Dept. Enquiry (Jud)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

~~XXXXXXXXXXXXXXXX~~

O.A. No. 555 OF 1987 ~~19XX~~

~~T.A. No.~~

~~XXXXXXXX~~

DATE OF DECISION 11-4-1991.

Himatlal M. Gandhi, Petitioner

Mr. K.B. Pujara, Advocate for the Petitioner(~~s~~)

Versus

Union of India & Ors. Respondents

Mr. R.M. Vin, Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. R.C. Bhatt, 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? No
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.

MGIPRRND—12 CAT/86—3-12-86—15,000

Himatlal M. Gandhi,
Zalorapa, Desai Khadki,
Junagadh. .... Applicant.

(Advocate: Mr.K.B.Pujara)

Versus.

1. Union of India
(Notice to be served through
the General Manager, Western
Railway, Churchgate, Bombay)

2. Divisional Mechanical Engineer(L)
Western Railway,
Bhavnagar Para.

3. Assistant Mechanical Engineer,
Western Railway, Bhavnagar Para. .... Respondents.

(Advocate: Mr. R.M. Vin)

J U D G M E N T

O.A.No. 555 OF 1987

Date: 11-4-91

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

This Original Application under section 19 of the Administrative Tribunals Act, 1985 has been filed by a former Chief Clerk of the Western Railway who retired on 31.10.86 to challenge two documents. The first is show cause notice dated 14.8.1987 issued under rule 9 of the Railway Service (Discipline & Appeal) Rules 1968 on a charge of negligence of duty causing loss of railway property thereby violating rule No.3(i)(ii) and (iii) of the Indian Railway Service Conduct Rules, 1966. The second is letter dated 16.10.87 by which the Enquiry Officer informed the applicant to attend the DAR enquiry from 19.10.87 to 21.10.87 the postponement of which is stated as not possible. Praying that these two documents be quashed and set aside, direction to the respondents to release the payment of retiral benefits of the applicant withheld because of the DAR enquiry, against him is sought.

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2. The grounds for the above in the pleadings are that the applicant is not responsible for the discrepancy in the Stores; that he submitted reply dated 4.9.1987 to the notice above explaining how he was not responsible and requested that the notice be discharged; that even before he submitted this reply, the enquiry officer came to be appointed which evidences prejudging and predetermination by the authority to harass the applicant; that some enquiry steps came to be Lastily taken under the same motivation and time schedule prescribed in the rules for such steps also not allowed to complete; that copies of certain items of adverse evidences were not supplied to him despite his request to supply them; that opportunity to produce defence witnesses was denied; that certain documents he asked for his defence use were denied to him on the ground that the said record was not cited in the inquiry against him; that though his sickness was supported by medical certificate and that he kept indifferent health was known to respondents who sanctioned his leave on that count seven times in a period of about a year between 11.12.86 and 31.10.87 and the Railway doctor also certified some spells of sickness during this period and he could therefore not attend the hearing on the given dates, his request for adjournment was ignored and the hearing nevertheless held; that though a dealing clerk was really responsible for the discrepancy in Stores, responsibility was foisted on him; and that the weighing machine to testweigh the metal in the stores was defective which was revealed in an inspection of the machine.

3. The respondents' reply is to the effect that the DAR enquiry has concluded and NIP dated 28.10.87 issued of which the applicant knows; that the remedy against the final order of punishment passed by the disciplinary authority lay in preferring appeal to the departmental appellate authority instead of which the application was filed in this Tribunal. This amounted to approaching this Tribunal without exhausting the statutory remedy of departmental appeal. It is averred that the appointment of the Enquiry Officer was in fact by order dated 23.9.1987 and date 23.7.87 shown was a typographical error and that full opportunity was provided to the applicant to defend himself and xerox copies of documents the applicant requested were also supplied. The applicant gave names of two defence counsel to the Enquiry Officer but without their willigness none from whom could therefore be appointed as defence counsel. The applicant himself did not participate in the inquiry and instead submitted sickness certificate from a private doctor which was not countersigned by the Railway Medical Officer. The NIP dated 28.10.87 could not be served on the applicant as he was not available at his residence in Junagadh. A copy of the NIP therefore had to be put on the notice board in the office at Jetalsar where he last worked. Rs. 45,824 as Provident Fund contribution and Rs.1340 as group insurance money have been disbursed to the applicant and no other retiral benefits are due as the applicant was removed from service.

4. At the final hearing, the counsel for the applicant submitted that no final order has been served on the applicant even though he retired from service. He argued that the Enquiry Officer's report

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was not supplied to him before the punishment order and he was deprived of opportunity to have his say on it. He relied on Union of India V/s. Mohmed Ramzan Khan (JT 1990(4) SC 456) to submit that this amounted to breach of principles of natural justice. He submitted that a loco foreman was also proceeded against for the discrepancy in the stores. But while the locoforeman's defence that the weighing machine was defective was accepted for exonerating him, the same defence of the applicant was not accepted.

5. The above rival facts, pleadings and submissions throw up significant features of this case. The NIP was concluded on 28.10.87. The application filed in this Tribunal on 13.11.1987 thus was filed after the conclusion of the NIP. Though the NIP could not be served on the applicant personally as he was not available at his residence at Junagadh and therefore its copy had to be displayed on the notice board of the applicant's place of last work at Jetalsar, the absence of service of the NIP on the applicant personally in the circumstances does not permit ignoring its mere existence for adjudication. With that happening, the application suffers from the primary disqualification at entreepoint as it challenges not the final order of the disciplinary authority though the same already existed but two prior documents above referred, namely, the show cause notice and a letter of intimation of date of hearing. These two documents are just two of the several documents and items of other evidence liable to be taken into consideration by the enquiry officer for his report and by the disciplinary authority for the final order in the disciplinary inquiry. The show cause notice cannot be considered for quashing and setting

aside unless it is shown to be void on the face of it. No doubt it is argued that the applicant is not responsible. But that argument rests on appraisal of only some evidence from the departmental inquiry figuring in the pleadings and submissions for the applicant but not on the whole of it which and whose strength and overall character untold before us. In the absence of the complete picture of evidence in the departmental inquiry and its appreciation by the empowered disciplinary authorities, we will not be persuaded to venture to hold that the show cause notice is bad in law. When in a challenge to the final order of the disciplinary authority and the order of the appellate authority, courts are precluded from undertaking reappraisal of evidence (see for an example, State of A.P. V/s. C. Venkata Rao, AIR 1975 SC 2511) in the departmental inquiry, to expect us to do so in a challenge to the merits of the show cause notice will be altogether unjustifiable expectation which has no legal support. The challenge to the letter intimating the date of hearing suffers from similar weakness. The two documents can therefore not be quashed and set aside. In that event question does not arise of issuing direction to the respondents to release payment of such retiral benefits of the applicant as can be lawfully withheld when disciplinary inquiry on charges of negligence of duty causing loss of Railway property has already been started and when the same concluded before filing of this application but the final order not challenged which, as we discussed supra, constitutes primary disqualification at entree point for seeking remedy in the forum of this Tribunal. It violates provisions of Section 20 of the

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Administrative Tribunals Act,1985, more on which subject is to follow.

6. We may, before we part with this case, refer to the allegation that the copy of the Enquiry Officer's Report was not supplied to the applicant before the issue of the final order and he therefore deprived of opportunity to represent against it. As above stated, the final order has not been challenged before us. In any case, the final order could not be so challenged without circumventing the provisions of Section 20 of the Administrative Tribunals Act regarding exhausting of remedies and remedy of departmental appeal undoubtedly exists. We therefore have no legal grounds before us to go into aspects which may imply our giving any verdict on the final order of the disciplinary authority without the same even being under challenge before us. However, we would nevertheless reproduce below para 17 of Supreme Court judgment in Mohd. Ramzan Khan case, supra,:

> "There have been several decisions in different High Courts which, following the Forty-Second Amendment, have taken the view that it is no longer necessary to furnish a copy of the inquiry report to delinquent officers. Even on some occasions this Court has taken that view. Since we have reached a different conclusion the judgments in the different High Courts taking the contrary view must be taken to be no longer laying down good law. We have not been shown any decision of a coordinate or a larger Bench of this Court taking this view. Therefore, the conclusion to the contrary reached by any two-judge Bench in this Court will also no longer be taken to be laying down good law,but this shall have prospective application and no punishment imposed shall be open to challenge on this ground."

We, for reasons above discussed, give no views on whether the punishment already imposed on the applicant shall be open to challenge on the allegation that copy of the Inquiry Officer's Report was not furnished to the applicant before the final order of punishment was, it seems, made and the ratio in the above judgment having prospective application and no punishment imposed open to challenge on this ground.

7. In the light of our above discussion, the application is liable to fail. We hereby dismiss it without any order as to costs.

(R.C. Bhatt)
Judicial Member

(M.M. Singh)
Administrative Member.