authority as well as the applicant, by this Tribunal. The Court or Tribunal may not play the role of the appellate forum, particularly in disciplinary proceedings. Further we feel that deciding the O.A. on the basis of the material available on record and relying upon the decisions cited by the learned counsel for the applicant may not be proper for -

(a) The respondent authorities have not considered the various grounds urged by the applicant in the Memorandum of Appeal/Revision. Further they failed to consider as to how the period of suspension of the applicant has to be treated. This is the basic requirement of the disciplinary authority to record a finding as to how the period of suspension has to be treated after conclusion of the disciplinary proceedings. The disciplinary authority and the appellate authority have failed in their duty.

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(b) In the absence of the views of the disciplinary authority and the appellate authority any attempt on the part of this Tribunal to re-appreciate or re-analyse the evidence may amount to usurping the powers of the appellate authority.

(c) The impugned orders are not as per DAR Rules, 1968.

Hence we feel that we may give an ~~opportunity to give an~~ opportunity to the appellate authority to have afresh look into the matter and arrive at a reasonable conclusion by a speaking order.

11-A. In order to record a finding that the findings recorded by the Inquiry Officer are either perverse or not based on legal evidence, this Tribunal has to consider, appreciate and analyse the evidence which, in our opinion, this Tribunal cannot do so in view of the decision of the Hon'ble Supreme Court in the case of Government of Tamil Nadu v. A. Raja Pandian, reported in AIR 1995 SC 561 and in the case of State of Tamil Nadu v. Subramanyam, reported in AIR 1996 SC 1232. Apart from these two decisions, the Hon'ble Supreme Court has consistently taken the view that it is not for the Tribunal or Court to analyse the evidence or appreciate the evidence. When that is the case, we cannot re-analyse the evidence and reach the conclusion that the findings recorded by the Inquiry Officer on the charges are either perverse or not based on legal evidence.

12. Rule 22(2) of the DAR Rules, 1968 enjoins certain responsibilities on the appellate authority while deciding the appeal. The appellate authority has to record a finding that -

(a) Sufficient opportunity was given to the applicant during the enquiry.

(b) Appreciation or analysis of the evidence by the disciplinary authority is acceptable.

(c) The principles of natural justice were adhered to; and
 (d) He must record a finding whether the punishment imposed on the applicant is adequate or inadequate and if so, reasons therefor.

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13. The order of the appellate authority is devoid of these requirements. We have extracted above the order of the appellate authority which is cryptic. Therefore, in our opinion, it is for the appellate authority to consider all these factors and take a final decision. The appellate authority is a quasi-judicial authority. It is expected to take into consideration the grounds raised by the applicant in the Memorandum of Appeal. We are not to be mistaken/misunderstood by the appellate authority that it is expected to write an order like a judgment in a court. It is expected to disclose the reasons for its conclusion. It must also record its definite findings on the points indicated above.

13.A. In the case of Ram Chander v. Union of India, reported in AIR 1986 SC 1173, the Hon'ble Supreme Court has considered the powers of the appellate authority under Rule 22(2) of the DAR Rules,1968: In Paras 4 & 5 of the judgment, their Lordships held as under :

"4. The duty to give reasons is an incident of the judicial process. So, in R.P. Bhatt v. Union of India (CA No.3165/81 decided on Dec.14,1982) : (reported in 1986 Lab IC 790) this Court, in somewhat similar circumstances, interpreting R.27(2) of the Central Civil Services(Classification, Control and Appeal) Rules,1965 which provision is in pari materia with R.22(2) of the Railway Servants(Discipline and Appeal)Rules,1968, observed:

" It is clear upon the terms of R.27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the rules had 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 the 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, inadequate or severe, and pass orders confirming, enhancing, reducing or setting aside the penalty, or remit back the case to the authority which imposed or enhanced the penalty,etc."

It was held that the word 'consider' in R.27(2) of the Rules implied 'due application of mind'. The Court emphasized that the Appellate Authority dischargingquasi-judicial functions in accordance with natural justice must give ~~more~~ reasons for its decision. There was in that

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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 R.22(2) of the Railway Servants Rules without any attempt on the part of the Railway Board either to marshall 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 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 R.22(2) of the Railway Servants Rules, the impugned order passed by the Railway Board is liable to be set aside."

14. It is to be noted that earlier to initiation of the disciplinary proceedings, the applicant was placed under suspension with effect from 4.1.1991. All the impugned authorities who passed the orders in the disciplinary proceedings failed to specify as to how the period of suspension was to be treated. The disciplinary authority or the appellate authority should specify whether the

period of suspension has to be treated as on duty or as suspension only. Since we are setting aside the orders of the appellate authority and the revising authority, we direct the appellate authority to advert to this matter and clearly specify whether the period of suspension of the applicant has to be treated as suspension only or as on duty.

15. In this view of the matter, we feel it proper to set aside the orders of the appellate authority and of the revising authority and remit the matter back to the appellate authority for considering the appeal dated 24.2.1993 of the applicant afresh in the light of the observations made by us during course of this order and taking into consideration the grounds raised in this O.A. and to pass a speaking and detailed order.

16. Hence we pass the following order :

(a) The order dated 29.4.1993 passed by the appellate authority and the order dated 30.1.1995 passed by the revising authority are hereby set aside.

(b) The Memorandum of Appeal dated 24.2.1993 of the applicant is remitted back to the appellate authority for consideration of the same afresh in the light of the observations made by us during the course of this order taking into consideration the various contentions raised by the applicant in the O.A. and in the Memorandum of Appeal.

(c) In case the applicant desires an opportunity of being heard, the appellate authority shall provide him the said opportunity.

(d) The appellate authority shall dispose of the appeal as expeditiously as possible.

[Signature]

(3a)

17. With the above directions, the O.A. is disposed of. No order as to costs.



(B.S. JAI PARAMESHWAR)
MEMBER (JUDICIAL)

28/4/98



(R. RANGARAJAN)
MEMBER (ADMINISTRATIVE)

DATED THE 28th APRIL, 1998.

for DR
DR revised

DJ/

DA No. 718/95

Copy to:-

1. The Divisional Commercial Superintendent, S.C.Railway, BG, Sec'bad.
2. The Sr. Divisional Commercial Superintendent, S.C.Railway, B G, Secunderabad.
3. The Divisional Railway Manager-II, South Central Railway, BG, Secunderabad.
4. The Chairman, Railway Board, Rail Bhavan, New Delhi.
5. One copy to Mr. C.Suryanarayana, Advocate, CAT., Hyd.
6. One copy to Mr. V.Bhimanna, Addl.CGSC., CAT., Hyd.
7. One copy to BSJP M(J), CAT., Hyd.
8. One copy to D.R.(A), CAT., Hyd.
9. One duplicate copy.

srr

15/5/98

II COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR :
M (J)

DATED: 28/4/1988

ORDER/JUDGMENT

M.A/R.A/C.P.NO.

in

D.A. NO. 718195

ADMITTED AND INTERIM DIRECTIONS
ISSUED

~~ALLOWED~~

DISPOSED OF WITH DIRECTIONS

~~DISMISSED~~

~~DISMISSED AS WITHDRAWN~~

~~DISMISSED FOR DEFAULT~~

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR.

