

**THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR**

O.A. No. 620/2001.  
T.A. No.

200

DATE OF DECISION \_\_\_\_\_

Padam Singh

Petitioner

Shiv Kumar

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

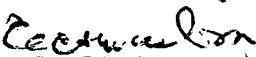
S. S. Hassan

Advocate for the Respondents(s)

**CORAM:**

The Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.

The Hon'ble Mr. G. C. Srivastava, Member (A).

  
(G. C. SRIVASTAVA)  
MEMBER (A)

  
(G. L. GUPTA)  
VICE CHAIRMAN

1. Whether Reporters of local papers may be allowed to see the Judgement?
- ✓ 2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement?
- ✓ 4. Whether it needs to be circulated to other Benches of the Tribunal ?

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH : JAIPUR

Date of Order : 05.06.2003.

O.A. No. 620/2001.

Padam Singh s/o Shri Manipal Singh, aged about 42 years, R/o Shastri Colony, Gangapur City, Distt. Sawaimadhopur, at present employed on the post of Khallasi Western Railway Kota Division Kota.

... APPLICANT.

v e r s u s

1. Union of India through, Western Railway, General Manager, Church Gate, Mumbai.
2. Assistant Civil & Telecom Engineer (N), Western Railway, Kota.
3. Divisional & Signal Telecom Engineer (T), Western Railway, Kota.
4. Senior Divisional Signal & Telecom Engineer Western Railway, Kota.

... RESPONDENTS.

Mr. Shiv Kumar counsel for the applicant.  
Mr. S. S. Hassan counsel for the respondent.

CORAM

Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.  
Hon'ble Mr. G. C. Srivastava, Administrative Member.

: O R D E R (ORAL) :  
(per Hon'ble Mr. G. C. Srivastava)

The applicant who is working as Khallasi under respondents is aggrieved on account of the penalty of reduction from the pay of Rs.912/- in the pay scale of Rs.750-940 to Rs.750/- for a period of 5 years with future effect imposed by the Disciplinary Authority (DA, for short) vide order dated 03.03.1997 (Annexure A-2) upheld by the Appellate Authority (AA, for short) vide order dated 12.05.1999 (Annexure A-3) and the Revisional Authority (RA, for short) vide order dated

Teed

18.07.2000 (Annexure A-7) and has prayed that the same be quashed and set aside.

2. The respondents have opposed the OA and have filed a detailed reply.

3. We have heard Mr. Shiv Kumar and Mr. S. S. Hassan learned counsel for the applicant and respondents respectively and with their consent, we are disposing of the matter at the admission stage.

4. The main ground advanced by Mr. Shiv Kumar, learned counsel for the applicant is that as per the report of the Inquiry Officer (IO, for short) dated 08.08.1996 (Annexure A-4) the charge levelled against him has not been proved and though the DA has disagreed with the findings of the IO, he has imposed the impugned punishment without giving any notice to the applicant in regard to his disagreement with the findings of the IO. He has contended that the DA has not disclosed whether he has disagreed with the findings of the IO or not and he has merely stated that the IO has not conducted the inquiry in proper and systematic way (Annexure A-2). He has further contended that the applicant immediately submitted a detailed appeal dated 27.07.1998 raising the above grounds (Annexure A-5). However, the AA has rejected the appeal in gross violation of Rule 22 (2) of Railway Servants (Discipline & Appeal) Rules, 1968. According to him, the order passed by the AA is a non speaking order. He, therefore, filed a Revision Petition dated 26.06.1999 (Annexure A-6), which has also been rejected by the RA without application of mind and without considering his contentions. He has further contended that this is a case of no

660

evidence as there is no evidence on record against the applicant to prove the charge against him.

5. On the other hand, Mr. S. S. Hassan, learned counsel for the respondents, has contended that the charge levelled against the applicant was serious in nature and looking to the gravity of the charge the DA has imposed the punishment by passing a speaking order, disagreeing with the findings of the IO. He has submitted that a notice imposing penalty was issued to the applicant but he refused to accept the NIP in presence of witnesses. He has further contended that the AA as well as RA have rightly rejected his Appeal and Revision Petition and there is sufficient evidence against the applicant but the IO has wrongly exonerated the applicant from the charge. He has, therefore, prayed that the OA be dismissed.

6. We have considered the rival contentions of the parties, It is not in dispute that a charge sheet was issued to the applicant vide S.F. dated 03.10.1988 levelling charge of assault with Mr. Mishra and Mr. Johry, for which a report was lodged with the Railway Police. It is also not in dispute that an inquiry was conducted against the applicant and the IO has submitted his report dated 08.08.1996 (Annexure A-4). It is also not in dispute that as per the findings of the IO annexed by the applicant, the applicant has not been found guilty of the charge on the basis of the evidences of witnesses. While examining the report of the IO, the DA has stated that the IO has not conducted the inquiry in a proper and systematic way and that his report does not throw light on the case of Mr. N. D. Mishra Ex.TCI/SWM now TCI-IDW DVN/NER who is the major part of this case. He has further stated that Mr. Johri's case is a by product of Snri Mishra's case. However, he has not recorded

lcl

anything whether he accepts the findings of the IO or not and has straight away awarded the punishment vide order dated 03.03.1997. Since the IO has held the applicant not guilty, it is clear that the DA has disagreed with the findings of the IO and has imposed the penalty. As per Para 10.3 of the Railway Servants (Discipline & Appeal) Rules, 1968, "the DA shall if it disagrees with the findings of the inquiring authority on any articles of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record, is sufficient for the purpose". As per the instructions of the Railway Board incorporated at Page 244 of the Railway Servants (Discipline & Appeal) Rules 1968 (Bahri Brothers) Edition 1999, "if the consideration of Inquiry Report shows that no charges as levelled against the delinquent have been proved, the disciplinary authority shall pass order to that effect and communicate the same to the delinquent alongwith :-

- (i) a copy of the inquiry report,
- (ii) a copy of findings of the Inquiry Officer.
- (iii) a copy of order of the Disciplinary Authority alongwith reasons for disagreement with the Inquiry Officer, if he has disagreed.
- (iv) a copy of further evidence, if any, taken by the disciplinary authority.
- (v) a copy of advice of UPSC, if taken".

In the instant case as per the findings of the IO no charge has been proved and since the DA has imposed the penalty

lcc

inspite of the fact that no charge is proved he has evidently disagreed with the findings of the IO and, therefore, it was incumbent on his part to have followed the procedure as mentioned above and communicated his disagreement alongwith reasons thereof to the applicant as also a copy of further evidence if taken by the DA. However, only a NIP was issued imposing penalty on the applicant which according to the respondents was not accepted by the applicant. It is an admitted position that the disagreement of the DA with the findings of the IO was never communicated to the applicant alongwith copies of further evidence taken by the DA. There is nothing to show if the DA has taken further evidence in support of his findings. In view of this, the order of penalty imposed by the DA is in clear violation of the above provisions of the Railway Servants (Discipline & Appeal) Rules, 1968 and principles of natural justice and as such the impugned punishment cannot be sustained in the eye of law.

7. The applicant had preferred an appeal against the above penalty order and had clearly pointed out that this is a case of no evidence against the applicant and had requested the AA to consider his appeal and pass appropriate order. But while disposing of the appeal, the AA has dismissed the same merely stating that the points presented through the appeal are not acceptable. As per Rule 22 of the Railway Servants (Discipline & Appeal) Rules 1968, the AA while examining the appeal is required to consider :-

"a) Whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

Cool

b) Whether the findings of the disciplinary authority are warranted by the evidence on the record; and

c) Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders -

(i) confirming, enhancing, reducing or setting aside the penalty ; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case.

In the instant case, the applicant had raised a specific contention about the case being of no evidence but the AA has not dealt with the above contention at all. It was a case where the IO had exonerated the applicant from the charge but the DA had disagreed with his findings and had imposed the punishment without giving any notice to the applicant for his disagreement along with reasons therefor. It was, therefore, necessary on the part of the AA to consider and examine whether the above provisions have been followed in this case or not. He has evidently failed to do so and, therefore, this order is not maintainable.

8. Aggrieved by the rejection of his appeal, the applicant filed a Review Petition which is also rejected by the RA who has passed the following orders :-

" I have gone through the case and Revision application

leeb

carefully, the penalty imposed should be sustained".

As per Para 25.3 in Railway Servants (Discipline & Appeal) Rules 1968, application for revision shall be dealt with in the same manner as if it were an appeal under these rules. While examining the Revision application, the RA has also failed to consider whether the prescribed rules have been followed in the instant case or not and whether there was any evidence warranting the imposition of penalty on the applicant although the applicant has very clearly pointed out the same in his Revision Petition. The order of RA does not disclose any reason, why the penalty should be sustained. Therefore, this order is also not sustainable.

9. In the light of the foregoing discussions, we are of the considered view that the DA has failed to observe the requirement of rules for issuing a notice to the applicant for his disagreement with the findings of the IO along with the copies of evidence for imposing the penalty. This is clearly a case of non application of mind and of no evidence. The three orders, the order dated 3.3.1997 passed by the DA, order dated 12.05.1999 passed by the AA and order dated 18.07.2000 passed by the RA, therefore, deserve to be quashed and set aside.

10. In the conclusion, we allow the OA and quash and set aside the orders dated 03.03.1997 (Annexure A-2), 12.05.1999 (Annexure A-3) and order dated 18.07.2000 (Annexure A-7). We further direct that the pay of the applicant be restored to the original position with all consequential benefits, as if, no penalty had been imposed.

11. There is no order as to costs.

  
(G. C. SRIVASTAVA)

MEMBER (A)



(G. L. GUPTA)

VICE CHAIRMAN