

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.573/2012

New Delhi this the 31st day of August, 2016

HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. V.N. GAUR, MEMBER (A)

Umesh Pandey
S/o Shri Badri Prasad
R/o 284/4, Railway Colony,
Shakurbasti,
Delhi-11034. ...Applicant

(Argued by: Shri R.K. Jain, Advocate)

Versus

1. Union of India through
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Additional Divisional Railway Manager (OP),
Northern Railway, DRM Office,
Chelmsford Road,
New Delhi.
3. The Senior Divisional Operation Manager,
Northern Railway, DRM Office,
Chelmsford Road,
New Delhi.
4. The Divisional Operation Manager/CHG,
Northern Railway, DRM Office,
Chelmsford Road,
New Delhi. ...Respondents

(By Advocate : Shri Kripa Shankar Prasad)

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

The crux of the facts and material, relevant for deciding the instant Original Application (OA), and emanating from the

record, is that, applicant, Umesh Pandey, while working as Goods Guard/SSB, organised illegal agitation/demonstration on 22.12.2008 at work place, i.e. TKD by raising slogans against the Railway Administration. Thus, he was stated to have committed grave misconduct while performing his duty.

2. As a consequence thereof, applicant, was served with the impugned Statement of Imputation of Misconduct and following Article of Charge (Annexure A-5):

“Sh. **Umesh Pandey** while working as **Goods Guard/SSB** on 22.12.2008 at about 12.30 Hrs. Has committed the serious misconduct in as much as:-

He organized illegal agitation/demonstration against the Railway administration on 22.12.2008 at work place i.e. TKD by raising slogans against the railway administration which resulted in detention of following nineteen trains :-

S.N.	Train No.	Station	From-To	S.N.	Train No.	Station	From-To
1.	RPAR Empty Box 'N' Load	TKD	1300-1600	1	SNP-3	TKD	1345-1515
2.	EPH Empty Box 'N'	TKD East	1305-1620	2	2907	JNC Cabin	1341-1520
3.	ASE VJP	O/S TKD	1425-1635	3	2617	JNC Cabin	1400-1520
4.	AHH-JNPT	OKA	1335-1635	4	KUN-UMB	O/S TKD	1445-1640
5.	2060	O/S TKD	1340-1515	5	3-HP	FDB	1442-1520
6.	9024	O/S TKD	1400-1552	6	8477	FDB	1510-1525
7.	2716	O/S TKD	1435-1435	7	361	FDN	1505-1522
8.	2191	OKA	1440-1522				
9.	2780	NZM	1500-1530				
10.	2688	NZM	1430-1538				
11.	2412	NZM	1535-1600				
12.	2612	NZM	1600-1610				

The issue of snatching with a staff by some miscreants was not deserving such illegal demonstration/ Agitation. The issue could have been easily resolved by discussion with the concerned security agencies and dialogue with the higher officials. But instead of bringing the issue to the notice of the concerned officials, he organized and participated in an illegal demonstration/agitation which has resulted in disruption of train operations. The illegal agitation was also against public order and led to avoidable harassment to the passenger and the public at large”

By the above act of omission and commission, he has failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner of unbecoming of a railway servant. His act of organizing and participating in the illegal demonstration/agitation at the work place was also against public order thereby contravened Rule 3.1 (i), (ii), (iii) and rule 7 of Railway conduct Rule, 1966.

3. The Enquiry Officer (EO) was appointed by the competent authority. After following due procedure of enquiry, he recorded, completed the evidence and came to a definite conclusion that the charges against the applicant stand proved, vide impugned enquiry report dated 04.03.2010 (Annexure A-4).

4. Having completed all the codal formalities and agreeing with the findings of the EO, a penalty of withholding of one increment for a period of one year was imposed, vide impugned order dated 24.06.2010 (Annexure A-1) by the Disciplinary Authority (DA). The appeal dated 30.07.2010 (Annexure A-9) filed by him was dismissed by a very brief order dated 23.08.2010 (Annexure A-2) by the Appellate Authority (AA). Thereafter, appeal/revision filed by the applicant was dismissed, vide impugned order dated 07.02.2011 (Annexure A-3) by the Revisional Authority.

5. Aggrieved thereby, the applicant has preferred the instant OA, challenging the impugned enquiry proceedings and orders on the following grounds, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985:-

“5.1 Because the applicant is fully entitled to protect his fundamental rights as envisaged under Article 14, 16 & 21 of the Constitution of India.

5.2 Because the departmental enquiry has not been held against the applicant as per the relevant rules. Hence the same is liable to be set aside.

5.3 Because there is no evidence against the applicant that the applicant had organized the illegal agitation during the departmental enquiry. Even PW2 Pawan Kumar had stated in his cross examination that he had neither seen the applicant putting red flags nor instigating any driver. Hence the applicant has been punished illegally.

5.4 Because the orders passed by the Disciplinary, Appellate and Revisional authority are all non-speaking. The respondents have not at all considered the pleas taken by the applicant while passing the impugned orders. Hence the impugned orders are liable to be set aside on this ground alone.

5.5 Because as per report submitted by PW 1 Ramjee Lal and PW2 Pawan Kumar, there were five persons at the place agitation including one Devender Kumar. No action has even been initiated against him by the respondents. Hence the applicant has been discriminated. Hence the impugned orders are liable to be quashed on this ground alone. A true copy of the report is annexed herewith as Ann. A-11.

5.6 Because as per the call book, the applicant was first served the call at 8.15 AM for E/BCN which was scheduled to leave the station at 10.30 AM. Thereafter, the applicant reached the lobby and sign on. But the train was not allowed to run by TXR as the same was still under examination. The applicant informed the same to the concerned authority. Again at 14.30, a call was again issued to the applicant to take another from main line. Hence the applicant came to main line and notice that a crowd had gathered there. The applicant had gone there just to know whether any mis-happening has been happened. The applicant cannot organize the demonstration which had started at 12.30 PM as the applicant was inspecting his train. Moreover, if the applicant would have organized the agitation, the applicant would not have been assigned the second call at 14.30. Hence the allegations against the applicant are baseless and the applicant has been punished illegally. The true copies of the call books are annexed herewith as Ann. A-12 [colly].

5.7 Because the respondents have neither provided all the documents requested by the applicant is his request nor the applicant was provided the reasons for not supplying the same. Hence the departmental enquiry has been conducted in violation of the principles of natural justice. Hence the same is liable to be set aside on this ground alone.

5.8 Because no documentary evidence has been produced in the enquiry to prove that 19 trains were detained.

5.9 Because Ramjee Lal had some previous biasness against the applicant as the applicant was working as pointman at SSB and Ramjee Lal was also working there. Ramjee Lal had started some illegal demands from the applicant but the applicant did not agree to that. The said Ramjee Lal got this opportunity to take the revenge against the applicant and included his name in his report. Hence the action against the applicant is biased and liable to be set aside on this ground alone".

6. According to the applicant, the impugned enquiry proceedings and orders are arbitrary, illegal, non-speaking and

without jurisdiction. On the strength of the aforesaid grounds, the applicant sought quashing of the impugned enquiry proceedings and orders in the manner indicated hereinabove.

7. The respondents refuted the claim of the applicant and filed the reply, wherein it was pleaded as under:-

“It is submitted that a report was received from Shri Ramji Lal, Chief Yard Master and Shri Pawan Kumar, SWMI, Tuglakabad that some guards have been assembled in lobby and had a meeting and taken the decision (sic) not to run the trains and then Shri Ramji Lal, CYM along with Shri Pawan Kumar, SWMI reached in the lobby where the guards were shouting the slogans and accordingly CHC/New Delhi and AOM(M)/New Delhi was informed and they also asked me to inform (sic) DOM (M) and accordingly DOM(M)/New Delhi was also informed. It is further submitted that the guards had jammed the main line on which 2060 Kota Jan Shatabdi and SNP-3 trains were about to leave. The following guards were found there, namely, S/Shri V.P.Singh, Joginder Sharma, G.D. Pujari, All Goods Guard Tughlakabad, Umesh Pandey (applicant), Goods Guard Shakurbasti and Devender Kumar, Sr. Chief Controller, Tuglakabad. It is submitted that the complainant requested and some guards became peaceful but Devender Kumar, Sr. Chief Controller, Tuglakabad induced V.P. Singh and said the other guards that “aisa netagiri nahin hoti” and also misbehaved with Ramji Lal and his mobile was slashed and thrown on earthed and forced to leave the site. The agitation was started at 13.30 pm and was over at 15.08 pm after intervening by the Divisional Officers and Delhi Police”.

8. Virtually acknowledging the factual matrix and reiterating the validity of the impugned enquiry proceedings and orders, the respondents have stoutly denied all other allegations and grounds contained in the OAs, and prayed for its dismissal. That is how we are seized of the matter.

10. As indicated hereinabove, although the applicant has challenged the impugned orders on various pleaded grounds mentioned therein, but during the course of arguments, learned counsel for the applicant, has confined his argument only to the limited extent of non-application of mind in not

deciding the statutory appeal (Annexure A-9) of the applicant by passing a quasi-judicial order by the AA.

10. At the very outset, learned counsel for the applicant has contended with some amount of vehemence that apart from other grounds, the present OA deserves to be accepted only on the ground of non-deciding the appeal (Annexure A-9) of the applicant by passing a quasi-judicial/speaking order.

11. On the contrary, learned counsel for the respondents has argued that the AA has passed the impugned order keeping in view the material available on record and no interference is warranted by this Tribunal.

12. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after considering the entire matter, we are of the firm view that instant OA deserves to be partly allowed, in the following manner.

13. As is evident from the record, that the indicated penalty was imposed on the applicant vide impugned order dated 24.06.2010 (Annexure A-1) by the DA. Dissatisfied thereby, the applicant filed statutory appeal dated 30.07.2010 (Annexure A-9) raising very important issues. Surprisingly enough, the appeal was stated to have been dismissed and its decision was conveyed to the applicant, vide memo dated 23.08.201 (Annexure A-2), which in substance is as under:-

“After considering the appeal dated 30.07.2010 of the above said employee, the competent officer issued the order as under:-

The defence Note contains (sic) no further evidence to prove himself from the charges regretted”.

14. Meaning thereby, the AA has not dealt with all the issues raised by the applicant in his grounds of appeal, including the ground of disproportionality of his sentence of minor misconduct by the DA. The right of filing the appeal is a very important statutory right, & the AA is required to deal with all the relevant issues and then to pass a reasoned and speaking order.

15. Be that as it may, the AA has not passed any speaking and reasoned order on the statutory appeal of the applicant. Therefore, the impugned order (Annexure A-1) is non-speaking, result of non-application of mind and cannot legally be sustained.

16. Moreover, it is not a matter of dispute that Central Vigilance Commission in its wisdom has taken a conscious decision and issued instructions vide Office Order No.51/09/03 dated 15.09.2003, which reads as under:-

“Subject: - Need for self-contained speaking and reasoned order to be issued by the authorities exercising disciplinary powers.

Sir/Madam,

It was clarified in the Department of Personnel & Administrative Reforms’ OM No. 134/11/81/AVD-I dated 13.07.1981 that the 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 therefore, it is necessary that orders issued by such authorities should have the attributes of a judicial order. It was also clarified that the 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. Such orders passed by the competent

disciplinary/appellate authority as do not contain the reasons on the basis whereof the decisions communicated by that order were reached, are liable to be held invalid if challenged in a court of law.

2. It is also a well-settled law that the disciplinary/appellate authority is required to apply its own mind to the facts and circumstances of the case and to come to its own conclusions, though it may consult an outside agency like the CVC. There have been some cases in which the orders passed by the competent authorities did not indicate application of mind, but a mere endorsement of the Commission's recommendations. In one case, the competent authority had merely endorsed the Commission's recommendations for dropping the proposal for criminal proceedings against the employee. In other case, the disciplinary authority had imposed the penalty of removal from service on an employee, on the recommendations of the Commission, but had not discussed, in the order passed by it, the reasons for not accepting the representation of the concerned employee on the findings of the inquiring authority. Courts have quashed both the orders on the ground of non-application of mind by the concerned authorities.

3. It is once again brought to the notice of all disciplinary/appellate authorities that Disciplinary Authorities should issue a self-contained, speaking and reasoned orders conforming to the aforesaid legal requirements, which must indicate, inter-alia, the application of mind by the authority issuing the order."

17. 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**".

18. An identical question came to be decided by Hon'ble Apex Court in a celebrated judgment 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.** If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just”. 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.

19. Therefore, the impugned order of Appellate Authority (Annexure A-3) lack application of mind and reasons, illegal, against the statutory rules and principles of natural justice, which is not legally maintainable.

20. No other point, worth consideration, has been urged or pressed by learned counsel for the parties.

21. In the light of the aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side, during the course of hearing of the appeal, the instant OA is partly accepted. The impugned order dated 07.02.2011 (Annexure A-3) passed by the Appellate Authority is set aside. The matter is remitted back to the Appellate Authority to decide the appeal afresh in view of the aforesaid observations by passing a speaking and reasoned order and in accordance with law, within a period of three months from the date of receipt of a certified copy of this order. However, the parties are left to bear their own costs.

Needless to mention, if the applicant still remains aggrieved by the order passed by the Appellate Authority, he would be at liberty to challenge the same by filing independent OA, subject to all just exceptions and in accordance with law.

(V.N. GAUR)
MEMBER (A)

Rakesh

(JUSTICE M.S. SULLAR)
MEMBER (J)
31.08.2016