

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

No. O.A. 1372 of 2013

**Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member**

R.K. Chaudhuri,
Son of Late Karan Deo Chaudhuri,
Aged about 33 years,
Working for gain as TTI/Asansol/Eastern Railway,
At present residing at Rly. Qr. No. 248/AB,
Traffic Colony, Asansol-1, Pin-713 301 and
Permanently residing at Vill. Tarsan,
P.O. – Kharona, P.S. Turki,
Dist. – Muzzafarpur, Bihar.

.. Applicant

- VERSUS -

1. Union of India,
Through the General Manager,
Eastern Railway, Fairlie Place,
17, N.S. Road,
Kolkata – 700 001.
2. The General Manager,
Eastern Railway,
Fairlie Place,
17, N.S. Road,
Kolkata – 700 001.
3. The Chief Commercial Manager,
Eastern Railway,
Fairlie Place,
Kolkata – 700 001.
4. The Divisional Commercial Manager,
Asansol,
Eastern Railway,
Dist. Burdwan.
5. The Sr. Divisional Commercial Manager,
Asansol,
Eastern Railway,
Dist. Burdwan.
6. The Additional Divisional General Manager,
Asansol,

Eastern Railway,
Dist. Burdwan.

7. The Sr. Divisional Personnel Officer,
Asansol,
Eastern Railway,
Dist. Burdwan.

8. Sri S.N. Ghosh,
CTI/HQ/Asansol,
Eastern Railway &
Inquiring Authority.

.. Respondents

For the Applicant : Mr. K. Sarkar, Counsel

For the Respondents : Mr. S.K. Das, Counsel

Order dated: 3.8.16.

ORDER

Per Ms. Bidisha Banerjee, Judicial Member:

Ld. Counsels were heard and materials on record were perused.

2. The applicant in this O.A. has assailed the entire disciplinary proceeding commencing with issuance of charge-sheet dated 23.10.98 culminating into a punishment on 29.3.2001 with orders of appellate authority dated 15.2.2012 and revisionary authority dated 6.7.2012 and 11.9.2012.

3. It transpires from the record that the applicant was chargesheeted for the following reasons:-

“ That the said Shri R.K. Chaudhuri while functioning as TTE/ASN during the period 1997 in train No. 8184 Dn. Exp. Between DNR-ASN was subjected to vigilance check between Mokuma-Jhajha on

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27.10.1997 and he was detected to have committed a serious irregularity in as much as:-

Private cash of Sri Chaudhuri found mixed with Govt. cash. Rs.

189/- found excess in Govt. cash of Sri Chaudhuri.

On without ticket passenger and 3 passengers holding IInd M/Exp. Tickets were found travelling in AC Chair Car Coach manned by Sri Chaudhuri.

By the above act of omission and commission Sri R.K. Chaudhuri failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway servant and thereby contravened 3.1 (i), (ii) & (iii) of Railway Services (Conduct) Rules, 1966."

4. The disciplinary authority being the Divisional Commercial Manager while penalising the applicant with "reduction of pay from Rs. 5450/- to Rs. 5300/- in scale of Rs. 5000-8000/- (RSRP)" with cumulative effect for a period of six months which shall operate to postpone future increments on restoration, has not passed any reasoned order. Similarly the appellate authority as well as the first revising authority and the second revising authority have passed two lines cryptic order without delving into the charges, evidences to sustain the same, the correctness of the conclusions arrived at by the enquiry officer on the basis of evidences and the justification of the penalty.

5. The Ld. Counsel for the respondents vociferously objected to the application and the relief sought for on the ground of delay inasmuch as the penalty order was issued way back in 2001 whereas the O.A. assailing the penalty order have been preferred in 2013. The contention was considered but in view of the fact that the second revisionary authority passed its order on 11.9.2012 and the O.A. application was preferred in October, 2013. it

could not be thrown away on the ground of limitation.

6. In regard to the orders impugned in the O.A. we would notice that all the impugned orders, Appellate order and the order passed on Revision are cryptic, mechanical and unreasoned.

" It has been held in a catena of decisions that "reason is the heart beat of every conclusion" and "reasons introduce clarity in an order." In support thereof, extracts from a few decisions rendered by the Hon'ble Apex Court would be profitable to quote:-

(i) The Hon'ble Apex 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."

Quoting supra the GI, MHA, DP & AR O.M. No. 134/1/81-AVD.I dated the 13th July, 1981 was issued that emphasised instances have come to the notice of this Department where the final orders passed by the competent Disciplinary /Appellate Authorities do not contain the reasons on the basis whereof the decisions communicated by that order were reached. Since such orders may not conform to legal requirements, they may be liable to be held invalid, if challenged in a Court of Law. It is, therefore, impressed upon all concerned that the authorities exercising disciplinary power should issue self-contained, speaking and reasoned orders conforming to the aforesaid legal requirements.

(ii) In the case of **Cyril Lasrado (Dead) by Lrs. & ors. v. Juliana Maria Lasrado & anr.** reported in **(2004) 7 SCC 431** it has been held as under:-

" Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, however brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable.

Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the other

made, in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

(iii) In the case of **R.P. Bhatt v. Union of India & ors.** reported in (1986)

2 SCC 651 it has been held as under:-

" Neither Article 311(2) nor rules of natural justice requires that in every case the appellate authority should in its order state its own reasons except where the appellate authority disagrees with the findings of the disciplinary authority. But where the Central Civil Services (Classification, Control and Appeal) Rules are applicable, the requirements of Rule 27(2) must be complied with. The word 'consider' in sub-rule (2) implies due application of mind. In the present case there is no indication in the appellate order that the appellate authority was satisfied as to whether the procedure laid down in the Rules had been complied with; and if not, whether such non-compliance has resulted in violation of any of the provisions of the Constitution or in failure of justice. The appellate authority had also not given any finding on the crucial question as to whether the findings of disciplinary authority were warranted by the evidence on record. He only applied his mind to the requirement of clause (c) of Rule 27(2) of the Rules, the impugned order passed by the appellate authority was liable to be set aside."

(iv) Noting the aforesaid judgment of the Hon'ble Apex Court in **Narinder**

Mohan Arya v. United India Insurance Co. Ltd. & ors. reported in (2006) 4

SCC 713 it has been held as under:-

" The Appellate Authority while disposing of the appeal was required to apply his mind with regard to the factors enumerated in Rule 37(2) of the Rules. The judgment of the civil court being inter parties were relevant. The conduct of the appellant as noticed by the civil court was also relevant. The fact that the respondent has accepted the said judgment and acted upon it would be a relevant fact. The authority considering the memorial could have justifiably come to a different conclusion having regard to the findings of the civil court. But, it did not apply its mind. It could have for one reason or the other refused to take the subsequent event into consideration, but as it had a discretion in the matter, it was bound to consider the said question. It was required to show that it had applied his mind to the relevant facts. It could not have without expressing it mind simply ignored the same."

An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind in compliance with the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.

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The order of the Appellate Authority demonstrates total non-application of mind. When the Rules required application of mind on several factors and serious contentions had been raised, the authorities were bound to assign reasons so as to enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute

required him to do."

7. In the aforesaid legal backdrop, the penalty orders as well as the appellate order as well as the orders passed by the revisionary authority on 6.7.2012 and 11.9.2012 are quashed and the matter is remanded back to the disciplinary authority to pass a reasoned and speaking order in the matter within a period of two months from the date of communication of this order.

8. The O.A. is, accordingly, disposed of. There shall be no order as to costs.

(Jaya Das Gupta)
MEMBER(A)

SP

(Bidisha Banerjee)
MEMBER(J)