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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.558/95

Date of order: 25.11.1997

S.K. Kulshreshtha : Applicant

Vs.

1. Union of India through the General Manager, Western Railway, Churchgate, Bombay.
2. Sr.Divisional Operations Manager, Western Railway, Kota.
3. Divisional Railway Manager, Kota Division, Western Railway, Kota.

...Respondents.

Mr.R.D.Tripathi - Counsel for applicant.

Mr.M.Rafiq - Counsel for respondents.

CORAM:

Hon'ble Mr.O.P.Sharma, Administrative Member

Hon'ble Mr.Patan Prakash, Judicial Member.

PER HON'BLE MR.O.P.SHARMA, ADMINISTRATIVE MEMBER.

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri S.K.Kulshreshtha has prayed that the order dated 20.10.95 (Annx.A1) by which the appeal of the applicant against the penalty imposed was dismissed and the order dated 8.5.95 (Annx.A2) by which the penalty of withholding two increments without future effect was imposed may be quashed with all consequential benefits and the respondents may be directed to provide all consequential service benefits to the applicant as if the aforesaid orders has never been passed.

2. The facts of the case as stated by the applicant who is now working on the post of Station Superintendent at Kiraoli, Distt.Agra are that an inspection on the working of the applicant when he was posted as Station Master at Chabra was carried out during September 1992 and certain defects in the applicant's working were pointed out during the aforesaid inspection. Thereafter another inspection on the working of the applicant was carried out in October 1992 wherein it was noted

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that the defects in the working of the applicant pointed out were not tenable. However, a charge sheet dated 16.11.94 (Annx.A3) initiating minor disciplinary proceedings against the applicant was issued. The applicant vide Annx.A4 dated 31.12.94 asked for perusal of the inspection report on the basis of which the charge sheet was issued, to enable him to prepare an effective defence. Another letter Annx.A5 dated 9.1.1995 was addressed by the applicant repeating the request made by him earlier regarding permission to inspect the inspection report. Yet another request vide Annx.A6 dated 25.5.95 was made by the applicant asking for perusal of the documents relating to the inspection for the purpose of preparing his defence. In this letter, the applicant further stated that no decision had yet been communicated to him in respect of his request for perusal of the documents in question. Thereafter, according to the applicant, a penalty order Annx.A2 dated 8.5.1995 was issued imposing penalty of withholding of two increments without future effect. At the bottom of the order it has been stated that the defence of the applicant has not been accepted and the charges do not require seeing the documents called for. Thereafter, the applicant preferred an appeal against the order of penalty vide Annx.A7 dated 3.7.95. The appellate authority vide order Annx.A1 dated 20.10.95 disposed of the appeal filed by the applicant with the following observations:

"I have gone through the case. The charges required explanation. Demanding documents had, no meaning. In fact it shows that the official does not give importance to work/duty assigned or expected of him.

Punishment is upheld."

3. The grievance of the applicant is that firstly the subsequent inspection carried out in October 1992 showed that in fact there were no defects in the applicant's working as

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revealed during the earlier inspection carried out in Sept. 1992. The applicant had also repeatedly asked for inspection of the inspection report on which the charge sheet issued to the applicant was based. This was to enable him to prepare an effective defence. However, according to the applicant not only was inspection of the documents asked for by him not allowed, but even a communication was not sent to the applicant informing him that it has not been considered necessary to grant him such inspection. Instead straightaway penalty has been imposed on the applicant vide order Annx.A2 dated 8.5.95. His appeal has also been summarily rejected without giving any detailed reasons or dealing with the three ingredients required to be dealt with as laid down in Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968. The applicant has also taken several other grounds for assailing the order of the penalty passed against him and the order rejecting his appeal. In essence his grievance is that the principles of natural justice have also not been observed while dealing with the matter.

4. The respondents in their reply have stated inter alia that the applicant was given full opportunity of putting forward his defence. According to them inspection of documents was not required to be given because it was a case of minor penalty. They have added that the applicant was informed in writing that his request for inspection of documents had been turned down. They have maintained that the orders passed in the applicant's case are reasoned one and have denied the allegation that there was any nonapplication of mind.

5. During the arguments the learned counsel for the applicant has stated that in spite of the claim of the respondents that they had informed the applicant in writing that his request for inspection of documents has been turned down, ~~but~~ no copy of

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such document has been annexed with the reply of the respondents.

6. The learned counsel for the respondents stated during his arguments that the inspection was carried out in the presence of the applicant and the charges framed against him on the basis of the inspection are quite clear and precise. Therefore, there was no question of any opportunity of being given to him to inspect the inspection report. He added that the applicant had also not denied by filing a rejoinder that he had not been informed in writing that inspection of the documents asked for by him could not be allowed. Finally, he stated that when the applicant did not submit any defence for as long as six months after receipt of the charge sheet, the respondents had no option but to pass an order imposing penalty. The appellate authority had also according to him applied his mind on the facts of the case before rejecting the applicant's appeal.

7. We have heard the learned counsel for the parties and have perused the material on record.

8. Admittedly, the charge sheet issued to the applicant is based on the inspection of his work carried out when he was working as Station Master at Chabra Railway Station, during September and October, 1992. When the applicant had been repeatedly asking for inspection of the inspection report which was the basis of the charge sheet issued to him, it would have been proper and reasonable for the respondents to allow him such inspection. Although the inspection may have carried out in the presence of the applicant, but it is not the case of the respondents that the inspection report was also prepared in his presence or the applicant was shown the inspection report as soon as it was prepared. In these circumstances, it was necessary to show the inspection report to the applicant to enable him to prepare his defence against the charge sheet. In

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any case, when the applicant had been repeatedly writing to the respondents to grant him access to the inspection report to enable him to prepare his defence, the least the respondents could have done was to inform the applicant that such access could not be granted to him. The averment of the respondents ~~is~~ <sup>on</sup> that he had been informed in writing about this is not based ~~on~~ <sup>on</sup> any documents. Apparently, the applicant was waiting for a response from the respondents regarding his request for grant of an inspection of the documents in question and therefore did not submit any defence as such. The disciplinary authority however, passed an order imposing penalty of withholding of two increments to the applicant, without having his defence before him and the same disciplinary authority in his order Annx.A2 has stated that the defence of the applicant has been rejected. This shows, clearly, lack of application of mind by the disciplinary authority. The appellate authority's order is also cryptic and in particular it does not deal with the three ingredients of Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968. Clearly there has been a violation of the principles of natural justice in deciding the matter and there has also been failure to follow the statutory rules by the authorities concerned.

8. For all these reasons the order imposing penalty is set aside. Annx.A2 being the penalty order and Annx.A1 being the order of the appellate authority are accordingly quashed with all consequential benefits. The respondents are, however, not precluded from taking action against the applicant in accordance with law.

9. The O.A is disposed of accordingly. No order as to costs.



(Ratan Prakash)

Judicial Member.



(O.P. Sharma)

Administrative Member.