IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXXXXXXXXXXXX~~
NEW DELHI

O.A. No.	391	OF	1986
~~XXT.A.No.~~	with		
O.A.No.	426	OF	1986

DATE OF DECISION 19-10-1989

Shri Gandalal Bhikhbhai,
Shri Ibrahim Ismail _____ Petitioner

Shri B.B.Gogia _____ 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.H.Trivedi : Vice Chairman

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

O.A. No. 391 OF 1986

with

O.A. No. 426 OF 1986

O.A./391/86

Shri Gandalal Bhikhabhai,
Behind IOW's Office,
Jetalsar Junction Station,
Western Railway,
Jetalsar. ... Applicant

(Advocate : Shri B.B.Gogia)

Versus

1. The Union of India,
Owning & Representing
Western Railway,
Through : General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.

2. The Divisional Railway Manager,
Western Railway,
Bhavnagarpara. ... Respondents

(Advocate : Shri R.M.Vin)

OA/426/86

Shri Ibrahim Ismail
Behind IOW's Office,
Jetalsar Junction Station,
Western Railway,
Jetalsar. ... Applicant

(Advocate : Shri B.B.Gogia)

Versus

1. The Union of India,
Owning & Representing
Western Railway,
Churchgate,
Bombay - 400 020.

2. The Divisional Railway Manager,
Western Railway,
Bhavnagarpara. ... Respondents.

(Advocate : Shri R.M.Vin)

JUDGMENT

Date : 19-10-1989

Per : Hon'ble Mr. P.H. Trivedi : Vice Chairman

The applicants, in O.A. No. 391/86 and O.A.No.426/86, have filed an application under Section

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19 of the Administrative Tribunals Act, and have asked for the relief of direction of the order dated 27.3.1984 and the appellate order dated 9.7.1984 to be declared illegal and void and to declare that the petitioner continues on his original post of Platform Porter with all benefits. It is admitted that the petitioner was convicted and sentenced till rising of the Court with fine of Rs.50/- and in default to 7 days' simple imprisonment by the Judicial Magistrate, First Class, Rajkot on a criminal charge on 25-7-1980 and there upon he was placed under suspension by order at Annexure 'A' dated 16-4-1982. A memo asking for his representation regarding the conclusion that he is not a fit person to be retained in service was sent and for that reason the A.O.S. Bhavnagar Para imposed a penalty of removal from service. The petitioner by his representation dated 14.2.1984 at Annexure 'C' said that he was made a scapegoat in that case by the RPF authorities and that he could not defend the case in the Court of law in absence of legal assistance because of his poor condition and urged the Respondents to consider his case sympathetically on account of his poverty. The said authority A.O.S. Bhavnagar Para by his order dated 29.3.1984 at Annexure 'D' informed the petitioner that the penalty of removal from railway service was imposed upon him and his defence is not accepted because : -

"(1) He has explained/submitted nothing in detail in defence of the charges.

(2) He has also not explained the circumstances /reasons how he had been made a scape goat by the RPF authorities (As stated in his defence). It shows that he has

no positive point in his favour to defend himself and thus it shows that it is just an excuse only and that too at this stage.

(3) Regarding his helplessness to further defend himself in the Court of Law (In a way of appellate against the punishment awarded to him). With a legal assistance, the reason shown by him is also not convincing.

(4) On the contrary he was supposed to inform the administration just after Court's order regarding his conviction but he failed in that also."

2. The learned advocate for the petitioner has urged that on conviction of criminal charge for a petty offence it is not obligatory to remove the petitioner from service that the respondents had not applied their mind to the charges in the disciplinary proceedings and did not decide the appropriate quantum of punishment and that extreme punishment is not warranted for a petty offence, in support of which he cited R.M.Parmar V/s. Gujarat Electricity Board, Baroda, (1982 (1) G.L.R. Page 352), and Shankar Dass V/s. Union of India (1985 (2) S.L.R. Page 109).

3. The learned advocate for the petitioner has also stated that although the conviction is dated 23.7.1980, the order of suspension is passed after about 2 years and dated 16.4.1982 the impugned notice for punishment under Section 14 (1) of the Railway Servants (Disciplene & Appeal) Rules, 1968 is dated 4.2.1984, after two more years. In reply the respondents stated that the petitioner was in duty bound to report his conviction which he failed to do

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and delay between 1980 and 1982 is due to this. The petitioners failure also shows his ulterior motives. Respondents came to know about the petitioners conviction through a communication for the Chief Security Officer, Churchgate. A Railway servant is not to be leniently dealt with if he fails to perform his duty and engages in thievery.

4. We find that the respondents have not filed any papers or instructions to show how it was a duty of the petitioner to promptly report his conviction. Unless there are aggravating circumstances extreme penalty is held to be grossly disproportionate to convictions on petty offences. There is some force in the respondents plea that petty thefts, if tolerated would have wide-spread deleterious consequences on administration or to services. In this case it is made out that petitioner did not report his conviction immediately. A poorly paid employee apprehending that a report of conviction which would result in his dismissal faces a very difficult problem in which his duty to the letter of the instructions is pitted against his prospect of losing his job. This is not to say that punishment should not be given and is not deserved, but there is scope for giving considerably lesser punishment. Normally it is not for the Tribunal to comment upon the quantum of punishment but having regard to the circumstances of this case and the reasons given for refusing the acceptance of the defence it is proper to direct the respondents to review their decision of the orders impugned for an appropriate lesser punishment with reinstatement of the petitioners to the post of Platform Porter, though no backwages may

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be paid to him for the period he has not been allowed in service as a consequences of the conviction or the removal from service/explanation as the case may be. We direct that the appropriate orders may be passed within a period of two months from the date of this judgment. No order as to costs.

5. With the above observations and subject to them we quash and set aside the impugned order and remit the case to the appellate authority for reviewing the punishment.

Sd/-
(P.H.TRIVEDI)
VICE CHAIRMAN

Sd/-
(P.M.JOSHI)
JUDICIAL MEMBER