

Central Administrative Tribunal
Jabalpur Bench

OA No.385/2002

Jabalpur this the 20th day of March, 2003.

Hon'ble Mr. Shanker Raju, Member (J)

Hon'ble Mr. R.K. Upadhyaya, Member (A)

KASHIRAM TIWARI,
S/o Shri Beni Madhav,
Pointsman 'A', U/CYM,
Central Railway, NKJ,
Katni (MP)

-Applicant

(By Advocate Shri V. Tripathi)

-Versus-

1. Union of India,
through its Secretary,
Ministry of Railway,
Railway Board, New Delhi.
2. General Manager,
Central Railway,
Mumbai C.S.T.
Mumbai.
3. Divisional Railway Manager,
Central Railway,
Jabalpur Division,
Jabalpur (MP).
4. Divisional Operating Manager (DOM),
Central Railway,
Jabalpur (MP).
5. Area Manager,
Central Railway,
New Katni Junction,
Katni (MP).

-Respondents

(By Advocate - None)

ORDER (ORAL)

Mr. Shanker Raju, Member (J):

Despite opportunity, no reply has been filed by the respondents. Their right to file the same is forfeited and the matter is proceeded against under Rule 16 of the Central Administrative Tribunal (Procedure) Rules, 1987.

2. Applicant impugns respondents' order dated 18.8.2001 whereby on completion of the disciplinary

proceedings he has been dismissed from service.

He has also impugned appellate order dated 18.3.2002 rejecting his appeal. Applicant has sought re-instatement with all consequential benefits.

3. While working as Pointsman 'A' applicant was served with a major penalty chargesheet under SF-5 on the allegation that while working on 18.10.94 he refused to perform his duties and has incited his colleague Ashwani Kumar, Pointsman, amounting to misconduct. During the course of enquiry witnesses have been examined and defence was tendered. Enquiry officer has held applicant guilty of the charge.

4. Applicant responded to the enquiry report and by an order dated 18.8.2001 a major punishment of dismissal has been imposed upon him, which was affirmed by appellate order dated 18.3.2002, giving rise to the present OA.

5. Though several contentions have been raised to assail the impugned order, but at the outset it is stated that impugned order of dismissal as well as the appellate order are non-speaking, showing non-application of mind and are contrary to the instructions issued by the Railways as well as under Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968.

6. Respondents have forfeited their right to file reply.

7. Even without the reply of the respondents an irresistible conclusion can be derived on going through the orders of punishment as well as appellate order that the same are bald, mechanical, non-speaking and

without dealing with the contentions of applicant.

8. We have carefully considered the pleadings on record. Railway Board in their letter No.E(D&A)-86 RG 6/1 of 20.1.86 issued the following guidelines:

"D&AR cases--Need for speaking orders--As is well settled by the courts, the disciplinary proceedings are quasi-judicial in nature and it is necessary that orders in such proceedings are issued only by the competent authority who have been specified as Disciplinary/Appellate/Revising authorities under the rules and the orders should have the attributes of a judicial order. Supreme Court in one case observed that recording of reason is obligatory as it ensures that it is as per law and not capricious."

9. Moreover, G.I. Dept. of P&T OM No.134/12/85-AVD I, dated 5.11.1985 laid down the following instructions:

"(1) Self-contained, speaking and reasoned order to be passed and to issue over signature of prescribed disciplinary/appellate/reviewing authorities.--As is well known and settled by courts, disciplinary proceedings against employees conducted under the provisions of CCS (CCA) Rules, 1965, or under any other corresponding rules, are quasi-judicial in nature and as such, it is necessary that orders in such proceedings are issued only by the competent authorities who have been specified as disciplinary/appellate/reviewing authorities under the relevant rules and the orders issued by such authorities should have the attributes of a judicial order. The Supreme Court, in the case of Mahavir Prasad v. State of UP (AIR 1970 SC 1302) observed that recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy or reached on ground of policy or expediency. The necessity to record reasons is greater if the order is subject to appeal."

10. If one has regard to the aforesaid mandatory instructions as on perusal of the orders passed by the disciplinary authority, we do not find any reason recorded to come to the conclusion to agree with the findings and also to arrive at a finding of

imposing an extreme punishment of dismissal upon applicant. None of his contentions raised in the representation to the finding has^h either been dealt with or considered and rejected by any recorded reason.

11. In so far as the appellate order is concerned, merely recording that speaking order has been passed by the disciplinary authority and the grounds raised in the appeal has no sense the appellate order is also bald and non-speaking.

12. Rule 22 of the Rules *ibid* obligates upon disciplinary authority while dealing with an appeal preferred against the order of punishment to consider various aspects including whether the procedure under the rules has been followed or not, whether the findings of the disciplinary authority are warranted by the evidence on record and also to record the finding on the proportionality of punishment. This is also mandated by the instructions issued which have been referred *ibid*. We do not find any of the requirement being complied with by the appellate authority. The contentions put-forth by applicant in his appeal have not been discussed, controverted and disposed of with reasons.

13. Recording of reasons being a quasi-judicial^h Authority when the decision is liable to be challenged in an appellate forum or before the court makes it more onerous to record reasons. As no reasons have been recorded either by the disciplinary or appellate authorities the orders issued are far from being declared legal.

14. Accordingly the OA is partly allowed.

The impugned order of dismissal as well as appellate orders are quashed and set aside. Respondents are directed to forthwith re-instate applicant. However, they are at liberty to take up the proceedings from the stage of passing final order in the disciplinary proceedings. The intervening period from the date of dismissal to re-instatement shall be subject to the outcome of the orders to be passed by the respondents and would be regulated in accordance with rules and regulations on the subject. The aforesaid directions shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

R.K. Upadhyaya

(R.K. Upadhyaya)
Member (A)

S. Raju

(Shanker Raju)
Member (J)

'San.'

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

पतिलिपि अर्पित:-

(1) सचिव, उच्च न्यायालय बार एसोसिएशन, जबलपुर

(2) आवेदन श्री/श्रीमती/व्यु.....के कार्डसल

(3) प्रत्यर्पि श्री/श्रीमती/व्यु.....के कार्डसल

(4) बांधवात, केंद्र अ., जबलपुर न्यायपीठ

सूचना एवं आवश्यक कार्यवाही हेतु

S. D. Sharma Adv

K. D. Banerji Adv

J. K. Sharma

उप-सचिव

26/3/03

Issued
26.3.03
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