

Stoppage of Increment (Yes)
(Jud)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW DELHI~~

A H M E D A B A D B E N C H

O.A. No. 197 1988

~~T.A. No.~~

DATE OF DECISION 11.7.1991

Shri P.C.M. Vyas Petitioner

Shri Y.V. Shah Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri N.S. Shevde Advocate for the Respondent(s)

CORAM :

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

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? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *N*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

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Mr. P.C.M. Vyas
Assistant Commercial Clerk (BG)
Western Railway
AHMEDABAD.

: Applicant

Vs.

1. Union of India, through
The General Manager,
Western Railway,
Churchgate,
BOMBAY-20.
2. Divisional Commercial Supdt. (E)
Western Railway,
BARODA.
3. Sr. Divisional Commercial Supdt. (E)
Western Railway,
BARODA.
4. Divisional Rly. Manager (E)
Western Railway,
BARODA.

: Respondents.

J U D G E M E N T

Date: 11.7.1991

O.A.No.197 of 1988

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

: Vice Chairman

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In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant challenges the order dated 9.2.1988 by respondent No. 1, by which the petition of the applicant dated 5.11.1987 against the penalty of reduction to the minimum of scale of Rs.260-430/- (R) for a period of two years with cumulative effect was rejected. The applicant was issued chargesheet dated 6.3.1985, by respondent No.2 for issuing 3 tickets on 7.12.1984 for travel on 11.12.1984, granting reservation to 3 berths against RMR quota, super-seeding 47 passengers on the Waiting List. Enquiry was held on 7.10.1985 and the enquiry officer gave his findings on 18.11.87, that the charges against the applicant are established. Thereupon the respondent No.2 had imposed a penalty of withholding

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two years' increment without future effect. The copy of the order dated 20.12.1985 is annexed at annexure A-1. The applicant appealed against this order on 16.1.1986, and thereupon, show cause notice was issued for enhancement of the penalty of removal from service. The applicant filed reply to it on 6.3.1986, and thereupon, the respondent No.3 imposed the penalty of reverting him and fixing his pay at Rs.260/- per month, for a period of 2 years with cumulative effect. The copy of the order dated 24.9.1986 is annexed at annexure A-3. The applicant filed second appeal to respondent No.4 on 30-10-86 which was rejected by an order dated 18.12.1987 annexed at annexure A-4. The applicant filed Revision Petition to the General Manager and on his being told to file Review Petition to respondent No.1 he did so, by an application dated 5.11.1987 which was rejected by an order dated 9.2.1988. The main grounds of challenge against the orders of the respondents are :-

1. The applicant contends that the 3 berths referred to were allotted and entries made by Sr. Asstt. Commercial Clerk, Shri S.S. Shah and not by the applicant.
2. Enquiry officer relied upon the statement dated 17.1.1985 during the preliminary enquiry and not on evidence recorded before him and found the applicant guilty. This was done without examining Shri S.S. Shah. This shows non-application of mind by the enquiry officer.
3. In appeal the penalty, though enhanced, it confirmed a nullity order and the enhanced order in appeal was also void.
4. No opportunity of hearing was given by respondent No. 4 in the second appeal.

2. In reply the respondents states that the fact that the 3 berths were allotted irregularly is not disputed, as such irregularity was committed during the office hours, when the applicant was in charge of it when the transaction took place


is also not disputed. The appeal of the applicant that he had gone to answer the call of nature and Shri S.S. Shah had allotted these reservations is an after thought and not true. In the preliminary enquiry the applicant had confirmed his statement made on 17.1.1985, the statement is part of the evidence and the enquiry officer's basis for his finding is not vitiated by his reliance on it and his not examining Mr. Shah as witness. The applicant's review or revision petition was considered by the Chief Commercial Supdt., and the decision of the CCS CCG with detailed reasons was conveyed to the applicant by orders dated 10.2.1988. The applicant was personally heard on 23.1.1987 before this appeal was rejected. It is open to the appellate authority to increase penalty after following the procedure of issuing notice and consideration representation against it.


3. The respondents have cited AIR 1989 Supreme Court 1185 (Parma Nanda's Case). In this case it was held that the Administrative Tribunal cannot interfere with the penalty imposed on the ground that it is not commensurate with the delinquency of employee. The Tribunal has no power to substitute its own discretion for that of the authority imposing the punishment provided, the enquiry is properly completed, and the conclusion of the enquiry officer or competent authority is based upon evidence. In that case the authority competent to do so had imposed penalty by coming to its conclusion regarding the appeal on the basis of circumstantial evidence, and it was held that it was competent for the authorities to do so, and if it was done properly, the Tribunal had no power to interfere by modification of the punishment imposed. The Tribunal can only exercise powers which the Civil Court or the High Court could have exercised by way of judicial review, and this power did not extend to modification of

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punishment imposed by competent authority based upon evidence during the enquiry, the Tribunal's jurisdiction to interfere with the disciplinary matters or punishments cannot be equated with an appellate jurisdiction. The applicant's learned advocate has also cited AIR 1991, Supreme Court, Mohd. Ramzan Khan's case Vs. Union of India & Ors. The decision in this case is attracted, as the applicant was reverted in rank. On perusal of the impugned order however, revision is only to reduction to the initial pay in his existing pay scale. This does not amounts to reduction in rank. The mere fact that the effect of punishment stands in the way of promotion or of the petitioner drawing a lower pay as a result, does not amount to reduction of rank. If the applicant had been reduced to a lower pay scale that would amount to reduction of rank. On this account therefore the applicant cannot avail to his advantage Ramzan Khan's case. The applicant has also relied upon AIR 1988(1) C.A.T. 257, Govindlal Chopra Vs. Union of India. The decision in the case was on the basis of disciplinary authority having manifested non-application of mind and imposed severer punishment without giving reason, In this case however, there is no circumstances showing non-application of mind at any stage.

3. In the result we find that the applicant has not made out any case or justification for interference with the impugned order. The application must on merit fail. There shall be no orders as to costs.


(R.C. BHATT)
Judicial Member


(P.H. TRIVEDI)
Vice Chairman