

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. No. 214 of 1986
Case No.

DATE OF DECISION 21.08.1989

Shri Girdhar Ramjibhai Petitioner

Shri M.K. Paul Advocate for the Petitioner(s)

Versus

Union of India & Anr. Respondent

Shri R.M. Vin Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. P. M. Joshi Judicial Member

The Hon'ble Mr. M. M. Singh .. . Administrative Member

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

(11)

Shri Girdhar Ramjibhai,
Cleaner under SEF
Railway Station,
Jetalsar.

.. Petitioner

(Advocate - Mr. M.K. Paul)

Versus

1. Union of India,
Through,
General Manager, W.Rly.,
Churchgate, Bombay.
2. Divisional Railway Manager,
Western Railway,
Bhavnagarpara.

.. Respondents

(Advocate - Mr. R.M. Vin)

CORAM : Hon'ble Mr. P.M. Joshi .. Judicial Member

Hon'ble Mr. M.M. Singh .. Administrative Member

O R A L - O R D E R

O.A./214/86

21.08.1989.

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

The petitioner Shri Girdhar Ramjibhai of Jetalsar has filed this application on 25.7.1986 under section 19 of the Administrative Tribunals Act, 1985. He has challenged the validity of the order dated 28.11.1985 imposing penalty of "removal from service, with immediate effect". It is alleged that the impugned order is bad in law as he had already given the correct date of birth, i.e. 14.9.1944, when he was engaged as casual labour on 1.3.1970. It was further submitted that Shri U.V. Dave, (ELM) Porbandar managed to prepare a certificate which is alleged to have been forged and he had collected a bribe of Rs. 1100/- for doing so and hence he should

not have been dealt with by the authorities by severe penalty of "removal from service". He has, therefore, prayed that the impugned order be quashed and set aside as it is harsh and excessive and the respondents should treat his services as continuous one with all back wages.

2. The respondents - railway administration in their counter have denied the allegations made against them. According to them, the petitioner was well aware that he was over aged when he was initially engaged and his action of manipulating the records of date of birth was actuated by a motive to get regular employment in service which was a grave and serious breach of railway service conduct rules. It is, therefore, submitted that the petitioner is not entitled to the relief as prayed for.

3. When the matter came up for final hearing, neither the petitioner nor his counsel Mr. M.K. Paul is present. Instead of dismissing the application for default, we have preferred to decide the application on merits on the basis of the record. We have, therefore, heard Mr. R.M. Vin, the learned counsel for the respondents.

4. The main grievance of the petitioner is that he had not misrepresented in respect of his date of birth, at the time when he was initially engaged, which has been recorded as "14.9.1944". It is averred that he has never misrepresented or cheated the railway administration. According to him, Shri U.V. Dave had collected Rs. 1100/- from him and he (Shri Dave) had done the acts of fraud and cheated the

railway administration by fabricating a bogus certificate showing his (petitioner's) date of birth as "22.2.1948". In his submissions, even his mercy appeal addressed to DRM has been rejected on 27.12.1985 without considering the question of adequacy of the punishment inflicted upon him which was in terms economic death i.e. "removal from service".

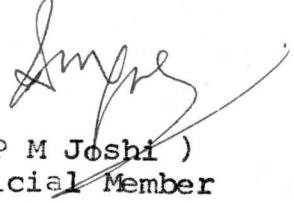
5. Mr. R.M. Vin, however, contended that but for the false certificate, the petitioner could not have been regularised as class IV employee and admittedly by paying a bribe of Rs. 1100/- to Shri U.V. Dave, he had committed an act of fraud and thereby secured permanent employment in the railway administration. In his submission, looking to the gravity and the seriousness of the misconduct duly established against the petitioner, it cannot be said that the order of penalty is in any manner excessive or harsh.

6. It is pertinent to note that the petitioner has not pointed out any procedural or jurisdictional error committed by the disciplinary authority in passing the impugned order. Once, the charge is duly established, the disciplinary authority is competent to pass the orders imposing penalty as required under the rules. As held by the Supreme Court in *Union of India v/s. Parma Nanda* (1989 Supreme Court Cases (L & S) 303), the Tribunal has ordinarily no power to interfere with the punishment awarded by the competent authority in departmental proceedings on ground of penalty being excessive

or disproportionate to the misconduct proved, if the punishment is based on evidence and is not arbitrary, malafide or perverse. The petitioner has not placed any material to show that the disciplinary authority has committed any error in holding the petitioner guilty of the charges levelled against him. Even, otherwise, there are no valid grounds to interfere with the penalty of "removal from service" imposed upon the petitioner.

In this view of the matter, the application fails and it is accordingly dismissed with no order as to costs.

M M Singh
(M M Singh)
Administrative Member


(P M Joshi)
Judicial Member

*Mogera