

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No. 341/2012

RESERVED ON : 22.08.2019
PRONOUNCED ON: 30.08.2019

CORAM:

**HON'BLE MRS. HINA P.SHAH, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)**

Harish Mishra s/o Shri Braham Prakash Mishra, aged about 34 years, working as Chief Commercial Clerk, Jodhpur in the pay scale of Rs. 9300-34800 + 4200 grade pay, R/o Chandna Bhakhar, Jyoti Nagar, Jodhpur

...Applicant

(By Advocate: Shri Vineet R.Dave proxy for Mr. Rajesh Joshi)

Versus

1. Union of India through the General Manager, HQ Office, North Western Railway, Malviya Nagar, Near Jawahar Circle, Jaipur-17.
2. Assistant Divisional Railway Manager, North Western Railway, Jodhpur Division, Jodhpur.
3. The Senior Divisional Commercial Manager, North Western Railway, Jodhpur Division, Jodhpur

...Respondents

(By Advocate: Shri Kamal Dave)

ORDER

Per Mrs. Hina P.Shah

In this OA filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the punishment

order dated 12.12.2011 (Ann.A/1) by which penalty of compulsory retirement from service with immediate effect has been imposed, and the order of the Appellate Authority dated 14.5.2012 (Ann.A/2) which upholds the punishment as passed by the Disciplinary Authority, with a prayer that these orders may be declared illegal and quashed and he may be reinstated with all consequential benefits.

2. It is the case of the applicant that on 22.6.2005, Shri Dinesh Kumar Khorwal, Vigilance Officer, North Western Railway, Jodhpur approached and asked him to answer some questions. The same were answered by the applicant. Thereafter, he was served a charge memo (SF-5) dated 30.4.2008 alleging that while functioning as Senior Booking Clerk at Jodhpur Station on various dates he had committed serious irregularities/misconduct on the basis of Article of Charges (Ann.I), Imputation of Charges (Ann.II), List of Documents (Ann.III) and List of Witnesses (Ann.IV) on which action under the Railway Servants (Discipline & Appeal) Rules, 1968 is to be taken against the applicant (Ann.A/4). On 6.6.2008, vide his letter to Assistant Commercial Manager, Northern Western Railway, Jodhpur (Disciplinary Authority) the applicant has pointed out that the charge sheet has some defects. After holding inquiry,

the Inquiry Officer submitted his report on 16.8.2011 (Ann.A/9A). Vide the said inquiry report the charge No.1 is proved and charge No.2 is not proved. The applicant represented against the inquiry report on 17.10.2011 pointing out violation of instructions/rules in the inquiry. The Senior Divisional Commercial Manager, North Western Railway, Jodhpur after considering the representation of the applicant and the inquiry report (Ann.A/9A) of the Inquiry Officer, vide order dated 12.12.2011 (Ann.A/1) imposed a penalty of compulsory retirement from service with immediate effect. Against the said punishment order the applicant filed a detailed appeal Ann.A/11 to the Appellate Authority raising manifold contentions. The Appellate Authority vide order dated 14.5.2012 (Ann.A/2) affirmed the punishment of compulsory retirement from service awarded by the Disciplinary Authority. Therefore, the applicant has filed the present OA praying for quashing and setting aside the penalty order as well as the appellate order.

3. In reply to the OA, the respondents have stated that the applicant was involved in various irregularities and illegalities including misappropriation of funds, which caused huge loss to the railway administration. Therefore,

a charge sheet was issued to him. During the course of inquiry, he was not only permitted to inspect the documents, but photocopies of the same have been supplied. The Principles of nature justice have been followed and he has been granted all opportunities to defend his case. The inquiry has been conducted in accordance with law and the Presenting officer has submitted his brief which has been considered by the Disciplinary Authority. All the relied upon documents were supplied to the applicant as admitted by the applicant himself that photocopies of all the Self Printing Machine Tickets and Non Issue Ticket statements were provided to him. The witnesses which were relevant have been examined and full opportunity was given to the applicant to cross examine the same. The Inquiry Officer has discussed each and every charge and found that the charges of gross misappropriation of fund, forgery and manipulation have been found to be proved on the evidence which has come on record. The charge No.2 has not been proved. The Disciplinary Authority passed order of compulsory retirement from service in accordance with Railway Servants (Discipline and Appeal) Rules, 1968 discussing the fraud committed by the applicant. The respondents,

therefore, stated the order of punishment is just and proper and the OA deserves to be dismissed.

It is noted that the respondents have not filed any specific reply to para 4.14 of the OA, which deals with rejection of appeal of the applicant by the Appellate Authority.

4. Heard Shri Vineet R.Dave, proxy counsel for Shri Rajesh Joshi, counsel for the applicant and Shri Kamal Dave, counsel for the respondents and perused the material available on record.

5. During the course of arguments, the learned counsel for the applicant contended that he has pointed out various shortcomings in the order passed by the Disciplinary Authority dated 12.12.2011 vide his appeal at Ann.A/11 and raised several grounds for consideration, but the same has not been taken care by the Appellate Authority while passing the appellate order on his appeal. He further contended that the applicant sought opportunity of personal hearing as per rules, but the same was also not provided. Therefore, the order of the Disciplinary Authority and the Appellate Authority are liable to be quashed and set-aside.

6. On the other hand, the respondents contended that the inquiry was conducted in just and fair manner. There was no violation of any rules or procedure. Every opportunity of hearing was granted to the applicant, therefore, there is no question of any judicial review in the inquiry proceedings as the orders passed by the Disciplinary Authority as well as by the Appellate Authority are passed after taking into consideration each and every issue raised by the applicant.

7. Considered the rival contentions of both the parties.

8. We have noticed that the applicant filed an appeal (Ann.A/11) against the order of the Disciplinary Authority which runs into 22 pages raising manifold contentions. The Appellate Authority passed the order dated 14.5.2012 (Ann.A/2) in the following manner:-

“विषय :— “अनिवार्य सेवानिवृत्ति” की दी गई शास्ति के विरुद्ध अपील।

पत्र संख्या DCM/Confdl./Vig./09/08 दिनांक 12.12.2011 के द्वारा शास्ति “अनिवार्य सेवानिवृत्ति” अधिरोपित किये जाने के विरुद्ध अपर मण्डल रेल प्रबन्धक को सम्बोधित आपके द्वारा की गई अपील पर विचार किया गया।

आप पर व्यक्तिगत फायदे के लिए fraud में लिप्त होने और रेलवे को नुकसान पहुंचाने का आरोप है। आपने अपनी अपील में कई Procedural irregularities एवं lack of evidences के बारे में बताया है। मैंने इस केस के संबंधित समस्त गवाहों के बयान एवं अन्य दस्तावेजों को पढ़ा। टिकटों पर की गयी overwriting

एवं obliteration को देखने के पश्चात कि आप पर fraud में लिप्त होने का आरोप बिना किसी शक के साबित होता है।

मेरे समक्ष प्रस्तुत किये गये रिकार्ड तथा आपकी अपील का अध्ययन करने के पश्चात मैं इस बात से संतुष्ट हूं कि आपको अपने बचाव का पूरा मौका दिया गया। मैं इस नतीजे पर पहुंचा हूं कि आप पर लगाये गये आरोप सही है तथा आपको उचित रूप से ही दोषी ठहराया गया है।

मैं आपको “अनिवार्य सेवानिवृत्ति” की शास्ति दी गई है। मैं इसे यथावत रखता हूं।”

9. The provisions under Rule 22 (2) of the Railway Servants (Discipline and Appeal) Rules, 1968 provides that:-

22. Consideration of appeal

(i)....

(iii) In 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 been 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 imposes or enhanced the penalty or to any other authority

with such directions as it may deem fit in the circumstances of the case:"

From perusal of appeal of the applicant and the appellate order, it cannot be said that the Appellate Authority has applied his mind to the issues raised by the applicant in his appeal. He should have passed the appellate order after applying his mind on the points raised by the applicant in accordance with the above provision while passing the order on the appeal of the applicant and if in the interest of justice it was necessary, he should have given personal hearing to the applicant, as has been sought by the applicant in his appeal. When serious contentions have been raised in the appeal, the Appellate Authority should give reasons, though in brief, after considering the same.

10. In this regard, we may also take support from the ratio of the Hon'ble Apex Court in the case of **Narinder Mohan Arya vs. United India Insurance Co. Ltd.** (2006) 4 SCC 713, which is in the following terms:-

"34. In Apparel Export Promotion Council v. A.K.Chopra (1999) 1 SCC 759) which has heavily been relied upon by Mr. Gupta, this Court stated:-

"16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole

judge of facts and in case an appeal is presented to the Appellate Authority; the Appellate Authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on fact being the sole fact-finding authority.”

35. The Appellate Authority, therefore, could not ignore to exercise the said power.

36. The order of the Appellate Authority demonstrates total non-application of mind. The Appellate Authority, when the Rules require application of mind on several factors and serious contentions have been raised, was 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. The expression “consider” is of some significance. In the context of the Rules, the Appellate Authority was required to see as to whether (i) the procedure laid down in the Rules was complied with; (ii) the enquiry officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (iii) whether penalty imposed by the disciplinary authority was excessive.

37. In R.P.Bhatt v. Union of India (1986) 2 SCC 651

this Court opined:-

“4. The word “consider” in Rule 27(2) implies ‘due application of mind. It is clear upon the terms of Rule 27(2) that the Appellate Authority is required to consider (i) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the Appellate Authority to

consider the relevant factors set forth in clauses (a), (b) and (c) thereof.

5. There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the rules has been complied with; and if not, whether such non-compliance had resulted in violation of any 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 clause (c) of Rule 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 requirement of Rule 27(2) of the Rules, the impugned order passed by the Director General is liable to be set aside."

In **Chairman, Disciplinary Authority, Rani Lakshmi BAi Kshetriya Gramin Bank vs. Jagdish Sharan Varshney and Ors.**, (2009) SCC 240, the Hon'ble Apex Court held that an order of affirmation need not contain as elaborate reasons as an order of reversal but that does not mean the order of affirmation need not contain any reasons at all. Whether there was an application of mind or not, can only be disclosed by reasons, at least in brief, mentioned in the order of appellate authority. An affirmation order must contain some reasons, at least in brief.

11. Therefore, in the above circumstance, we come to the conclusion that the order of the Appellate Authority suffers from non-application of mind by not considering the grounds taken in his appeal. Accordingly, the order dated 14.5.2012 (Ann.A/2) is quashed and set aside. The matter is remitted back to the Appellate Authority to consider the appeal of the applicant afresh taking into account the grounds and issues raised by the applicant in his appeal Ann.A/11 and thereafter pass a reasoned order in accordance with law. This exercise shall be completed as expeditiously as possible.

12. The OA is disposed of in the above terms with no order as to costs.

**(ARCHANA NIGAM)
ADMV. MEMBER**

**(HINA P.SHAH)
JUDL. MEMBER**

R/