

Debi Din Vs. Divisional Operating Superintendent, Northern Rly and ors.

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Court : Allahabad

Decided On : Mar-29-1967

Reported in : AIR1968All91

Judge : Lakshmi Prasad, J.

Acts : [Constitution of India](#) - Articles 226 and 311; ;Railway Establishment Code, Rules - Rules 1716 and 1731

Appeal No. : Writ Petn. No. 184 of 1966

Appellant : Debi Din

Respondent : Divisional Operating Superintendent, Northern Rly and ors.

Advocate for Def. : A.B. Nigam, Adv.

Advocate for Pet/Ap. : Mohd Abid Ali, Adv.

Judgement :

ORDER

Lakshmi Prasad, J.

1. This is a petition under Article 226 of the Constitution. On the date certain charges were served on the petitioner he held the post of a cabinman. The charges were served by opposite party No. 2 the Assistant Operating

Superintendent, Northern Railway Moradabad. A copy of the charges is Annexure 2. The petitioner submitted his explanation a copy of which is Annexure 3. Thereafter opposite party No. 2 passed the order of punishment which is Annexure 4. In this order he mentions the counts for which the punishment is imposed but gives no reasons for not accepting the explanation of the petitioner and finding the two charges mentioned in the order proved.

The petitioner then preferred an appeal. A copy of the memorandum of appeal is Annexure 5. It came to be rejected by opposite party No. 1 the Divisional Operating Superintendent, Northern Railway, Moradabad by an order which is Annexure 6. It reads as below:

'With reference to your appeal dated 23-10-65 addressed to DOS (M) against the order of AOS (M) imposing the penalty of WIP for two years you are hereby informed that DOS (M) has passed the following orders':

The appeal is rejected.'

It is in these circumstances that the present petition is filed for the quashing of the appellate order reproduced above on the ground that in passing the impugned order the appellate authority, viz. opposite party No. 1 failed to comply with the requirements of the relevant rule on the point, namely, Rule 1731 of the Railway Establishment Code.

2. The petition is opposed by the opposite parties.

3. I have heard learned counsel for the parties.

4. It is admitted on all hands that the punishment which has been imposed on the petitioner in the instant case is a minor punishment being one of those provided in Clauses (i) to (iii) of Sub-rule (1) of Rule 1707 of the said Code. It is also not in dispute that the procedure prescribed in Rule 1716 of the Code is to be followed in the matter of imposition of a minor punishment specified in Clauses (1) to (iii) of Sub-rule (1) of Rule 1707. Clause (e) of Sub-rule 1716 provides that the record of proceedings in a case in which a minor punishment is proposed to be imposed is to include the orders on the case together with the reasons therefor. The order of

punishment imposed by opposite party No. 2, as already mentioned, though mentions the counts on the basis of which punishment has been imposed omits to mention the reasons for the conclusions which is reached, namely, that the charges referred to in the order stand proved as against the explanation of the petitioner contending for the contrary. Thus it was one of the grounds in the memorandum of appeal that the order of punishment passed by opposite party No. 2 stood vitiated because of his failure to mention the reasons as required by Rule 1716.

Admittedly Rule 1731 of the Code provides for the procedure to be followed in the disposal of appeals. Sub-rule (2) of Rule 1731 provides for the procedure to be followed in case of an appeal against an order imposing any of the penalties specified in Rule 1707. It says that in case of such an appeal 'the appellate authority' shall consider:

(a) Whether the procedure prescribed in these 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;

(b) Whether the findings are justified; and

(c) Whether the penalty imposed is excessive, adequate or inadequate and after consultation with the Commission, if such consultation is necessary in the case, pass orders,

(i) setting aside, reducing, confirming or enhancing the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;

Provided that (It is not necessary for the purpose of this case to reproduce the proviso).'

The contention of the learned counsel for the petitioner is that opposite party No. 1 the appellate authority in the instant case failed to comply with the requirements of Sub-rule (2) of Rule 1731 in so far as it disposed of the appeal by an order

consisting of four words,

'The appeal is rejected'.

The argument is that the very requirement in Sub-rule (2) reproduced above on the part of the appellate authority to consider the various matters enumerated in Clauses (a) (b) and (c) thereof indicates that the appellate authority has to pass an order indicating that it has really considered these points and a laconic order like the one passed in the case in hand can by no means be said to be in compliance with the requirements of Rule 1731 (2).

5. As against that the contention of the learned counsel appearing for the opposite parties is that Rule 1731 (2) does not impose any duty on the appellate authority to give reasons for giving its decision in the appeal. He contends that all that the rule requires is that the appellate authority should, while disposing of the appeal, consider the various points mentioned in it, and that has been done in the instant case as shall appear from true copy of the appellate order dated the 23rd December, 1965 which is Annexure G to the counter affidavit. This order reads as follows:

'I have gone through his appeal. The appeal is rejected.'

In support of his contention the learned counsel placed reliance on the decision of a learned Single Judge of this Court in the case of Ram Parshad v. Traffic Inspector, Northern Railway, Hardoi, Writ Petn. No. 784 of 1964, D/- 11-8-1966 (All). There are no doubt some observations in the judgment of the said case a certified copy of which has been placed before me, to lend support to the contention of the learned counsel. With due respect to the learned Judge I feel difficulty in accepting the view point urged by the learned counsel and upheld in that case. I am unable to see as to how the observations made by the Supreme Court in the case of Syed Yakoob v. K. S. Radhakrishnan, AIR 1964 SC 477 in paragraph 9 of the report at page 480 are at all helpful in interpreting the language either of Rule 1716 or of Rule 1731.

I have deliberately referred to both these rules because whereas the one provides for the procedure to be followed by the punishing authority the other for the procedure to be followed by the appellate authority. The said Supreme Court case arose out of orders passed by the appropriate authority granting or refusing to grant permits under the provisions of the Motor Vehicles Act. The general observations relied on by the learned counsel which occur in paragraph 9 of the report appear to pertain to the question of scope of a petition under Article 226 rather than to pertain to the question if or not an administrative body when required to act in a quasi judicial manner is or is not to give reasons for its decision. Apart from that general proposition as to whether or not it is the duty of a quasi judicial body to give reasons for its decision in all cases we are in the instant case primarily concerned with the interpretation of Rules 1716 and 1731.

Clause (e) of Rule 1716 (2) clearly appears to provide for the reasons being given. The contention of the learned counsel, that in so far as the order passed by the punishing authority in the instant case mentions the charges on account of which punishment is being imposed, it must be taken that it complies with the requirements of Clause (e) of Rule 1716 (2), appears to be without any substance. As I read the said Clause (e) I find that it requires not only the findings being mentioned which constitute the basis of punishment but also the reasons being mentioned for the findings arrived at. Thus in my view Rule 1716(2) provides in express terms for the reasons being given. Though there is no such express provision in Rule 1731, the same appears to be necessarily implied in the language thereof. The very requirement that the appellate authority is to consider whether the findings recorded by the punishing authority are justified shows that the appellate authority has to appraise the evidence for itself in order to confirm or reverse the findings recorded by the punishing authority. That necessarily implies the giving of reasons in my view there can be no sufficient compliance with the requirement of Rule 1731(2) unless reasons have been given.

In the instant case it appears from a perusal of the explanation Annexure 3 that the petitioner gave a plausible explanation for his absence which is one of the counts constituting the basis of punishment. I should not be taken to suggest that there can be no reason to reject that explanation. There may be many. But that is

a matter to be found by the punishing authority. I have referred to it only to indicate the compelling necessity of giving reasons in the instant case in order to come to a finding on that charge against the petitioner as against the explanation which reads plausible at any rate.

6. As for the general proposition that a quasi judicial body should give reasons for its decision I need only refer to the case of *Madhya Pradesh Industries Ltd. v. Union of India*, AIR 1966 SC 671. In this connection paragraph 9 of the report may be perused. I may reproduce only the concluding portion of that paragraph which runs as below:-

'What is essential is that reasons shall be given by an appellate or revisional tribunal expressly or by reference to those given by the original tribunal. The nature and the elaboration of the reasons necessarily depend upon the facts of each case. In the present case, neither the State Government's nor the Central Government's order discloses the reasons for rejecting the application of the appellant. In the circumstances the Central Government's order is vitiated, as it does not disclose any reasons for rejecting the revision application of the appellant.'

I need hardly say that the present case stands on a much higher footing because as I read rules 1716 and 1731 I find that they expressly provide for what their Lordships of the Supreme Court have laid down in the case cited above to be an obligatory duty of a quasi judicial body or of administrative body acting quasi judicially in a matter.

In these circumstances I am of the opinion that the present writ must succeed and the impugned order should be quashed with a direction that the appellate authority should dispose of the appeal afresh in the light of the observations made in the body of this judgment. However, in view of the judgment of the learned single Judge placed before me which appears to lay down to the contrary I have to refer the case to a larger Bench.

7. I, therefore, direct that the record of the case be laid before the Hon'ble Chief Justice for being referred to a larger Bench. I may clarify that the whole case is

being referred to a larger Bench.

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