

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 271 of 1998

Jabalpur, this the 21st day of July, 2003.

Hon'ble Mr. J.K. Kaushik, Judicial Member

Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

Shri Laxminarain Tiwari,
S/o Late Shri Bhaiyalal Tiwari,
aged 50 years
Goods Driver (Loco Shed Bina),
Vir Savarkar Ward,
Behind Life Insurance Building,
Bina - Ittawa

(By Advocate - Smt. S. Menon)

APPLICANT

VERSUS

1. Union of India,
Through General Manager,
Western Central Railway,
Jabalpur.
2. Divisional Railway Manager,
Western Central Railway,
Habibganj, Bhopal.
3. Senior Divisional Electrical
Engineer (TRO), Western Central Railways
Bhopal.

RESPONDENTS

(By Advocate - Shri S.K. Mukerjee)

ORDER (ORAL)

By J.K. Kaushik, Judicial Member-

Shri Laxminarain Tiwari has filed this original Application under Section 19 of the Administrative Tribunals Act, where he has sought the following reliefs.

(i) Quash the entire action of the respondents from the issuance of the Memorandum of charges to the passing of the ultimate order of penalty dated 6.10.97/Annexure A-III as also the appellate order confirming the order of penalty dt. 26.12.97 Annexure A-V and declare it as wholly illegal, unjustified, contrary to the service rules and principles of justice.

(ii) Pass any other appropriate direction this Hon'ble Tribunal deems fit under the facts and circumstances of the case in favour of the applicant and against the respondents.

[Signature]

2. The abridged facts of the case are that the applicant was issued a charge-sheet under Rule 11 of Railway Servants (Discipline & Appeal) Rules 1968 (hereinafter referred to as 'the Rules') which was served on 16.5.1997. The applicant submitted his explanation on 26.5.1997 (Annexure A-2) which was duly acknowledged by the respondents. The said explanation to the memorandum of charges was submitted within the stipulated time. Thereafter the respondent No. 3 without considering the reply to the charge-sheet, inflicted the penalty of withholding of two annual increments without cumulative effect. The order has been passed mechanically without considering the explanation/representation to the memorandum of charges.

3. Further case of the applicant is that he had preferred an appeal before the competent authority on 20.10.1997 (Annexure A/4) and the same was decided on 26.12.97 (Annexure A/5). The appellate authority and disciplinary authority have not assigned any reason, and both the orders were non-speaking and void ab intio. The significance of giving reasons have been explained. A legal notice was also sent in the matter, where the applicant had quoted certain provisions. He has filed another application for consideration of promotion to the post of Passenger Driver.

4. The Original Application has been filed on multiple grounds which we propose to deal with at the appropriate place.

5. We have heard, the learned counsel for the parties at a considerable length and have bestowed our earnest consideration to the arguments, pleadings and the records of the case.

6. The learned counsel for the applicant has submitted that the statement of the defence(i.e. the reply to the charge sheet) was submitted well in time to the competent authority, but the same has not been considered due to some extraneous reasons. In the Original Application our attention was specifically drawn towards the impugned order dated 6.10.97 (Annexure A/3) wherein the penalty has been imposed on the applicant under Rule 6 of the Rules. It has been mentioned therein that explanation of the applicant was not received. It has been submitted that bare reading of the penalty order would reveal that no reason is indicated in this order and even no specific finding is on the imputation of misconduct/forth-coming. She has also invited our attention to the appellate order dated 26.12.97 (Annexure A-5) wherein the position has been even worse in as much as certain extraneous matter has been taken into consideration, while rejecting the appeal and the same was never disclosed to him. Therefore even if the explanation to the charge-sheet was not submitted in time it was certainly available before the competent authority at the time of passing of the penalty order and it could have been fair on his part to consider the same.

7. On the contrary learned counsel for the respondents, vehemently opposed the contentions of the learned counsel for the applicant and has submitted that Annexure A-2 was not submitted on 26.5.97 but the same was submitted on 26.8.97 and therefore, same could not be taken into account as per the rules. He has also submitted that the order has been fabricated.

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and he should not be heard in the matter and the case be thrown on this ground alone. He has submitted that since the representation of the applicant was received by the authority beyond the period of time, the charges were taken ^{as} admitted and there was hardly any reason for any interference. Further defence of the respondents is that otherwise also in the case of minor penalty no detailed enquiry was required to be followed. Therefore, the Original Application deserves to be dismissed with heavy cost.

8. We have considered the rival contentions of the learned counsel for the parties.

9. As far as the issue concerned in this case we have made anxious effort and tried to go to the root of the matter and we find that there is some confusion. We have also tried to get proof of the service of the same from the learned counsel for the applicant but no satisfactory explanation has been forthcoming. Thus we have no alternative except ~~him~~ ^{accept the} contention of the learned counsel for the respondents that the representation was not submitted in time.

10. Now adverting to the next issue that even though, representation was not received in time but it was available before the disciplinary authority prior to the issuance of penalty order, therefore ^{it} ought to have been considered by him. we find ourselves unable to subscribe with the view of the learned counsel for the applicant, since there is no such rule which countenances such proposition.

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11. Looking the aforesaid issue from another angle it has been specifically indicated in the reply that the disciplinary authority had decided the matter of imposition of penalty on the applicant on 6.8.1997 itself and the impugned penalty order which is issued on 6.10.1997 was only a communication of the decision. Thus, it is wrong to contend that the representation of the applicant was available with the disciplinary authority while taking the decision in the matter. We find that no rebuttal of this averment has been made since no rejoinder has been filed on behalf of the applicant in this case.

12. As far as the question regarding non-speaking order dated 6.10.1997 is concerned, the procedure for imposing minor penalty has been laid down in Rule 11 of the Rules and sub-rule (1)(d) of which reads as "recording a finding on each imputation of misconduct or misbehaviour". As per the said Rule, the disciplinary authority was required to give a specific finding on imputations of misconduct or misbehaviour, but, we find that no such finding has been given and the order is cryptic and non-speaking. As far as law relating to passing of the speaking order is concerned, by now, it is well settled by the Apex Court in number of cases. In one well celebrated judgment of the Hon'ble Supreme Court in the case of S.N.Mukherjee vs. Union of India, AIR 1990 SC 1984 their Lordships in a Constitution Bench have held that the administrative authority while exercising quasi judicial functions are required to give reasons for their decision until the rules specifically prohibit from giving such reasons. Applying the said proposition of law to the impugned penalty order

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we are of the firm opinion that the same is a non-speaking order and does not contain any reason whatsoever for its decision, and can be said to be valid.

13. Now, advertizing to the last issue as far as the order passed by the appellate authority is concerned, the law is already well settled by the Hon'ble Supreme Court in the case of Ram Chander Vs. Union of India and others, AIR 1986 SC 1173 wherein their Lordships were dealing with Rule 22(2) of the Rules and have held that the appellate authority is required to give a specific finding on the three mandatory points mentioned in the said Rule which are reproduced as under:-

- "(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;
- (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."

We find from the perusal of the appellate order that the aforesaid rule has not been complied with and the contention of the learned counsel of the applicant appeals to the reason and has substantial force. The appellate order also cannot be sustained. However, since we have come to the conclusion that the very disciplinary authority's order is not in consonance with the rules and the same is required to be set aside, the order of the appellate authority will also not stand.

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14. Before parting with this case we would enter into caveat with the applicant that he should be very careful and should avoid filing any confusing documents before the court of law in future.

15. In the premises, the original application is partly allowed. The impugned orders dated 6.10.1997(Annexure-A-3) and 26.12.1997(Annexure-A-5) passed by the disciplinary authority and appellate authority respectively are set aside. However, the respondents shall be at liberty to pass appropriate order in the disciplinary case ignoring the reply to the charge-sheet, as per rules in force. No costs.

rkv.

(Anand Kumar Bhatt)
Administrative Member

JK
(J.K.Kaushik)
Judicial Member.

पृष्ठांकन सं. ओ/व्या..... जखलपुर, दि.....
प्रतिज्ञित अध्येता:—

- (1) संविधि, उत्तर व्यापार विभाग, जखलपुर
- (2) अधिकारी नं. ५२, जखलपुर, जखलपुर
- (3) लग्जरी श्री/श्रीमती/न्तु के कार्रवाल SK. merson-Adel
- (4) वायरला, केवड़ा, जखलपुर ज्यागता

संविधि एवं आवश्यक कार्यवाली हेतु
JK
25/7/03

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on
25/7/03