

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXX~~

(6)

O.A. No. 91 OF 198 7.
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DATE OF DECISION 10-4-1990.

NASIRUDDIN KARIMUDDIN SHAIKH Petitioner

MR. S.K. BUKHARI Advocate for the Petitioner(s)

Versus

THE UNION OF INDIA & ORS. Respondents.

MR. N.S. SHEVDE Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. A.V. HARIDASAN, 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? *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? *No*

Nasiruddin Karimuddin Shaikh,
residing at House No. 2639,
Gali No. 15, Sodagarni Pole,
Kalupur, Ahmedabad.

.... Petitioner.

(Advocate: Mr. S.K. Bukhari)

Versus.

1. The General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.

2. The Chief Mechanical Engineer,
Western Railway,
Churchgate,
Bombay - 400 020.

3. The Divisional Railway Manager,
Western Railway,
Pratapnagar, Baroda.

.... Respondents.

(Advocate: Mr. N.S. Shevde)

J U D G M E N T

O.A.NO. 91 OF 1987

Date: 10-4-1990.

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

The applicant Railway employee was chargesheeted by the Senior Divisional Mechanical Engineer (C & W) Western Railway, Baroda and order of removal from service came to be issued by way of penalty. The order remained pending issue and implementation as the High Court of Gujarat had issued interim injunction. However, the DRM Baroda reviewed the same suo moto in exercise of powers vested in him under Rule 25 of Railway Servants (Discipline & Appeal) Rules, 1968 and reduced the punishment to withholding of increment for two years without future effect. The Chief Mechanical Engineer, Western Railway, Bombay, in appeal preferred by the applicant, further reduced the penalty to withholding of increment for one year without future effect by his order dated 18.4.1986. Against this order-in-appeal,

AB (8)

the applicant preferred appeal to the General Manager, Western Railway, Bombay. This appeal was, both in the averments of the applicant and in reply of the respondents stated to be pending. However, at the hearing, Mr. N.S. Shevde, learned advocate for the respondents, informed that the General Manager had, under his letter No. E/DAR/388/39/8/237 dated 19.9.1986 addressed to the DRM(E) BRC, informed that there is no provision for second appeal under the Railway Service (Discipline & Appeal) Rules, 1968 and that the applicant may be advised suitably. From the circumstance that the applicant as also the Divisional Personal (Personnel, it seems) Officer, Western Railway, Baroda, in their respective averments stated that the appeal was pending, it appears that the applicant was not suitably informed about the order of the General Manager, Western Railway, Bombay, as also the respondents oversighted the order. Not only that, the applicant, in para 6 (iv) of his application alleged that his advocate had issued notice dated 7.10.1986 to the General Manager requesting him to dispose of the appeal within a reasonable time and, despite the notice having been duly served on 15.10.1986, the General Manager, Western Railway "neither cared to dispose of the appeal/representation nor replied the said notice" which constrained the applicant to approach this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 by filing the present application dated 25.2.1987.

2. The respondents' reply to the application was filed exactly after one year and six months from 25.2.1987, namely on 25.8.1988. It is unfortunate that notwithstanding the long time taken by the respondents in filing their reply, the same suffers from inaccuracy on a most material point and while the respondents admitted

in their belated reply that the second appeal was pending with the General Manager, Western Railway, Bombay, respondent No.1, giving the irresistible impression that the second appeal did lie, we are informed, as late as on 6.4.1990 at the final hearing, that it did not.

3. At the final hearing, we have heard the advocate for the respondents but did not have the benefit of hearing the advocate for the applicant or the applicant himself for reasons of their absence. We have very carefully perused the applicants' record.

4. Even though the Railway Servants (Discipline & Appeal) Rules, 1968 do not provide for a second appeal against the order of the appellate authority, the General Manager has powers of revision under rule 25 of these rules. The General Manager is competent at any time, either on his own motion or otherwise, to call for the records of any inquiry and take steps to revise any order made under the Railway Servants (D & A) Rules if he considers the same necessary.

5. In view of the above and in consideration of the fact that the applicant's representation to the General Manager against the appeal order was long erroneously shown by the respondents also as pending, we are of the view that the interest of justice requires that the first respondent, the General Manager, Western Railway, Churchgate, Bombay is directed to decide the applicant's representation dated 9.6.1986 by a speaking order in exercise of the powers vested in him under rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968 within three months from the date of issue of this order and the applicant at liberty, in case he still has

MA/683/88

in

OA/91/87

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

21/10/1988

Heard Mr.S.K.Bukhari learned advocate for the applicant. No reply has been filed by the respondent. Documents be produced if available. Miscellaneous application allowed. Mr.N.S.Shevde learned advocate for the respondent present. With this order, MA/683/88 stands disposed of.

P.H.Trivedi

(P.H.Trivedi)
Vice Chairman

a.a.bhatt