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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

O.A. No.      142      OF      1986.  
~~XXXXXX~~

DATE OF DECISION 26 -11-1986

ONKARSINGH HIMMATSINGH SOODAN      Petitioner

B.I. MEHTA      Advocate for the Petitioner(s)

Versus

G.K. LIMAYA, GEN. MANAGER, W.RLY.      Respondent s.  
& ORS.

K.K. SHAH      Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN.

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal. *No*

6

J U D G M E N T

O.A.No. 142 OF 1986.

Date: 26-11-1986

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioner, Shri Onkarsingh Himmatsingh Soodan, a Diesel Driver-B of Ahmedabad has challenged the validity of the order dated 24.5.1986 passed by the Respondent No.3 imposing penalty of reduction to the lower stage in time scale of Rs. 425-640(R) with pay fixed at Rs. 425/- for a period of two years with effect of postponing the future increments. According to him, the charge levelled against him for passing home signal No.92 at danger, while entering Gandhidham passanger yard on 31.12.1983 in contravention of general Rule 3.78 and 3.80, has not been established and eventhough the Inquiry Officer had exonerated him, a disciplinary authority without applying it's mind has held him guilty. It is, therefore, prayed that the said order should be quashed and set aside.

2. While filing the application it was stated by the petitioner that the impugned order has not been served upon him, so far. The interim relief to stay the implementation of the impugned order was granted. The Respondents, in response to the notice served upon them, have filed the written statement wherein they have denied the averments and allegations made against them. It is inter-alia contended that the Disciplinary Authority while disagreeing with the findings of the inquiry officer, recorded its reasons in detail vide order dated 27.3.1986, on the basis of the evidence on record as required under Rule 10(3) of the Railway

contd..... 2/-

Servants (discipline and Appeal Rule 1968) and the same has been communicated to the applicant vide NIP No. E/308/5/3/AC/1 dated 24.4.1986 (referred to as Annexure 'A' but not produced). It is further stated that the impugned order has been served upon the petitioner and there are no valid grounds to challenge the same.

3. At the outset it may be stated here that neither the petitioner nor the respondents have preferred to bring on record, the impugned order imposing penalty of reduction in rank. It was conceded by Mr. V.R. Mehta, the learned counsel for the petitioner that the impugned order is appealable under the Rules. However, according to him when the impugned order is ex facie illegal, as the charge is baseless and the findings are completely perverse, it would justify the petitioner to invoke the jurisdiction of this Tribunal without exhausting the remedy available to the petitioner. Mr. Mehta during his submission raised the contention that the impugned order is bad in law as no copy of the report of the Inquiry Officer or the Disciplinary Authority has been furnished to him before imposing the penalty. He conceded that no such specific plea has been raised by him in his memo of appeal. But <sup>ing to him,</sup> accord~~ing~~ is entitled to do so <sup>as</sup> it being a question of law.

4. As regards the contention of Mr. Mehta about the impugned order being ex facie illegal and without any evidence, we can hardly agree with the learned counsel for the petitioner, though we are not expressing any opinion at this stage as to whether the evidence was adequate for reaching to the conclusion that the petitioner was guilty for the act of misconduct alleged

against him. It is otherwise, a matter which is ordinarily within the domain of the disciplinary authority.

5. On perusal of the material brought on record we are convinced that the petitioner ought to have exhausted the remedy available to him under the All India Service (Discipline & Appeal) Rules 1969, by filing an appeal to the appellate authority against the impugned order before approaching the Tribunal. Therefore it is not possible to entertain this application as Section 20, of the Administrative Tribunals Act 1985, is considered to be a bar. No doubt, the word "ordinarily" used in Sub Section 1 of Section 20 of the Act, leaves a discretion with the Tribunal to entertain an application under Section 19 even where the applicant has failed to avail all the remedies available to him under the relevant "service rules as to redressal of grievances". Obviously this discretion has to be exercised judicially and not arbitrarily. Such a discretion cannot be exercised in all the cases and that has to be exercised in extraordinary situations. It is true if the domestic Tribunal lacks jurisdiction on ground of bias or other like violation of natural justice there will be no absolute bar in entertaining the application. However, in the present case, no such case has been made out and an attempt was made by raising the contention that a failure in furnishing a copy of the inquiry report has vitiated the proceedings. We have not allowed him to take this plea as it was not made a ground of attack in the application. However he will be free to raise such a plea before the appellate authority. Having



9

regard to the totality of the circumstances including :  
the merits of the petitioners case, his conduct and  
the conduct of the authorities, we strongly feel that  
the petitioner's application is not entertainable,  
as he has not availed of the remedy clearly available  
to him. He may do so even now if advised. In case,  
he has lost the period of limitation, he would be free  
to seek condonation of delay. We are confident, that  
the authorities would be considerate to condone the  
delay in filing the appeal as he has already pursued  
the action before the Tribunal without showing any  
indulgence in the matter.

6. In the result, the application is rejected. No  
order as to costs.

  
(P.H. TRIVEDI)  
VICE CHAIRMAN

  
(P.M. JOSHI)  
JUDICIAL MEMBER