

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00361/16

Reserved on: 28.08.2019

Date of Order: 30.08.2019

C O R A M

HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Dilip Kumar Singh, Son of Sri Ramesh Chandra Singh, resident of Village- Pahari Chack, PO & PS- Sonapur, District- Saran (Chapra), at present residing at East Boring Canal Road, Gandhi Nagar, House No. 50, P.S. S.K. Puri, District- Patna.

.... Applicant.

By Advocate: - Mr. G. Bose

-Versus-

1. The Union of India, through the General Manager, East Central Railway, Hazipur.
2. The General Manager(P), East Central Railway, Hazipur.
3. The General Manager (C), East Central Railway, Hazipur.
4. The Divisional Railway Manager, East Central Railway, Danapur.
5. The Divisional Railway Manager (P), East Central Railway, Danapur.
6. The Divisional Railway Manager (C), also known as Senior Divisional Commercial Manager, East Central Railway, Dhanbad.
7. The Divisional Commercial Manager, East Central Railway, Dhanbad.
8. The Assistant Commercial Manager, East Central Railway, Danapur.
9. The Senior Divisional Personnel Officer, East Central Railway, Dhanbad.

.... Respondents.

By Advocate(s): - Mr. Mukundjee, Sr. Panel Counsel
Mr. Shiv Kumar

O R D E R

Per Dinesh Sharma, A.M.:- The case of the applicant is that he was punished by the Disciplinary Authority vide an order dated 27.01.2009 by which a penalty of reduction of his pay from Rs.11650/- in Pay Band of Rs. 9300-34800/- and Grade Pay Rs. 4200/- to Rs. 5200/- in Pay Band Rs. 5200-

20200(initial pay) and Grade Pay Rs. 2800/- for a period of three years with cumulative effect. His appeal against this order was also rejected arbitrarily. On his filing OA 560 of 2010 before this Tribunal, the Tribunal, by its order dated 13.04.2015, directed the Appellate Authority to pass a reasoned and speaking order on his appeal. The Appellate Authority has now passed the order dated 17.06.2015. The applicant has filed this OA against this order mainly on ground that (a) the Appellate Authority has simply quoted from certain portions of the enquiry report and thus it is without any application of mind, (b) it has not considered the grounds and defence set forth by the applicant in his appeal, (c) it is against the statutory rules and the orders passed by the Hon'ble Apex Court and (d) also that he was not given any chance of personal hearing or any opportunity to place his case before deciding the appeal.

2. The respondents have filed a written statement in which they denied the claim of the applicant. They have stated that the applicant, while working as Head Booking Clerk at Patna Railway Station, during a vigilance check conducted on 21.09.2005, was found to have indulged in serious irregularities. He has been punished following a properly conducted enquiry. Following the direction of this Tribunal to the Appellate Authority in this case (Divisional Commercial Manager, Dhanabad) the said authority has passed a detailed speaking order on 17.06.2015. Since this order is a reasoned and speaking order passed after going through the entire case file and the appeal preferred by the applicant, it cannot be said that the appeal has been rejected arbitrarily.

3. The applicant has filed a rejoinder reiterating his earlier claim and also referred to a decision of the Hon'ble Apex Court in **Ram Chander Vs. Union of India** reported in AIR 1986 SC 1173 stating that as per this decision, the Appellate Authority must give a personal hearing and also pass a reasoned order.

4. We have gone through the pleadings and heard the arguments of learned counsels of both the parties. During the course of arguments, the learned counsel for the applicant cited another ruling of the Hon'ble Apex Court in the case of **Chairman, LIC & Ors Vs. A. Masilamani**; (2013) 6 SCC 530 to support his contention that the Appellate Authority while considering the appeal should reflect application of mind and the order of the authority itself should reveal such application of mind. "The Appellate Authority cannot simply adopt the language employed by the Disciplinary Authority and proceed to affirm the order". The learned counsel for the respondents argued that all prescribed procedure for conduct of disciplinary case has been followed and sufficient opportunity has been provided to the applicant to defend himself. A personal hearing is not mandatory under the rules. Since there has been no denial of opportunity to defend his case, lack of personal hearing alone cannot vitiate the whole process. He also argued that the Tribunal at this stage should not go into facts and evidence, but apply itself to the issues of law, correctness of procedure, and also about the quantum of punishment in proportion to the seriousness of the proved misconduct. The Tribunal asked the learned counsel for the applicant whether he was challenging the quantum of

punishment to which he replied that the whole process of enquiry and the punishment is being challenged and therefore he is not specifically challenging the quantum of punishment.

5. After going through the pleadings and hearing the arguments, we find that the order issued by the Appellate Authority (Annexure-1 of the OA) is quite a detailed order which, besides giving details of the history of this case, the direction of this Tribunal and the position of the relevant rules, goes into the two charges which were found proved by the Inquiry Officer. It is true that the speaking order does quote the decision of the Disciplinary Authority verbatim and this has been cited by the learned counsel for the applicant as a sure sign of non- application of mind. However, we find that the decision of the Appellate Authority does not stop with this verbatim quoting from the Disciplinary Authority's order. It gives further details about the two acts of the delinquent officer which are subject matter of the enquiry. The detailing of these two acts (of finding Rs. 51 short and a cancelled ticket on the counter) and of the Appellate Authority's understanding of the relevant factors shows enough application of mind. Therefore, though one could differ with the reasoning given by the Appellate Authority, in this order it cannot be blamed for non-application of mind. The order also deals with matters mentioned by the applicant in his appeal and therefore it cannot be said that the Appellate Authority has not gone through the points of defence taken by the applicant in his appeal. We do not find the speaking order issued by the Appellate Authority following our direction lacking in application of mind. Similarly, though it may not

stand the strict test of a perfect judicial order, it does not suffer from any fatal impropriety or serious procedural error to justify any further intervention in the process. Under the circumstances, we do not see any reason to interfere with that order. It is especially so because the applicant has chosen not to question the quantum of punishment. The OA is, therefore, dismissed. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member