
(2008) 08 AHC CK 0287
In the Allahabad High Court

Virendra Kumar Verma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (2008) 08 AHC CK 0287

Hon'ble Judges : V.M. Sahai, J;S.P. Mehrotra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V.M. Sahai and S.P. Mehrotra, JJ.—The present Writ Petition has been filed by the petitioner under Article 226 of the Constitution of India, inter-alia, praying for quashing the order dated 19.12.2003 (Annexure-8 to the Writ Petition) passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad, the order dated 11.7.1999 (Annexure-5 to the Writ Petition) passed by the respondent No. 4, the order dated 3.4.2000 (Annexure-6 to the Writ Petition) passed by the respondent No. 3 and the order dated 9.6.2000 (Annexure-7 to the Writ Petition) passed by the respondent No. 2.

Counter affidavit and rejoinder affidavit as well as supplementary affidavits and their replies have been exchanged between the parties, and the Writ Petition is being disposed of finally with the consent of the learned Counsel for the parties.

2. As per the averments made in the Writ Petition, and in various affidavits, the petitioner, at the relevant time, was working on the post of "Permanent Way Mistry/Supervisor" at Shahzahanpur.

The petitioner was served with a charge-sheet dated 30.10.1998 alleging that derailment took place at 1850 hours on 13.8.1998 due to jamming of the track on account of falling of Ballast from partially unloaded BOBs. It was alleged that the petitioner, who was in the loading side, failed to show red signal and stop the forward movement of the Train. As such, the petitioner failed to show absolute

devotion to duty, and he contravened Rule No. 3(1)(i), (ii) and (iii) of the Railway Services (Conduct) Rules, 1966.

An Inquiry Officer was appointed, and he submitted his Enquiry Report dated 7.5.1999.

Copy of the said Enquiry Report dated 7.5.1999 has been filed as Annexure-3 to the Writ Petition.

3. The Inquiry Officer in the said Enquiry Report concluded that on account of lack of evidence and in view of the contradictory statements, the charge against the petitioner was not established.

The Disciplinary Authority (respondent No. 4), however, did not agree with the findings given by the Inquiry Officer for the reasons recorded by the Disciplinary Authority (respondent No. 4) in his Communication dated 15.6.1999 sent to the petitioner. The said Communication dated 15.6.1999, inter alia, gave opportunity to the petitioner to submit his representation, if any, within 15 days of the receipt of the said Communication dated 15.6.1999.

Copy of the said Communication dated 15.6.1999 has been filed as Annexure-4 to the Writ Petition.

4. It appears that in response to the said Communication dated 15.6.1999, the petitioner made his representation within time. However, the said representation was not placed before the Disciplinary Authority (respondent No. 4) by the concerned Clerk. In the circumstances, the Disciplinary Authority (respondent No. 4) passed an order dated 11.7.1999 imposing punishment on the petitioner. It was recited in the said order dated 11.7.1999 that no representation of the petitioner had been received till date, and it seemed that the petitioner had nothing to represent.

Copy of the said order dated 11.7.1999 has been filed as Annexure-5 to the writ Petition.

5. It further appears that subsequently it was detected that the representation of the petitioner, in response to the said Communication dated 15.6.1999, had been received by the concerned Clerk in the Office of the respondent No. 4, but it was not placed before the Disciplinary Authority (respondent No. 4). In the circumstances, the respondent No. 2 sent a Communication/Order dated 6.3.2000 to the respondent No. 3, inter alia, directing that the respondent No. 4 would take de novo action immediately in the matter of the petitioner from the stage of imposing punishment.

Copy of the said Communication/Order dated 6.3.2000 has been filed as Annexure-SA1 to the Supplementary Affidavit, sworn on 5.8.2007, filed on behalf of the petitioner.

6. Relevant portion of the said Communication/Order dated 6.3.2000 is as under:

Sub: Appeal of Sri V.K. Verma, PWM/SPN against punishment of Reduction to lower stage for three years imposed by DEN/SPN. NIP No. E/19/VKV dated 11.7.99.

Ref: Your letter No. E/19/VKV dated 27.1.2000 & 21.2.2000.

In reference of above, following orders are hereby passed:

Issue SF-11 to the concerned Clerk (defaulting) who has not put the representation of Sri V.K. Verma to competent authority in time although he had received it in time.

DEN/SPN to take DENOVO action immediately from the stage of imposing punishment and take early action.

Pursuant to the said Communication/Order dated 6.3.2000 of the respondent No. 2, the respondent No. 3 sent a Communication/order dated 3.4.2000 to the petitioner, interalia, stating as follows:

... Accordingly your representation dated 22.7.99 has been considered DENOVO and observations are as under:

Whatever the other factors could be contribute to the derailment, Shri V.K. Verma could not be absolved of his responsibility as the supervisor of the gang working on IMT as clearly maintained in the Joint report of the Sr. Subordinates and hence the punishment already imposed vide NIP No. 8/19-VKV dated 11.7.99 still holds good....

Thus, the above Communication/Order dated 3.4.2000, interalia, referred to the representation of the petitioner and concluded that the punishment already imposed by the order dated 11.7.1999 still held good.

7. Copy of the said Communication/Order dated 3.4.2000 has been filed as Annexure-6 to the Writ Petition.

It further appears that an Appeal was, thereafter, filed by the petitioner, evidently under Rule 18 of the Railway Servants (Discipline and Appeal) Rules, 1968. The said Appeal was dismissed by the respondent No. 2 by its Communication/ Order dated 9.6.2000, copy whereof has been filed as Annexure-7 to the Writ Petition.

Relevant portion of the said communication/order dated 9.6.2000 is as under:

...I have gone through the representation and found that appeal of CO is not correct and he is responsible for the lapse occurred in the derailment of ballast DMT. I therefore, regret his appeal, and found him responsible for the charge and punishment is considered correct. The appeal is disposed of accordingly....

8. The petitioner, thereafter, filed an Original Application being O.A. No. 85 of 2001 before the Central Administrative Tribunal. The said Original Application was dismissed by the Central Administrative Tribunal, Allahabad Bench,

Allahabad by the order dated 19.12.2003, copy whereof has been filed as Annexure-8 to the Writ Petition.

Thereafter, the petitioner has filed the present Writ Petition.

We have heard Shri Prakash Padia, learned Counsel for the petitioner and Shri Govind Saran, learned Counsel for the respondent Nos. 2,3 and 4, and perused the record.

9. Shri Prakash Padia, learned Counsel for the petitioner submits" that as the Disciplinary Authority (respondent No. 4) was differing with the findings recorded by the Inquiry Officer, it was incumbent on the Disciplinary Authority (respondent No. 4) to give opportunity to the petitioner before taking any decision in the matter. The Communication dated 15.6.1999 issued by the Disciplinary Authority (respondent No. 4) giving reasons for differing with the findings recorded by the Inquiry Officer gave opportunity to the petitioner to submit his representation, if any, within 15 days of the receipt of the said Communication dated 15.6.1999. The petitioner made his representation within time. However, as the said representation was not placed by the concerned Clerk before the Disciplinary Authority (respondent No. 4), the Disciplinary Authority (respondent No. 4) passed the order dated 11.7.1999 imposing punishment on the petitioner while noting that no representation had been received till date and it seemed that the petitioner had nothing to represent. The assumption of the Disciplinary Authority (respondent No. 4) in the said order dated 11.7.1999 that no representation of the petitioner had been received, was subsequently found to be incorrect, and as such, the respondent No. 2 by his Communication/Order dated 6.3.2000 directed the respondent No. 4 to take DENOVO action immediately from the stage of imposing punishment. Thereupon, the respondent No. 3 issued the Communication/Order dated 3.4.2000 concluding that the punishment already imposed by the order dated 11.7.1999 still held good.

10. It is submitted that the order dated 11.7.1999 was passed by the Disciplinary Authority (respondent No. 4) on an incorrect assumption that no representation had been filed by the petitioner, and as such, the said order was illegal and in violation of the principles of natural justice. There was, the submission proceeds, no occasion for the respondent No. 3 to conclude in the said Communication/Order dated 3.4.2000 that the punishment already imposed by the order dated 11.7.1999 still held good.

11. It is submitted that a fresh reasoned order ought to have been passed taking into consideration the representation of the petitioner, and there was no occasion for the respondent No. 3 to conclude that the punishment already imposed by the order dated 11.7.1999 still held good in complete disregard of the fact that the said order was violative of the principles of natural justice and was illegal and invalid.

Shri Padia points out that by the Communication/Order dated 6.3.2000, the respondent No. 2 required the respondent No. 4 to take DENOVO action

immediately from the stage of imposing punishment. In the circumstances, a fresh reasoned order taking into consideration the representation of the petitioner ought to have been passed, and there was no occasion for upholding the order dated 11.7.1999, which was in violation of the principles of natural justice and was illegal and invalid.

Shri Prakash Padia further submits that the Communication/Order dated 3.4.2000 is a non-speaking order, and it does not deal with the grounds raised by the petitioner in his representation.

12. It is further submitted that the Communication/Order dated 9.6.2000 dismissing the Appeal of the petitioner is again a non-speaking order, and it does not deal with various grounds raised by the petitioner in his representation and Appeal.

The Central Administrative Tribunal, the submission proceeds, failed to consider the above aspects and acted illegally in dismissing the Original Application filed by the petitioner.

Shri Prakash Padia, learned Counsel for the petitioner has placed reliance on the following decisions:

1. Punjab National Bank and Others Vs. Sh. Kunj Behari Misra,
2. R.P. Bhatt Vs. Union of India and Ors (UOI) .,
3. Ram Chander Vs. Union of India (UOI) and Others,
4. M.V. Bijlani Vs. Union of India (UOI) and Others,
5. Judgement dated 27.2.2007 passed by a Division Bench of this Court in Civil Misc. Writ Petition No. 7285 of 2003 (Shri Ajab Singh Tevatia and Anr. v. Board of Directors, Kisan Gramin Bank and Ors.).

13. In reply, Shri Govind Saran, learned Counsel for the respondent Nos. 2,3 and 4 submits that the petitioner was given reasonable opportunity of being heard at every stage, and various orders passed in respect of the petitioner are perfectly legal and valid. The Central Administrative Tribunal, it is submitted, rightly dismissed the Original Application filed by the petitioner .

We have considered the submissions made by the learned Counsel for the parties.

Before proceeding to examine the facts of the present case, it will be relevant to note the relevant Rules pertaining to the Railway Servants and the legal principles, as emerge from various judicial decisions including those relied upon by the learned Counsel for the petitioner.

As regards the relevant Rules, it is pertinent to refer to certain provisions of the Railway Services (Conduct) Rules, 1966 as well as certain provisions of the Railway Servants (Discipline and Appeal) Rules, 1968.

Rule 3 of the Railway Services (Conduct) Rules, 1966 provides as follows:

3. General .- (1) Every railway servant shall at all these:

(i) maintain absolute integrity;

(ii) maintain devotion to duty; and

(iii) do nothing which is unbecoming of a railway or Government servant.

(2)(i) Every railway servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all railway servants for the time being under his control and authority;

(ii) No railway servant shall in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior and shall, where he is acting under such direction, obtain the direction in writing, wherever practicable, and where it is not practicable, to obtain the direction in writing, he shall obtain written confirmation of the direction as soon thereafter as possible.

Explanation.- Nothing in Clause (ii) of Sub-rule (ii) shall be construed as empowering a railway servant to evade his responsibilities by seeking instructions from, or approval of officer or authority when such instructions are not necessary under the scheme of distribution of power and responsibilities.

Rule 6 of the Railway Servants (Discipline and Appeal) Rules, 1968 deals with penalties (minor and major) which may be imposed on a railway servant.

14. In view of the said Rule 6, the penalty of reduction of pay to a lower stage in the same time-scale for a period of three years postponing future increments, imposed on the petitioner in the present case, falls in the category of major penalty in view of Clause (v) of Sub-rule (1) of the said Rule 6.

Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 lays down the procedure for imposing major penalties. It provides for the procedure upto the stage of submission of Inquiry Report.

Rule 10 of the Railway Servants (Discipline and Appeal) Rules, 1968 makes provision for action on the Inquiry Report. The said Rule 10 is as under:

10. Action on the inquiry report.- (1) If the disciplinary authority, having regard to its own findings where it is itself the inquiring authority, or having regard to its decision on all or any of the findings on the inquiring authority, is of the opinion that the penalty warranted is such as is within its competence, that authority may act on the evidence on the record or may if it is of the opinion that further examination of any of the witnesses is, necessary in the interests of justice, recall the witness and examine, cross-examine and re-examine the witness and may impose on the railway servant such penalty as is within its competence in accordance with these rules. Where such disciplinary authority is of the opinion that the penalty warranted is such as is not within its competence, that authority

shall forward the records of the inquiry to the appropriate disciplinary authority who shall act in the manner as hereinafter provided.

The disciplinary authority, if it is not itself the inquiring authority, may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of Rule 9 as far as may be.

The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in Clauses (i) and (iv) of Sub-rule (1), and Clauses (i) and (ii) of Sub-rule (2), of Rule 6 should be imposed on the railway servant, it shall, notwithstanding anything contained in Rule 11, make an order imposing such penalty.

15. Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the railway servant.

If the disciplinary authority, having regard to its findings in all or any of the articles of charges and on the basis of evidence adduced during the inquiry, is of the opinion that one of the penalties specified in Clause (v) to (ix) of Rule 6 shall be imposed on Railway servant it shall make an order imposing such penalty and it shall not be necessary to give the Railway servant any opportunity of making representation on the penalty proposed to be imposed.

Part V of the Railway Servants (Discipline and Appeal) Rules, 1968 makes provisions for "appeals".

Rule 18 occurring in Part V of the said Rules deals with orders against which a railway servant may prefer an appeal.

Clause (ii) of Rule 18 of the said Rules provides for appeal against "an order imposing any of the penalties specified in Rule 6 whether made by the disciplinary authority or by any appellate or reviewing authority".

Rule 20 occurring in Part V of the Railway Servants (Discipline and Appeal) Rules, 1968 provides for the period of limitation for appeals.

Rule 21 occurring in Part V of the said Rules deals with form and contents and submission of appeal".

Rule 22 occurring in Part V of the said Rules makes provisions for consideration of appeal. The said 22 is as under:

22. Consideration of appeal.- (I) In the case of an appeal against an order of

suspension, the appellate authority shall consider whether in the light of the provisions of Rule 5 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(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:

Provided that:

(i) the Commission shall be consulted in all cases where such consultation is necessary;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in Clauses (v) to (ix) of Sub-rule (1) of Rule 6 and an inquiry under Rule 9 has not already been held in the case, the appellate authority shall subject to the provisions of Rule 14 itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry and make such orders as it may deem fit;

(iii) if the enhanced penalty which the appellate authority proposes to impose, is one of the penalties specified in Clause (v) to (ix) of Sub-rule (1) of Rule 6 and an inquiry under Rule 9 has already been held in the case, the appellate authority shall, make such orders as it may deem fit; and

(iv) subject to the provisions of Rule 14, the appellate authority shall:

(a) where the enhanced penalty which the appellate authority proposes to impose, is the one specified in Clause (iv) of Rule 6 and falls within the scope of the provisions contained in Sub-rule (2) of Rule 11; and

(b) where an inquiry in the manner laid down in Rule 9, has not already been held in the case,

itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry, pass such orders as it may deem fit; and

(iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 11, of making a representation against such enhanced penalty.

(3) In an appeal against any other order specified in Rule 18 the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable.

Let us now notice the legal principles, as emerge from various judicial decisions including those relied upon by the learned Counsel for the petitioner.

16. In Punjab National Bank case (*supra*), the question involved was, as to whether the Disciplinary Authority was required to give any opportunity to the delinquent officer in case the Disciplinary Authority differed from the conclusions of the Inquiry Officer and gave contrary findings. Their Lordships of the Supreme Court held as follows (paragraphs 17, 18 and 19 of the said AIR):

17. These observations are clearly in tune with the observations in *State of Assam and Another Vs. Bimal Kumar Pandit*, quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the inquiry officer had given an adverse finding, as per *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the inquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be over-turned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. when the inquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority.

18. Under Regulation 6, the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not to be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc.* etc.,

17. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the inquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

(Emphasis supplied)

18. This decision, thus, lays down that in case the enquiry report is in favour of the delinquent officer but the Disciplinary Authority proposes to differ with such conclusions, then that authority, which is deciding against the delinquent officer, must give him an opportunity of being heard for otherwise he would be condemned unheard. In such a case, the delinquent officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed.

Referring to the decision of the Supreme Court in *Punjab National Bank case* (supra), their Lordships of the Supreme Court have reiterated the above principles in *Yoginath D. Bagde Vs. State of Maharashtra and Another*,

Again, following the decision in Punjab National Bank case (supra), their Lordships of the Supreme Court in S.B.I. and Others Vs. Arvind K. Shukla, , have reiterated the legal position that in case the Disciplinary Authority proposes to disagree with the findings of the Inquiry Officer, the Disciplinary Authority is required to record its tentative reasons for disagreement and give to the delinquent officer an opportunity to represent before it recorded its ultimate findings.

19. In R.P. Bhatt case (supra), their Lordships of the Supreme Court opined as under (paragraphs 1, 4, 5 and 6 of the said AIR):

1. The short point involved in this appeal by special leave from a judgment and order of the Delhi High Court dated November 20, 1980 dismissing in limine the writ petition filed by the appellant, is whether the Appellate Order passed by the Director-General, Border Roads Organisation dated October 14, 1980, is in conformity with the requirements of Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 ("Rules" for short) which have been made applicable to the personnel of the Border Roads Organisation.

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 (1) 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 had been complied with; and if not, whether such non-compliance had resulted in violation of any of the 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 requirements of Rule 27(2) of the Rules, the impugned order passed by the Director General is liable to be set aside.

6. It is not the requirement of Article 311(2) of the Constitution of India or of the Rules of natural justice 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....

(Emphasis supplied)

20. This decision, thus, lays down that it is not the requirement of Article 311(2) of the Constitution of India : or of the Rules of the natural justice 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. However, the Appellate Authority is required to consider in its order the various factors mentioned in Clauses (a), (b) & (c) of Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

21. In Ram Chander case(supra), the question involved was as to whether the order passed by the Railway Board dated March 11, 1972 dismissing the Appeal preferred by the appellant (Ram Chander) under Rule 18(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968 was not in conformity with the requirements of the said Rules.

22. Their Lordships of the Supreme Court referred to the provisions of Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, and opined as under (paragraphs 3, 9 and 25 of the said AIR):

3. Rule 22(2) of the Railway Servants Rules provided as follows:

22(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.

9. These authorities proceed upon the principle that in the absence of a requirement in the statute or the rules, there is no duty cast on an appellate authority to give reasons where the order is one of affirmance. Here, Rule 22(2) of the Railway Servants Rules in express terms requires the Railway Board to record its findings on the three aspects stated therein. Similar are the requirements under Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Rule 22(2) provides that 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" as to the matters indicated therein. The word "consider" has different shades of meaning and must in Rule 22(2), in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision.

23. Professor de Smith at Pp. 242-43 refers to the recent greater readiness of the Courts to find a breach of natural justice "cured" by a subsequent hearing before an appellate tribunal. In *Swadeshi Cotton Mills Vs. Union of India (UOI)*, although the Majority held that the expression "that immediate action is necessary" in Section 18AA(I)(a) of the Industrial Undertakings (Development and Regulation) Act, 1951, does not exclude absolutely, by necessary implication, the application of the audi alteram partem rule, Chinnappa Reddy, J. dissented with the view and expressed that the expression "immediate action" may in certain situations mean exclusion of the application of the rules of natural justice and a post decisional hearing provided by the statute itself may be a sufficient substitute. It is not necessary for our purposes to go into the vexed question whether a post- decisional hearing is a substitute of the denial of a right of hearing at the initial stage or the observance of the rules of natural justice since the majority in *Union of India and Another Vs. Tulsiram Patel and Others*, unequivocally lays down that the only stage at which a Government servant gets "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him" i.e. an opportunity to exonerate himself from the charge by showing that the evidence adduced at the inquiry is not worthy of credence or consideration or that the charges proved against him are not of such a character as to merit the extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case, is at the stage of hearing of a departmental appeal. Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in *Tulsiram Patel's* case that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by 1 tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair-play and justice also require that such a personal hearing should be given.

(Emphasis supplied)

24. This decision, thus, lays down that in the absence of requirement in the statute or the rules there is no duty cast on the Appellate Authority to give reasons where the order is one of affirmance. However, in view of the requirements of Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, the Appellate Authority is required to record its findings on the

three aspects stated in the said Rule after due application of mind and giving reasons for its decision.

25. In M.V. Bijlani case(supra), their Lordships of the Supreme Court considered the nature of departmental enquiry and the standard of proof required in such enquiry. The duty of the Appellate Authority was also taken note of by the Apex Court. The relevant portion of the decision are quoted below [paragraphs 18, 25 and 26 of the said AIR]:

18. The appellate authority totally ignored the evidences adduced before the disciplinary authority and in particular the evidence of Shri K.C. Saria in favour of the Appellant in this behalf. The appellate authority was required to apply its mind on the materials placed on record. It failed to take into consideration that the disciplinary authority purported to have relied upon the police report which was not proved.

25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial, i.e., beyond all reasonable doubt, we cannot lose sight of the fact that the Enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

26. The report of the Enquiry Officer suffers from the aforementioned vices. The orders of the disciplinary authority as also the appellate authority which are based on the said Enquiry Report, thus, cannot be sustained. We have also noticed the way in which the Tribunal has dealt with the matter. Upon its findings, the High Court also commented that it had not delved deep into the contentions raised by the Appellant. The Tribunal also, thus, failed to discharge its functions properly.

(Emphasis supplied)

26. This decision, thus, lays down that the disciplinary proceedings are quasi-criminal in nature, and the Inquiry Officer performs a quasi-judicial function. The Inquiry Officer upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. He is required to keep in mind various aspects indicated in the above decision. It has further been laid down that the Appellate Authority is required to apply its mind on the Materials placed on record.

In Ajab Singh Tevatia case(supra), a Division Bench of this Court considered the validity of an order dated 25.11.2002 passed by the Appellate Authority. No reason was recorded in the said order by the Appellate Authority. The Division Bench quashed the said order dated 25.11.2002 holding as under:

It is clear from the record that the appellate order dated 25.11.2002 (Annexure 13 to the writ petition) appears to be communicated to the petitioner regarding decision of the appeal, no reasons have been recorded. We have also perused order dated 12.11.2002 of the Board, as it has been submitted by Sri Grover that this detailed and reasoned order was passed on the appeal of the petitioner. The said order is for consideration of various persons for the purpose of promotion. There is nothing in the said order regarding taking a decision of the grievances of the petitioners regarding their appeal which was to be decided in accordance with law.

27. The submission of the petitioners to this effect has got force that the order passed by the respondents is an order arbitrary in nature without application of mind to the real controversy involved in the case. It is not the case of the respondents that except the order dated 25.11.2002 any Order has ever been communicated to the petitioners. The learned Counsel for the respondents is not able to defend and place any argument in defence of the same regarding non-assigning any reason. It is well settled that an order having civil consequences even though passed by administrative authority must contain reasons so as to enable the aggrieved party to challenge the reasoning of the administrative authority because in writ jurisdiction it is reasoning which has to be decided. In the absence of reasons no foundation can be laid by the petitioners and only argument remains is that order is passed upon non-application of mind. We are also of the view if the reasons is not communicated it will be presumed that no order has been passed upon the appeal filed by the petitioners. From the perusal of the order dated 25.11.2002, it is clear that no reason has been assigned only it is a communication regarding the decision taken by the respondents on the appeal filed by the petitioners. We are of the further view also that if the order has not been communicated it will be presumed that no order has been passed and the appeal filed by the petitioners will be treated to be alive.

(Emphasis supplied)

28. This decision, thus, lays down that in case, the Appellate Authority does not record its reasons in its order, the order will be treated to be arbitrary in nature having been passed without application of mind.

29. Keeping in view the relevant Service Rules and the above legal position, let us examine the facts of the present case. The Inquiry Officer submitted his Report dated 7.5.1999 absolving the petitioner of the charge levelled against him. The Disciplinary Authority (respondent No. 4) was proposing to differ with the findings of the Inquiry Officer and, therefore, it was incumbent on the Disciplinary Authority (respondent No. 4) to follow the principles of natural

justice and give opportunity of being heard to the petitioner, and then record its own findings on the charges against the petitioner, and on the basis of such findings, award punishment, if any, to the petitioner [See: Punja]b National Bank case (supra)]. The Disciplinary Authority (respondent No. 4) sent Communication dated 15.6.1999 to the petitioner, inter alia, giving opportunity to the petitioner to make representation within 15 days of the receipt of the said Communication. The petitioner made his representation within time. However, the concerned Clerk in the Office of the respondent No. 4 (Disciplinary Authority) did not place the said representation before the respondent No. 4 (Disciplinary Authority). In ignorance of the said representation and, therefore, without considering the said representation of the petitioner, the Disciplinary Authority (respondent No. 4) passed the said order dated 11.7.1999 imposing punishment on the petitioner. It was noted in the said order dated 11.7.1999 that no representation had been received from the petitioner till date, and it seemed that the petitioner had nothing to represent. The assumption made by the respondent No. 4 (Disciplinary Authority) in passing the said order dated 11.7.1999 imposing punishment on the petitioner was evidently incorrect. Hence, the said order dated 11.7.1999 was passed without considering the representation of the petitioner, and the petitioner was evidently prejudiced by non-consideration of his representation. The order dated 11.7.1999 was, thus, passed in violation of the principles of natural justice, and as such, was invalid and illegal [See: State Bank of Patiala and others Vs. S.K. Sharma,

30. Further, as noted above, it was subsequently discovered that in response to the Communication dated 15.6.1999, the petitioner had made his representation within time but the concerned clerk did not place the same before the Disciplinary Authority (respondent No. 4), and as such, the Disciplinary Authority (respondent No. 4) passed the said order dated 11.7.1999 without considering the representation made by the petitioner. In the circumstances, the respondent No. 2 sent the Communication/ Order dated 6.3.2000 to the respondent No. 3, inter alia, directing the respondent No. 4 to take DENOVO action immediately in the matter of the petitioner from the stage of imposing punishment.

31. Pursuant to the said Communication/Order dated 6.3.2000 of the respondent No. 2, the respondent No. 3 sent a Communication/Order dated 3.4.2000 to the petitioner, inter alia, referring to the representation of the petitioner and concluding that the punishment already imposed by the order dated 11.7.1999 still held good.

32. It will, thus, be noted that despite the direction given by the respondent No. 2, no fresh order was passed by the respondent No. 4. The respondent No. 3 sent the said Communication/Order dated 3.4.2000, inter alia, referring to the representation of the petitioner and reiterating the punishment already imposed by the order dated 11.7.1999.

33. We are of the opinion that the order dated 11.7.1999 having been passed without considering the representation made by the petitioner, it was incumbent

on the respondent No. 4 to pass a fresh order taking into consideration the representation made by the petitioner and other material on record, and then on such consideration, record findings on the charges against the petitioner, and then on the basis of such findings, award punishment, if any, to the petitioner. Instead of a fresh order being so passed, the respondent No. 3 issued the said Communication/ Order dated 3.4.2000, interalia, concluding that the punishment already imposed by the order dated 11.7.1999 still held good. The said Communication/Order dated 3.4.2000 whereby the order dated 11.7.1999 was reiterated, was evidently illegal as the said order dated 11.7.1999 itself was illegal and invalid.

34. It is further noteworthy that the Communication/Order dated 6.3.2000 issued by the respondent No. 2, interalia, required the respondent No. 4 to take DENOVO action. In view of the said direction, the respondent No. 4 was required to pass a fresh reasoned order taking into account the representation of the petitioner. This was not done, and instead, the said Communication/ Order dated 3.4.2000 was sent by the respondent No. 3 to the petitioner, interalia, concluding that the punishment already imposed by the order dated 11.7.1999 still held good. The direction given by the respondent No. 2 in the said Communication/ Order dated 6.3.2000 was not complied with, and in view of this also, the Communication/Order dated 3.4.2000 was vitiated.

35. Further, the Communication/Order dated 3.4.2000 sent by the respondent No. 3 was a cryptic order. The said Communication/ Order dated 3.4.2000 though made passing reference to the representation of the petitioner and the responsibility of the petitioner as the Supervisor, did not record findings on the charges against the petitioner on a consideration of the material on record and the representation of the petitioner. Without recording findings on the charges against the petitioner, the said Communication/Order dated 3.4.2000 concluded that the punishment already imposed by the order dated 11.7.1999 still held good. This again vitiated the said Communication/Order dated 3.4.2000 in view of the decision of the Apex Court in Punjab National Bank case (supra), as also in view of the provisions of Sub-rule (3) of Rule 10 of the Railway Servants (Discipline and Appeal) Rules, 1968, which provides that "the disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

36. After the said Communication/Order dated 3.4.2000, the petitioner filed an Appeal which was dismissed by the respondent No. 2 by its Communication/ Order dated 9.6.2000.

37. In view of the decisions in R.P Bhatt case (supra) and Ram Chander case (supra), as also in view of the provisions of Sub-rule (2) of Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968, the Appellate Authority was required to consider and record its findings on the following factors after due application of mind and giving reasons for such findings:

(a) Whether the procedure laid down in the Railway Servants (Discipline and Appeal) Rules, 1968 was complied with, and if not, whether such non-compliance resulted in; the violation of any provision of the Constitution of India or in the failure of justice;

(b) Whether the findings of the Disciplinary Authority were warranted by the evidence on the record;

(c) Whether the penalty imposed was adequate, inadequate or severe.

38. A perusal of the Communication/Order dated 9.6.2000, quoted in the earlier part of this judgment, shows that the Appellate Authority did not consider and record its findings on factors (a) and (b) mentioned above.

As regards factor (c), the Appellate Authority merely observed that "punishment is considered correct.". No proper consideration of adequacy, inadequacy or severity of the punishment has been done by the Appellate Authority.

39. In the circumstances, the Communication/Order dated 9.6.2000 of the Appellate Authority suffers from manifest illegality.

There is another aspect of the matter.

In view of the decision in M.V. Bijlani case (supra), the Appellate Authority is required to apply its mind on the materials placed on record. Further, in view of the Division Bench decision of this Court in Ajah Singh Tivetia case (supra), the Appellate Authority is required to pass reasoned order.

40. In view of the decisions of the Supreme Court in R.P. Bhatt case (supra) and Ram Chander case (supra), the Appellate Authority is not required to give reasons when it passes an order affirming the order passed by the Disciplinary Authority.

41. From the above decisions, it follows that the Appellate Authority is required to apply its mind on the materials placed on record and then conclude as to whether it agrees or disagrees with the findings of the Disciplinary Authority. In case the Appellate Authority disagrees with the findings of the Disciplinary Authority, the Appellate Authority is required to state its own reasons. However, when the Appellate Authority agrees with the findings of the Disciplinary Authority, it is not required to give detailed reasons but there should be sufficient indication in its order that it has applied its mind to the materials on record and then has agreed with the findings of the Disciplinary Authority.

A perusal of the Communication/Order dated 9.6.2000 of the Appellate Authority shows that the Appellate Authority merely recorded its conclusions regarding the guilt of the petitioner but there is no sufficient indication that the Appellate Authority applied its mind to the materials on record and agreed with the findings of the Disciplinary Authority after such application of mind.

For this reason also, the Communication/Order dated 9.6.2000 passed by the

Appellate Authority is vitiated.

42. It is further noteworthy that the Appellate Authority failed to consider the illegality in the order dated 11.7.1999 and the Communication / Order dated 3.4.2000, as indicated in detail above. In view of this also, the Communication/ Order dated 9.6.2000 is vitiated.

After the said Communication/Order dated 9.6.2000, the petitioner filed Original Application No. 85 of 2001 before the Central Administrative Tribunal, and the same was dismissed by the Tribunal by its order dated 19.12.2003.

43. A perusal of the order dated 19.12.2003 shows that the Central Administrative Tribunal rejected the Original Application mainly on the ground of limited scope of judicial review. It did not consider the various aspects indicated above, which made the order dated 11.7.1999, the Communication/Order dated 3.4.2000 and the Communication/Order dated 9.6.2000 manifestly illegal.

In the circumstances, the order dated 19.12.2003 passed by the Central Administrative Tribunal cannot be sustained.

44. In view of the above, we are of the opinion that the Writ Petition deserves to be allowed, and the order dated 11.7.1999 (Annexure-5 to the Writ Petition) passed by the respondent No. 4, the Communication/Order dated 3.4.2000 (Annexure-6 to the Writ Petition) issued by the respondent No. 3, the Communication/Order dated, 9.6.2000 (Annexure-7 to the Writ Petition) issued by the respondent No. 2 and the order dated 19.12.2003 (Annexure-8 to the Writ Petition) passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad are liable to be quashed, and the matter is liable to be sent back to the Disciplinary Authority (respondent No. 4) for deciding the same afresh in accordance with law from the stage of the receipt of the representation of the petitioner in response to the Communication/ Order dated 15.6.1999.

45. Accordingly, the Writ Petition is allowed, and the order dated 11.7.1999 (Annexure-5 to the Writ Petition) passed by the respondent No. 4, the Communication Order dated 3.4.2000 (Annexure-6 to the Writ Petition) issued by the respondent No. 3, the Communication/Order dated 9.6.2000 (Annexure-7 to the Writ Petition) issued by the respondent No. 2 and the order dated 19.12.2003 (Annexure-8 to the Writ Petition) passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad are quashed, and the matter is sent back to the Disciplinary Authority (respondent No. 4) for deciding the same afresh in accordance with law from the stage of the receipt of the representation of the petitioner in response to the Communication/ Order dated 15.6.1999.

46. However, in the facts and circumstances of the case, there will be no order as to costs.