

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

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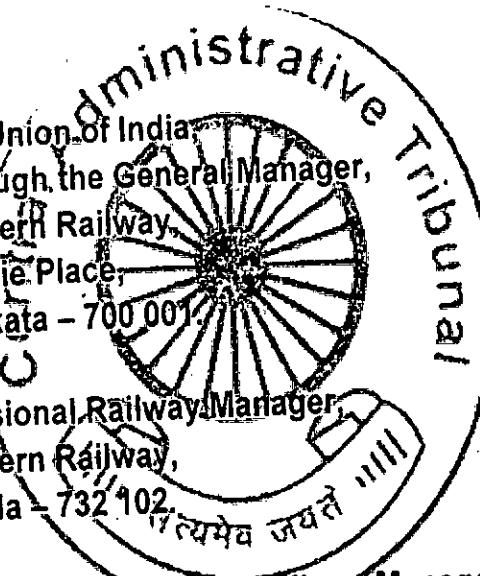
No. O.A. 350/1093/2016

Date of order: 27th March 2018Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

I, Amitava Sarkar,
 S/o Late Manoranjan Sarkar,
 Aged about 51 years,
 Working as Reservation Supervisor – II under
 Senior Divisional Commercial Manager,
 Eastern Railway, Malda,
 At present residing at 214/A, Barrack Colony,
 Jhaljharia, Malda,
 Pin – 7312102, West Bengal.

.. Applicant

Vs.



1. The Union of India
 Through the General Manager,
 Eastern Railway,
 Fairlie Place,
 Kolkata – 700 001

2. Divisional Railway Manager,
 Eastern Railway,
 Malda – 732 102.

3. Additional Divisional Railway Manager,
 Eastern Railway,
 Malda – 732 102.

4. Senior Divisional Personnel Officer,
 Eastern Railway,
 Malda – 732 102.

5. Senior Divisional Commercial Manager,
 Eastern Railway,
 Malda – 732 102.

.. Respondents

For the Applicant : Mr. C. Sinha, Counsel
 For the Respondents : Mr. A.K. Banerjee, Counsel

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ORDERPer Dr. Nandita Chatterjee, Administrative Member:

Aggrieved at the imposition of penalty of compulsory retirement as enhanced from reduction to one grade lower for two years with cumulative effect, the applicant has filed this application under Section 19 of the Administrative Tribunal Act, 1985 seeking the following relief:-

"a) To set aside and quash Impugned Charge Memorandum being No. Con/Vig./NKF/406/2013 (Major) dated 12.8.2013 issued by Senior Divisional Commercial Manager, Eastern Railway, Malda.

b) To set aside and quash Impugned Enquiry Report dated 17.3.2016 issued by the Enquiry Officer supplied under covering letter dated 22.4.2016.

c) To set aside and quash Impugned punishment Notice dated 23.5.2016 issued by Senior Divisional Commercial Manager, Eastern Railway, Malda.

d) To set aside and quash Impugned letter being No. Con/Vig./NFK/406/2013 (Major) dated 21.6.2016 issued by Additional Divisional Railway Manager, Eastern Railway, Malda.

e) To set aside and quash Impugned letter No. CON/VIG/NFK/406/2013 (MAJOR) dated 26.6.2016 issued by Additional Divisional Railway Manager communicated under letter dated 29.6.2016.

f) Any other order or orders as the Hon'ble Tribunal deems fit and proper."

II. Heard Ld. Counsel for the applicant and respondents, perused pleadings, documents on record as well as the provisions of Railway Servants (Discipline & Appeal) Rules, 1968.

The case, in brief, of the applicant as canvassed by his Ld. Counsel, is as follows:-

That, the applicant was appointed on 25.4.1990 as Enquiry-cum-Reservation Clerk and thereafter promoted to the post of Reservation Supervisor - II (RS-II).

That, while working as Reservation Supervisor - II (RS-II), a charge-memorandum dated 12.8.2013 was issued to the applicant.

That, the applicant had prayed for documents relied upon in the said memo and also for some additional documents which were not supplied to him.

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That, the Inquiry Officer was appointed and upon conclusion of enquiry the disciplinary authority, vide punishment notice dated 23.5.2016, imposed a punishment of reduction to one grade lower for two years with cumulative effect.

That, the applicant had preferred an appeal dated 17.6.2016 against the penalty so imposed and the appellate authority, vide letter dated 21.6.2016, proposed to enhance the penalty. Such, proposal, however, was without specification of the penalty to which it was proposed to be enhanced.

That, the decision of the appellate authority was guided by extraneous considerations.

That, the applicant represented on 24.6.2016 against the proposal of enhancement of penalty by the appellate authority, but vide order dated 26.6.2016, communicated on 29.6.2016, the appellate authority enhanced his penalty to compulsory retirement from service.

That, Rule 22 of the RS(D&A) 1968 were violated in this regard and hence aggrieved, the instant application has been filed.

III. Per contra, the respondents in their reply have stated that the applicant was working as RS-II, and while the applicant was working as RS-II, a vigilance check was conducted, upon which certain irregularities were detected. A charge-memo was accordingly issued to the applicant.

That, the applicant submitted his representation refuting all charges levelled against him.

That, the disciplinary authority, on receipt of enquiry officer's report, inflicted a punishment of reduction of one grade lower for two years with cumulative effect and the applicant preferred an appeal against the said punishment order.

That, the appellate authority proposed to enhance the penalty and liberty was given to the applicant for preferring a representation against the said proposal and after consideration of the said representation, the appellate

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authority imposed a major penalty of compulsory retirement with immediate effect and liberty was given to prefer an appeal to the revisionary authority.

That, the applicant, however, without preferring a Revision Petition, has filed the instant Original Application.

The O.A. is disposed of concluding as follows:-

"20. In view of the above, I am of the view that applicant cannot be allowed to present the application under Section 19 for challenge the order passed by disciplinary authority and appellate authority without exhausting the statutory remedy of second appeal and revision under RS (DA) Rules. Therefore, this application cannot be admitted for hearing. The Bench has not assigned any reason to lift the bar contained in Section 20 of AT Act nor record any satisfaction to lift the bar in the light of contingencies discussed hereinabove. The reference is accordingly answered."

Thereafter, the applicant challenged the said order in WPCT No. 27 of 2017 which was disposed of by Hon'ble High Court as under:-

" For the reason discussed we are of the opinion that the impugned order dated 23.12.2016 is not sustainable in law and the same is accordingly set aside and the writ petition is disposed of setting the original application to the Learned Tribunal for fresh consideration on merit."

That, thereafter the Tribunal took up the matter for hearing on merit.

The respondents further averred that necessary documents were supplied to the applicant / charged officer vide letter dated 31.12.2013 (R-1 to the reply) which was admitted by the applicant/charged officer vide his letter dated 29.1.2014 (R-2 to the reply) and that the enquiry officer was appointed from the approved list of Vigilance Department of Eastern Railway.

That, the enquiry report was prepared after receiving and considering the defence brief from the applicant/charged officer and that the disciplinary authority had duly considered the applicant's/charged officer's representation dated 17.5.2016 against the enquiry report while deciding on the penalty.

That, as per Para 22 and 23 of the RS (D&A) Rules, 1968, the appellate authority is at liberty to enhance the punishment imposed by the disciplinary authority and that has not been stated in the Rules that the nature of punishment to be enhanced by an appellate authority has to be a priori communicated to the Charged Officer.

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The respondents have therefore objected to the grounds as contained in the instant application.

ISSUE

The issue that we need to decide upon in the context of the instant application is whether principles of natural and procedural justice have been violated in the proceedings as conducted against the applicant.

FINDINGS

(i)(a) It is seen that the applicant had been given all opportunities to represent and submit his defence at all stages of the proceedings.

The memorandum of charges was drawn up on 12.8.2013 against which, on 30.8.2013, the applicant had sought certain documents (Annexure "A-2" to the O.A.).

The respondents have referred to their reply dated 31.12.2013 (Annexure "R-1" to the reply) by which nine sets of documents were furnished to the applicant.

The applicant, however, had preferred another representation on 29.1.2014 (Annexure "R-2" to the reply) requesting for further documents, but, thereafter at Annexure "R-3" in his representation dated "nil" implicitly admitted receipt of necessary documents.

b) The applicant had participated in the preliminary hearing of the enquiry held on 15.10.2015 (Annexure "A-4" to the O.A.) on 16.12.2015 (Annexure "A-4" to the O.A.). The applicant also furnished his defence brief dated "nil" (Annexed as Annexure "A-5" to the O.A.) as well as submission against the enquiry report dated 17.5.2016 (Annexure "A-7" to the O.A.) as well as an appeal to the appellate authority dated 17.6.2016 (Annexure "A-9" to the O.A.) and his representation against enhanced penalty by appellate authority dated 24.6.2016 (Annexure "A-11" to the O.A.).

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It is also noted that the applicant was given liberty to submit his revision application against the punishment imposed by the appellate authority vide respondent's memo dated 29.6.2016 (Annexure "A-12" to the O.A.).

Hence, as the respondents have given an opportunity to defend him and participate in the enquiry at every stage, natural justice has not been denied to the applicant at any stage.

(i) Coming to the issue of procedural justice, the following is deciphered:-

(a) No response was issued to the applicant/Charged Officer in response to his prayer for basic and fundamental documents dated 29.1.2014.

(b) The cryptic order of the disciplinary authority dated 23.5.2016 (Annexure "A-8" to the O.A.) is reproduced below:-

"PUNISHMENT NOTICE FOR THE PENALTY OF REDUCTION TO A LOWER SERVICE, GRADE OR POST OR LOWER TIME SCALE

Office: DM, Railway Manager

Station: Malda Town

Sri Amitava Sarkar,
RS-II/MLDT

C/o. SM/Eastern Railway/MLDT

"I find that C.O. has written in lot of things after charges having been proved by I.O., but not a single word of dissension could be seen on record in joint check memorandum drawn on 17.4.2012.

Having unclaimed tickets at the disposal of reservation staff is a big irregularity and this kind of things tarnishes Rly's image to its users.

Therefore, I order for reduction to one grade lower for two years with cumulative effect.

(S. Chakraborty)
Sr. Divisional Commercial Manager
Eastern Railway / Malda"

It is a settled principle of law that the order imposing the punishment must be a reasoned order. In the Railway Servants (Discipline & Appeal) Rules, 1968 vide Railway Board's order No. E(D&A) 78 RG 6-11 of 3.3.78 it has been directed that in some of the disciplinary cases that there is an omission on the part of the disciplinary authority, while imposing any of the penalties, to pass speaking order indicating the reasons for imposing a particular penalty. These

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order have been held by the courts as not in accordance with the D&A Rules. It is therefore desired that in all disciplinary cases the disciplinary authority should invariably pass a speaking order. The same procedure also should be adopted by the Appellate Authority while passing orders on the appeals.

As held by the Hon'ble Apex Court in **Bhagat Raja v. Union of India**, AIR 1967 SC 1606 it is also a settled principle of law that the order of the disciplinary authority must disclose reasons so that the appellate or supervisory authority can appreciate what factors weighed with the disciplinary authority in awarding the punishments and also enable the employee to challenge the order in appeal.

It has also been held by the Hon'ble Apex Court in **Roop Singh Negi v. Punjab National Bank**, (2009) 2 SCC 570 that "As adverse orders of the Disciplinary authority and Appellate authority entails civil consequences, such orders must be based on recorded reasons."

It has also been held in **S.K. Sharma v. Director Technical Education, Kanpur** (1992) Lab IC 1426 that "non-application of mind may be inferred where the approving authority passes any one word order saying, 'Anumadit' (approved) without applying his mind to the true scope and circumstances of the case and without considering as to what punishment would be imposed to meet the ends of justice.

In this case, given the legal position of the rules as well as the decision of the Hon'ble Apex Court, it is established that the disciplinary authority's order is a non-speaking order and accordingly the said order suffers from non-application of mind. The same is hence the same is fit to be set aside and we accordingly set aside the order of Disciplinary authority dated 23.5.2016 (Annexure A-8 to the O.A).

(c) The appellate authority, while providing the applicant/charged officer with an opportunity to make representation against proposed enhanced penalty, had noted the charges in the charged memorandum dated 12.8.2013 in para 2 of his notice. In para 7 of the same, the appellate authority also recorded the

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arguments/plea submitted in his defence by the applicant/charged officer and concluded on how the charges were finally established against the applicant/charged officer.

The appellate authority, however, went beyond his jurisdiction and terms of reference when he moved out of the charges in the charged memorandum in para 8 of his notice and summarised the purported misconduct of the applicant/charged officer in 26 years of his service and having concluded that the applicant/charged officer is habitual offender proposed to enhance the penalty of the applicant/charged officer.

The order of the appellate authority enhancing the penalty from "reduction to one grade lower for two years with cumulative effect" to "compulsory retirement" is based on extraneous matters of past conduct which, according to the RS (D&A) Rules, 1968, should in no case be taken into account unless a reasonable opportunity has been given to the delinquent to defend himself against such allegations.

It is true that a notice was issued to the applicant/charged officer detailing the past history of misconduct and the charged officer did not respond to this adequately (Annexure A-11 to the O.A). It was, however, binding on the appellate authority not to transgress his boundary. It was also against procedural justice to expect the applicant/charged officer to respond within a short time against charges of his purported misconduct for the last 26 years and without, being furnished documents relied upon in such notice.

It has been held in *V.C. Chaturvedi v. U.O.I. & ors. (1996) 1 LBESR 424 (SC)* that Judicial review is called for in the context of disciplinary proceedings when the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or when the conclusion of finding reached by the disciplinary authority is based on no-force.

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While noting impact of changes in Rule 10 of Railway Servants (Discipline & Appeal) Rules, 1968 made vide RBE No. 132/2002, it has been stated that the new sub-rule (1) makes some procedural steps necessary eg.

Xxxx xxxxxx xxxxxx xxxxxx

(4) Disciplinary Authority shall consider representation, if given and record its findings, and then proceed as in sub-rules (3) & (4).

Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968 states as follows:-

"22. Consideration of appeal

Xxxxx xxxxx xxxxx xxxx xxxxxx

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall 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;
- (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;

The Railway Servants (Disciplinary & Appeal) Rules, 1968, the relevant rules in this regard have clearly laid down the requisites of passing a speaking order by the Disciplinary authority as well as non-transgression of jurisdiction by the appellate authority. Both principles have been violated in the orders of the disciplinary authority and the appellate authority.

Hence, this matter being vitiated on account of issue of non-speaking order with no application of mind by the disciplinary authority as well as transgression of boundaries in the appeal, is a fit case for judicial review. We, therefore, intervene in the matter and set aside the orders of the disciplinary authority dated 23.5.2016 as well as the order of the appellate authority dated 26.6.2016. At the

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same time, as held in **Managing Director, ECIL Hyderabad v. V. Karnukar AIR 1994 SC 1074**, we remit the concerned case back to the disciplinary authority to pass a speaking order after due application of mind and after weighing evidence for and against the applicant/charged officer. Liberty is also accorded to the applicant to take further recourse to departmental remedy as required under the rules.

With this, the O.A. succeeds and is disposed of with the above directions.

Parties will bear their own costs.

(Dr. Nandita Chatterjee)
Administrative Member

SP

(Manjula Das)
Judicial Member

