

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.405/95

Date of order: 17/4/2001

Kanhi Singh, S/o Shri Jaswant Singh, R/o 9/95, Jamna Bridge, Station Road, Agra, posted as Khallasi in W.Rly Kota Division, Yamna Eridge, Agra.

...Applicant.

Vs.

1. Union of India through the General Manager, W.Rly, Churchgate, Bombay.
2. Divisional Rly.Manager, Western Rly, Kota.
3. Sr.Divisional Mechanical Engineer, Divisional Office, Western Railway, Kota.
4. Asstt.Mechanical Engineer, Divisional Office, W.Rly, Kota.

...Respondents.

Mr.P.P.Mathur, Proxy of Mr.R.N.Mathur - Counsel for applicant  
Mr.Manish Bhandari - Counsel for respondents.

CORAM:

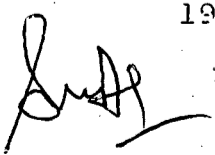
Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member.

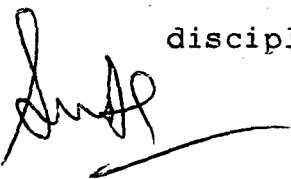
PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this O.A under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash and set aside the order of the disciplinary authority dated 31.1.94 and the appellate authority dated 14.3.95. Further directions are sought to direct the respondents to give all the benefits to the applicant as if no penalty was imposed upon him.

2. In brief, the case of the applicant is that Memorandum of charge-sheet dated 6.6.91 was served upon the applicant to initiate departmental proceedings under Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968 (for short 'Rule of 1968'). The allegation against the applicant is that on 13.4.91



when Shri Moolchand D, went in the office of Jamuna Bridge Train Examiner, where the applicant who was on duty misbehaved and made an attempt to assault. It is stated that on 9.12.91, the charge-sheet issued to the applicant earlier was cancelled and another charge-sheet under Rule 9 of the Rules of 1968 was issued to the applicant on the same allegation. The applicant demanded copy of the complaint made by Shri Moolchand D, which was not supplied to the applicant. Thereafter, enquiry was conducted and the Enquiry Officer did not find the applicant guilty and submitted the report to the disciplinary authority. The disciplinary authority on the basis of such report, imposed the penalty of stoppage of all sets of passes for two years, upon the applicant, vide order dated 31.1.94. It is stated that the disciplinary authority without communicating the reasons of disagreement, imposed the penalty. It is further stated that the applicant filed an appeal to the appellate authority but the appellate authority issued a Memorandum dated 15.7.94 to the applicant under Rule 22 of the Rules of 1968, for enhancing the penalty. The applicant submitted a detailed reply but the appellate authority vide the impugned order dated 14.8.95, imposed the penalty of reversion in lower grade for 3 years, loss of seniority, fixation of pay at lower scale. It is stated that the disciplinary authority while disagreeing with the finding of the Enquiry Officer, did not record reasons of disagreement and no opportunity to show cause was given to the applicant before imposing the penalty. Likewise, the order of the appellate authority is also nonspeaking and based on surmises and conjectures. It is also stated that 3 penalties as imposed by the appellate authority cannot be imposed upon the applicant under the rules. Therefore, the order of the disciplinary authority and the order of the appellate



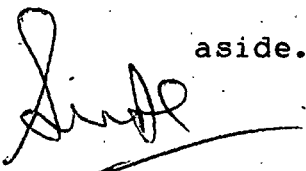
authority are liable to be quashed and set aside. Hence, the applicant filed the O.A for the relief as above.

3. Reply was filed. It is stated that the charge-sheet under Rule 11 of the Rules of 1968 was withdrawn with a view to serve the charge-sheet for major penalty. It was denied that earlier charge-sheet was cancelled as no misconduct was proved. It is stated that erroneous finding of the Enquiry Officer was corrected and thereby the disciplinary authority imposed the penalty vide the impugned order dated 31.1.94. It is also stated that the appellate authority issued a memorandum under Rule 22 of the Rules of 1968 to enhance the penalty and after consideration of reply filed by the applicant, passed the impugned order dated 14.8.95, which is perfectly legal and valid. It is denied that the penalty order has not been passed in accordance with the provisions contained in Rule 22 of the Rules of 1968. Therefore, it is stated that the applicant has no case for interference by this Tribunal and the O.A liable to be dismissed as such.

4. Heard the learned counsel for the parties and also perused the whole record.

5. In Sir Edward Coke in a famous case, Cooper Vs. Wordworth, has held that even God did not pass a sentence upon Adam before he was called upon to make his defence.

6. In Narain Mishra Vs. State of Orissa, 1969 SLR (3) SC 657, Hon'ble Supreme Court held that if the punishing authority differed from the findings of Enquiry Officer and held the official guilty of the charge from which he was acquitted by the Enquiry Officer and no notice or opportunity was given to the delinquent official about the attitude of the punishing authority the order will be against all the principles of fair play, natural justice and liable to be set aside.



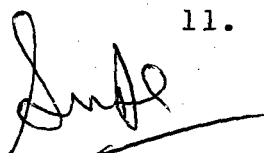
7. In R.R.Gabhane Vs. State of M.F & Ors, 1998 SCC (L&S) 1712, held by the Apex Court that it is obligatory for the disciplinary authority to communicate reasons for disagreeing with the report of the Enquiry Officer. It is unfair to proceed against the delinquent without supplying him a copy.

8. In Punjab National Bank & Ors Vs. Shri Kunj Bihari Misra, 1998(3) ATJ (SC) 537, the Apex Court held that whenever a disciplinary authority disagreeing with the findings of Enquiry authority on any articles of charge and record its own findings the reason of such disagreement must be recorded and the delinquent must be given to represent his case. The above principles have also been reiterated by the Apex Court in Yogi Nath D.Bagda Vs. State of Maharashtra, JT 1999(6) SC 62.

9. In the instant case, undisputedly, the disciplinary authority did not communicate the reasons of disagreement to the applicant before imposing the penalty vide order dated 31.1.94. Therefore, in view of the settled legal position and facts and circumstances of this case, we are of the considered opinion that the order dated 31.1.94 is not sustainable in law and liable to be quashed.

10. As regards the order of the appellate authority dated 14.8.95 is concerned, it is stated by the applicant that the appellate authority has not considered the appeal in accordance with Rule 22 of the Rules of 1968 which provides that the appellate authority must give his finding as to whether the procedure has been correctly followed or as to whether proper opportunity of hearing has been given to the delinquent or the punishment is adequate as to the gravity of the charge. It is stated that in view of the provisions as above, the order of the appellate authority is not a speaking order.

11. In the reply, it is stated that the applicant was

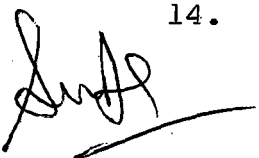


served with the memorandum under Rule 22 of the Rules of 1968 for enhancement of penalty and after perusal of the representation filed by the applicant, he was punished accordingly. It is denied in the reply that while imposing the penalty the order was not passed in accordance with the provisions of Rule 22 of the Rules of 1968.

12. We have given anxious consideration to the rival contentions of both the parties and also perused the impugned order passed by the appellate authority.

13. On a perusal of the order dated 14.8.95, it appears that the appellate authority has not considered whether the rules in this regard have been complied with or whether the finding of the disciplinary authority are based on evidence on record to prove the charge. No opportunity of hearing appears to have been provided by the appellate authority before imposing the punishment. The impugned order passed by the appellate authority appears to be cryptic order though the appellant had submitted a detailed representation against the Memorandum which was served upon him under Rule 22 of the Rules of 1968 but the appellate authority has not dealt with the points raised by the applicant. The appellate authority is required to examine whether the procedure laid down in the rules has been complied with and if not whether noncompliance has resulted any violation in provisions of the Constitution of India, or in the failure of justice the appellate authority is also required to examine whether the finding of the disciplinary authority are warranted by evidence on record. The contents of the appellate order do not show that any attention was given to any of these requirements, consequently in our opinion, the appellate order is nonspeaking and therefore, not sustainable in law.

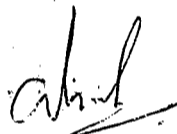
14. As the order passed by the disciplinary authority has



already been held as bad in law, therefore, in view of the above, the order of the appellate authority cannot be held to be legal and valid therefore the same is liable to be quashed on this ground.

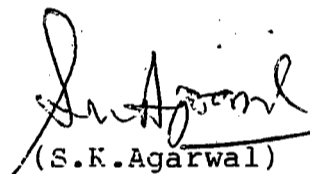
15. We, therefore, allow the O.A and quash and set aside the order passed by the disciplinary authority dated 31.1.94 and the order passed by the appellate authority dated 14.8.95. In case the disciplinary authority disagrees with the findings of the Enquiry Officer on any article of charges, the disciplinary authority shall be at liberty to pass an appropriate order, after following the procedure, as mentioned above.

16. No order as to costs.



(N.P. Nawari)

Member (A).



(S.K. Agarwal)

Member (J).