OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the 10th Day of October 2018)

Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Original Application No.330/00916/2014
(U/S 19, Administrative Tribunal Act, 1985)

Vijay Kumar Bharti aged about 45 years S/o Shri Katwaru Ram, Ex. Booking Clerk Zamunia, East Central Railway, Zamania, R/o Village Chhimia, Post Mughalsarai, District Chandauli.

..... Applicant

By Advocate: Shri Vinod Kumar

Versus

1. Union of India through General Manager, East Central Railway, Hazipur (Bihar).
2. The Divisional Railway Manager, East Central Railway, Danapur.
3. Additional Divisional Railway Manager, East Central Railway Danapur.
4. Senior Divisional Commercial Manager East Central Railway Danapur.
5. Shri S.K. Saran (Enquiry officer) working as CTI, ECR at Danapur.
6. Shri Ganesh Prasad working as Assistant Station Master at Zamania, ECR, Danapur.
7. Sri Bali Ram Prasad, Booking Supervisor, at Zamania, E.C.R., Danapur.

.... Respondents

By Advocate: Shri Rishi Kumar

O R D E R

Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member (Judicial)

1. Through the present O.A., the applicant prays for the following reliefs :-

"(i) to issue an order or direction in the suitable nature quashing the impugned orders dated 18.09.2012 as well

as order dated 11.03.2014 passed by respondent No.4 and 3 respectively (Annexure A-1 and A-2 to the compilation No.1).

(ii) to issue an order or direction in the suitable nature directing the respondents to reinstate the applicant in service with all consequential benefits along with arrears of salary.

(iii) to issue any order or direction which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

(iv) to award the cost of the application to the applicant".

2. Applicant Vijay Kumar Bharti case is that he has been initially appointed as Booking Clerk in the year 1996. During the service period, he was transferred from one place to another where he worked with full devotion and sincerity. While working as Booking Clerk and posted at Zamania Railway Station, he was placed under suspension vide order dated 01/04.07.2011 w.e.f. 20.06.2011 (Annexure A-3). Thereafter he was served a memorandum of chargesheet (SF-5) dated 08.07.2011 (Annexure A-4) about unauthorized absence from service. The suspension order dated 01/04.07.2011 was revoked by the respondents vide order dated 12.07.2011 with further order to initiation of preliminary enquiry against him vide order dated 26.11.2012(Annexure A-6). Applicant submitted his reply on 08.07.2011 (Annexure A-7) whereby denied all the charges leveled against him. Enquiry Officer concluded the enquiry and submitted its report dated 21.6.2012 (Annexure A-11) before the Disciplinary Authority whereby charges stated to have been proved against the applicant. Applicant submitted his reply dated 31.7.2012. Without considering the reply of the applicant, disciplinary authority has passed the impugned order on 18.9.2012 (Annexure A-1) removing the services of the applicant. Immediately applicant submitted his appeal on 02.11.2012

before the Appellate Authority, which too was rejected by the Appellate Authority by passing unreasoned order dated 11.3.2014 (Annexure A-2).

3. In the counter affidavit, it has been averred that major charge-sheet was issued to the applicant vide chargesheet dated 8.7.2011 mainly on the following grounds-

    (i) Applicant is a habitual absconder.
    (ii) He himself written Lap in the attendance register against the absent mark.
    (iii) He was habitual offender in creating shortage in booking.

4. Further an adequate opportunity of hearing has been given to the applicant to defend his case and applicant has also cross examined the prosecution witnesses. Respondents have further averred that absconding from duty and creating shortage in booking are serious irregularities and with such habit, it is not possible to retain him in the service. Respondents further submitted that Disciplinary and Appellate Authorities have passed speaking order considering all the facts and circumstances of the case.

5. In the rejoinder, applicant while reiterating the averments made in the O.A. has further submitted that disciplinary and appellate orders are non-speaking and said authorities have not applied its mind while passing such orders.

6. Applicant has challenged the orders of disciplinary authority and appellate authority. Heard Shri Vinod Kumar, learned counsel for the applicant and Shri Rishi Kumar, learned counsel for the respondents and also gone the pleadings on record.

7. In the above context, it has been submitted by learned counsel for applicant, that the Inquiry Officer, Disciplinary Authority and Appellate Authority have utterly failed to consider the pleas raised by the applicant in his written statement of defence, reply to the show-cause notice, and

appeal in their proper perspective, and that the conclusions arrived at by the said authorities are perverse and, therefore, the impugned enquiry report and the orders passed by the Disciplinary Authority and Appellate Authority are unsustainable and liable to be quashed.

8. Per contra, it has been submitted by learned counsel appearing for respondents, that there was sufficient evidence to prove the charges against the applicant. The Inquiry Officer, Disciplinary Authority and Appellate Authority have recorded their findings in a fair manner. The pleas taken by the applicant in the written statement of defence, reply to the show cause notice, and appeal have been duly considered and findings thereon have been arrived at by the Inquiry Officer, Disciplinary Authority and Appellate Authority. The procedure established by law has been duly followed. The punishment of removal from service is commensurate with the charges proved against him. Therefore, there is no infirmity in the orders passed by those authorities, and the O.A. is liable to be dismissed.

9. It is no more res integra that the power of judicial review does not authorize the Tribunal to sit as a court of appeal either to reappraise the evidence/materials and the basis for imposition of penalty, nor is the Tribunal entitled to substitute its own opinion even if a different view is possible. Judicial intervention in conduct of disciplinary proceedings and the consequential orders is permissible only where (i) the disciplinary proceedings are initiated and held by an incompetent authority; (ii) such proceedings are in violation of the statutory rule or law; (iii) there has been gross violation of the principles of natural justice; (iv) there is proven bias and mala fide; (v) the conclusion or finding reached by the disciplinary authority is based on no evidence and/or perverse, and (vi) the

conclusion or finding be such as no reasonable person would have ever reached.

10. Insofar as the orders dated 18.9.2012 and 11.3.2014 of the Disciplinary authority (DA) and Appellate authority (AA) are concerned, the learned counsel for the applicant argued that the orders are cryptic and without reasons. Both Disciplinary and appellate authority have not recorded sufficient reasons in their orders and given due evaluation to the enquiry report as to its acceptance or otherwise and does not meet the requirement of law.

11. The enquiry officer has given the gist of the charge, evidence both oral and documentary placed on record by the department and without recording the reasons deduced that:

> "16. Findings: After considering all the documentary and oral evidence produced by the prosecution and defence plea advanced by the defendants I course of enquiry proceedings with a cool and detached mind the following findings are drawn "Charges brought against the charged official Sri V.K.Bharti, BC/ZNA as per Annexure-1 of the memorandum of charge sheet quoted above is established"
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> 17.Reasons for findings:
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> 17.1 The Charge against C.O. is on account of unauthorized absent from 17.05.11 to 25.05.2011 and 10.06.11 to 15.06.11 as per P/Exbt.-III & P/Exbt – I.C.O didn't cross examined the statement of PW-1.
>
> 17.2 Prosecution had quoted instances of shortages in booking from JAN'11 to MAR'11 also as per P/Exbt. – II.C.O didn't cross examined the statement of PW 2. He said that outstanding on account of shortage in booking was due to want of COM 16."

12. However, applicant has not challenged the enquiry report and so, no finding can be given regarding the enquiry report. However, the Disciplinary and Appellate Authorities, it seems, have not gone into the inquiry and its proceedings and the ultimate finding given therein. If the said authorities had carefully gone through the inquiry report, they would have noticed the lacunas in the said report. What is the evidence, its worth and credibility and process of reasoning to arrive at the decision in the inquiry report, does not seem to have been taken note of by the said Authorities. How the inquiry officer deduce the guilt of the applicant in arriving at the finding of misappropriation of government money is singularly lacking in the inquiry report. This, observation, is not to be construed as being given on merit but is based on a bare and cursory glance at the report.

13. However, since the applicant has not challenged the inquiry report, we refrain from giving a finding on the inquiry report. However, the Disciplinary Authority ought to have gone into the merit of the inquiry report to find whether there is justification for the entire or part of the enquiry report to be accepted and thereafter, impose a penalty upon the applicant, which, as per, law should not be disproportionate to the count on which the applicant has been found guilty. To repeat, the order of DA is sketchy, cryptic, unreasoned and non-speaking and is therefore, set aside.

14. Learned counsel for applicant submitted that the order dated 11.03.2014 passed by the Appellate Authority is not in accordance with the law. Learned counsel further argued that the impugned appellate order is not only against the mandate of Rule 22 of the Rules but is also a unreasoned order and has not dealt with the issues raised by the applicant while challenging the order of the disciplinary authority as well as the authority which had initiated the disciplinary proceedings.

It is stated that the order of the Disciplinary Authority is cryptic, unreasoned and non-speaking.

15. On the other hand learned counsel for the respondents submitted that due procedure was adopted and observed by the Appellate Authority while dismissing the appeal and upholding the punishment imposed upon the applicant, as such, the present O.A. being meritless deserves to be dismissed.

16. Applicant as challenged the order of the Appellate Authority has been passed in violation of Rule 22 of The Railway Servants (Discipline & Appeal) Rules, 1968 (Hereinafter referred to as the "Rules").

17. Rule 22 reads as under :

> "Consideration of appeal
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> xx xx xx
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> (2) In the case of an appeal against an order imposing any of the penalities specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider –
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> (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-
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> (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.

18. Rule 22 lays down that the appellate authority while considering an appeal against an order imposing any of the penalties specified in Rule 6 shall consider as to whether (i) the procedure laid down in the Rules have been complied with and if not such non-compliance resulted in violation of provisions of Constitution of India or in the failure of justice, (ii) the findings of disciplinary authority are backed by the evidence and the penalty imposed is adequate, inadequate or severe and thereafter pass order confirming the penalty.

19. In the present case the order of the appellate authority is terse and is an unreasoned order spelling out no reason for rejecting the appeal. There is nothing in the impugned order to show that the pleas raised by the applicant in the memo of appeal were considered by the Appellate Authority and were found to be baseless. The impugned order is singularly lacking in giving the reasons as to how the pleas raised by the appellant/ applicant were dealt with by the Appellate Authority. It is a settle principle that giving reasons is a hallmark of a fair administration so as to enable the effected person to know as to the manner in which his lis has been dealt with.

20. Rule 22 speaks of three essential conditions which are to be looked into by the Appellate Authority while disposing of an appeal i.e. compliance of procedure, finding based on evidence and the penalty is adequate.

21. Perusal of the impugned order does not reveal that the Appellate Authority had considered the aforementioned three conditions while passing the impugned order. The only circumstance given in the impugned order is that the appeal

of the applicant and other records/ aspects of the case were considered to come to the conclusion that the charge have been proved but again the impugned order is lacking in reasons for coming to the conclusion that the appeal is to be rejected. The impugned order seems to be relying heavily on the assessment of disciplinary authority to dismiss the appeal.

22. In this regard, reference may be made to R.P. Bhatt vs Union Of India And Ors, AIR 1986 SC 1040 wherein the Hon'ble Apex Court held that "There is no indication in the impugned order that the Director-General was satisfied as to whether the procedure laid down in the Rules had been complied with; and if not, whether such noncompliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director-General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. It seems that he only applied his mind to the requirement of cl. (c) of r. 27(2), viz. whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of r. 27(2) of the Rules, the impugned order passed by the Director-General is liable to be set aside."

23. In the instant case, it was incumbent upon the Appellate Authority to pass a reasoned order observing the principles of natural justice, which are totally lacking in the present case.

24. It is, thus, apparent that the impugned order of the Appellate Authority is very brief, sketchy and lacks reasoning. It is now well settled principle of law that in case a public authority wants to pass an adverse order, it has to follow the principles of natural justice, and to pass a speaking order.

25. Exhibiting the necessity of passing of speaking orders, the Hon"ble Apex Court in the case of Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others (2009) 4 SCC 240 has in para 8 held as under:-

> "8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N.Mukherjee vs. Union of India reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation".

26. An identical question came to be decided by Hon'ble Apex Court in the case of M/s Mahavir Prasad Santosh Kumar Vs. State of U.P. & Others 1970 SCC (1) 764 which was subsequently followed in a line of judgments. Having considered the legal requirement of passing speaking order by the authority, it was ruled that "recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. It was also held that while it must appear that the authority entrusted with the quasi-judicial authority has reached a conclusion of the problem before

him: it must appear that he has reached a conclusion which is according to law and just, and for ensuring that he must record the ultimate mental process leading from the dispute to its solution". Such authorities are required to pass reasoned and speaking order. The same view was again reiterated by Hon"ble Apex Court in the case of Divisional Forest Officer Vs. Madhuusudan Rao JT 2008 (2) SC 253.

27. And in Kranti Associates Private Limited and Anr. Vs. Masood Ahmed Khan and Ors., (2010) 9 SCC 496, the Hon'ble Supreme Court has held that a quasi judicial authority must record reasons in support of its conclusions. The insistence on recording of reasons is meant to serve the wider principle that justice must not only be done it must also appear to be done. In para-47, it has been held that:-

> "7. Summarizing the above discussion, this Court holds:
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> (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
>
> (b) A quasi-judicial authority must record reasons in support of its conclusions.
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> (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
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> (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
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> (e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
>
> (f) Reasons have virtually become as indispensable a component of a decision making process as

observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior Courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or `rubber-stamp reasons' is not to be equated with a valid decision making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

28. Therefore, thus, seen from any angle, the impugned order dated 11.03.2014 of the Appellate Authority (AA) does not fulfill the legal requirements as laid down by the Hon'ble Apex Court and has no legs to stand in law. The same reasoning also applies to the order dated 18.09.2012 passed by the DA. The Disciplinary and Appellate Authority has not considered the facts and the evidence in details and recorded cogent reasons dealing with the relevant evidence of the parties and provided adequate opportunities at appropriate stages to the applicant. Therefore, we hold that both the DA and AA have not recorded cogent reasons and examined the matter in the right perspective.

29. After analyzing all the points raised by the applicant in this OA, we find that orders passed by DA and AA are wholly cryptic, non-speaking and without application of mind and have been passed in most casual and perfunctory manner as it has not been passed in accordance with the decision of Hon'ble Supreme Court in the case of Ram Chander Vs. Union of India

and Ors. 1986 SCC (L&S) 383, N.M Arya Vs. United India Insurance Company – 2006 SCC (L&S) 840 and DFO Vs. Madhusudan Rao. 2008 Vol. 1 Supreme Today page 617 wherein it has been held that while deciding the representation or appeal or revision by the Competent Authority, speaking order should be passed. On perusal of appeal filed by the applicant, it is evident that the applicant raised several grounds in support of his case but the DA and the AA without considering each and every ground raised by the applicant, rejected his grounds of defence by a cryptic and non-speaking order.

30. Accordingly, the O.A. is allowed and the impugned order dated 18.09.2012 passed by Disciplinary Authority (respondent No. 2) and order dated 11.3.2014 passed by Appellate Authority (respondent No. 3) are hereby quashed and set aside. The matter is remitted back to the respondent No. 2 to consider and decide the enquiry report afresh by a reasoned and speaking order meeting all the grounds raised by the applicant in his reply, within a period of three months from the date of receipt of certified copy of the order in accordance with law and relevant rules on the subject and communicate the decision to the applicant. It is made clear that the applicant shall be entitled to the benefit under the Rule 5 (4) of the Railway Servants (Discipline and Appeal) Rules, 1968. No order as to costs.

(Rakesh Sagar Jain)
Member (J)

(Gokul Chandra Pati)
Member (A)

Manish/-