

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH~~XXXXXXXXXX~~O.A. No. 329 OF 1986
~~XXXXXX~~

DATE OF DECISION 13-10-1989.

MR. JOSEPH RAIMAN PetitionerMR. M. I. PATEL FOR MISS. NITA MISHRA Advocate for the Petitioner(s)

Versus

THE UNION OF INDIA & ORS. Respondent s.MR. N. S. SHEVDE 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? *Yes*
2. To be referred to the Reporter or not? *Yes*
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? *Yes*

Mr. Joseph Raiman,
Cleaner,
Western Railway,
Baroda.

..... Petitioner.

(Advocate: Mr. M.I. Patel for
Miss. Nita Mishra.)

Versus.

1. Union of India, through
Asstt. Mechanical Engineer (L)
Western Railway,
Baroda.

2. Divisional Railway Manager,
Western Railway,
Baroda.

..... Respondents.

(Advocate: Mr. N.S. Shevde)

J U D G M E N T

O.A.NO. 329 OF 1986

Date: 13-10-1989.

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

The petitioner, Mr. Joseph Raiman, who was working as Cleaner Class IV employee in Baroda Division (Western Railway) was subjected to a departmental proceedings under the Railway Servant (Discipline & Appeal) Rules 1968 whereby a penalty of removal from service was imposed vide order dated 14.6.84 passed by A.M.E. (L) BRC, which was confirmed in appeal vide order dated 26.11.84. The petitioner being aggrieved by the said order has filed this application under section 19 of the Administrative Tribunals Act, 1985, on 8.9.1986.

2. According to the case set up by the petitioner, a false complaint was lodged against him for "removal of railway coal worth Rs. 10/-" for which he was prosecuted for the offence punishable under section 3 of Railway Property (Unauthorised Possession) Act, 1966 wherein he was convicted and sentenced to suffer 7 days R.I. and pay a fine of Rs. 10/- in default one day S.I. by

J.M.F.C. (First Class) Godhra and on the basis of such conviction his services have been terminated. It is alleged that the impugned order imposing extreme penalty of removal from service is illegal and dis-proportionate. He, therefore, prayed that the impugned order be quashed and set aside and the respondents be directed to reinstate the petitioner with back wages.

3. When the matter came up for hearing, we have heard Mr. M.I.Patel ~~for~~ Miss. Nita Mishra and Mr. N.S. Shevde, the learned counsel for the petitioner and the respondents respectively.

4. According to Mr. Patel, the petitioner being low paid employee, he was advised to plead guilty and he was led to believe that this being a first offence, the Court will release him on admonition. But on his plea of guilty, he was convicted and sentenced by the Court. According to him, the charge levelled against him in respect of a petty offence and the disciplinary authority instead of imposing a light penalty, a penalty of economic death has been imposed upon him i.e. "removal from service," by the impugned order. In his submission the appellate authority has not assigned any reason dismissing his appeal and hence the orders passed in appeal deserves to be quashed and set aside.

5. It is significant to note that the respondents have not opposed the application by filing any reply or written statement. However, Mr. N.S. Shevde, who appeared on behalf of the respondents, vehemently contended that the Tribunal has no power to interfere with the orders of penalty passed by the disciplinary authority. In his submission having regard to the nature of the offence

alleged to have been committed by the petitioner there are no valid grounds to interfere with the orders imposing penalty from removal from service.

6. It is true, ordinarily the High Court or The Tribunal has no power to interfere with the punishment awarded to the delinquent by competent authority in departmental proceeding on ground of penalty being excessive ^{or} disproportionate to the misconduct proved, if the punishment is based on evidence and is not arbitrary, mala fide or perverse as held by the Supreme Court in Union of India V/s Parma Nanda 1989 S.C.C.(L&S) 303. However, the Supreme Court in the same case laid down a rider by holding that "the Tribunal can interfere with the apparently unreasonable punishment where it is imposed on the basis of conviction by Criminal Court dispensing with departmental enquiry under second proviso (a) to Article 311(2) of the constitution of India."

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7. Similarly, the Bench of this Tribunal had an occasion to consider similar question in Narayan P. Patel & Ors. V/s. Union of India (A.T.R. 1987(1) C.A.T., 479) wherein the delinquents; all the petitioners were detected carrying away 7 Kilogram Steam Coal worth Rs. 7/- each in their hand bag from Low Level Yard, Surat on 7.6.82 at 12-35 for which they were prosecuted and an order of conviction and sentenced to a fine of Ra. 10/- I/D 2 days S.I. on 23.5.84 in three different criminal cases filed against them were passed and on the basis thereof the delinquents were subjected to a departmental proceedings wherein they were awarded

the penalty of "stopage of next increment for a period of one year without further effect". However the appellate authority enhanced the penalty by passing an order of removal from service. In the said case it was held that the disciplinary authority while exercising the power had already imposed a penalty of stopage of increment for a period of one year without further effect, the said order of penalty imposed qua the petitioner deserved to be restored. While reaching to this conclusion, we had taken into consideration the following observations made by Mr. Justice M.P. Thakker, Chief Justice (as he then was) in R.M. Parmar V/s Gujarat Electricity Board, Baroda, (23 G.L.R.p.352) which reads as under :

"It is not expedient in the interest of administration to visit every employee against whom a fault is established, with the penalty of dismissal and get rid of them. Taking a petty article by a worker in a moment of weakness when he yields to a temptation, does not call for an extreme penalty from service".

8. In the instant case also the petitioner was accused of having committed a theft of coal worth Rs. 10/- only and the penalty of removal from service has been imposed by the disciplinary authority. Apart from the plea of the petitioners that he was advised to plead guilty due to his economic condition and lack of education, a penalty of "removal from service" is therefore not called for when a poor worker like the present petitioner while serving as a cleaner who had otherwise worked satisfactorily for 7 years yielded to a momentary temptation and committed an offence of theft of the property worth Rs. 10/- only. We have therefore, no hesitation in holding that an extreme penalty of

removal from service is rather uncalled for and disproportionate to the offence of theft of property worth Rs. 10/- only. Mr. Patel, during the course of his arguments, submitted that the petitioner if re-instated immediately he will forgo his claim for backwages and the loss of such salary and pay, may be treated as adequate punishment in his case for the alleged misconduct.

9. Before passing the final order it was thought that we could revise the orders ourselves and pass suitable orders as it was done in the case of Narayan.P. Patel & Ors. (supra). But in the said case we had the benefit of the orders passed by the competent authority who had imposed a minor penalty of "stoppage of next increment for one year without further effect", qua the delinquents. In the present case, neither the petitioner nor the opponents have placed on record the orders passed by the appellate authority which is said to have been passed on 26.11.84. It is borne out by the impugned order dated 14.6.84 that the appeal lies to Senior Divisional Mechanical Engineer (Sr. DME)(L) BRC.

10. In the result, we allow the application partly. We hereby quash the order of punishment imposed upon the petitioner and direct that he shall be reinstated without back wages to the post held by him, within a period of one month from the date of this Judgment. At the same time, we remit the matter to the appellate authority (Sr.Divl. Mechanical Engineer (L) BRC to reconsider the appeal dated 22.8.84 filed by the petitioner and pass any order of penalty like censure, withholding his promotion, recovery from his pay of the whole or part of any pecuniary loss caused to Government by negligence, withholding of increment of pay etc; instead of major penalty like "removal from service". The petitioner is at liberty to file a supplementary representation, if any, in addition to the appeal, which he had already preferred to the

appellate authority within a period of one month from the date of this order. We further direct that the appellate authority, i.e., Sr. Divisional Mechanical Engineer (L) Baroda, on receipt of the supplementary representations filed by the petitioner, shall decide his appeal and representations within a period of 4 months from the date of this order by passing a "speaking order", and without being influenced by his previous order. It is further clarified that in the meantime, the salary and other emoluments earned by him on his reinstatement, will be subject to the orders which may be passed by the appellate authority.

With the aforesaid direction, the application stands disposed of with no order as to costs. A copy of this judgment be forwarded to Sr. Divisional Mechanical Engineer (L) Baroda, and an acknowledgement thereof be retained by the Registry on record.

M. M. Singh

(M.M. SINGH)
Administrative Member.

P. M. Joshi

(P.M. JOSHI)
Judicial Member.