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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 22 OF 1988
~~T.A. No.~~

DATE OF DECISION 22-7-1991.

B.C. Mistry, Petitioner

Mr. D.K. Mehta, Advocate for the Petitioner(s)

Versus

Union of India, & Ors. Respondents

Mr. N.S. Shevde, 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? *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. *No*

(9)

B.C. Mistry,
Asstt. Station Master,
Railway Quarters,
Palej, (Dist. Bharuch)

..... Applicant.

(Advocate: Mr. D.K. Mehta)

Versus.

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

2. Divisional Railway Manager,
Baroda Division, Divisional
Office, Pratapnagar,
Baroda.

3. Sr. Divisional Operating-
Superintendent, Baroda Division,
Divisional Office,
Pratapnagar, Baroda.

..... Respondents.

(Advocate: Mr. N.S. Shevde)

J U D G M E N T

O.A.No. 22 OF 1988

Date: 22-7-1991.

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

This application under section 19 of the Administrative Tribunals Act, 1985 is made against the order of the Senior Divisional Operating Superintendent, Baroda awarding the punishment of stoppage of one increment without future effect and the appellate order which confirmed the order of punishment. The applicant has since retired from service.

2. The application ^{is} silent on the subject of the payscale of the applicant and the amount of an increment in the payscale stopped without future effect. The learned counsel for the applicant, Mr. Mehta, could not furnish this information at the final hearing when we asked him about this

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information during the course of his submissions on the appropriateness of punishment saying that the charges as proved could be ignored or the punishment of censure could have been awarded as overwritings in the record are not disputed. In para 6(c) of the application appears "..... the fact remains that the overwriting in the musterroll made by the applicant cannot be said tampering of record....." When information about the quantum of punishment is not disclosed, it is fruitless for Mr. Mehta to submit that the punishment is excessive.

3. No allegation of denial of opportunity figures in the pleadings of the applicant. However, at the final hearing, Mr. Mehta submitted that the inquiry officer's report was furnished to the applicant along with the order of the disciplinary authority and not before and the applicant therefore not given opportunity to represent against the report. This ground of denial of opportunity does not figure in the application filed in 1988 perhaps because of provisions of rule 12 in Railway Servants (Discipline & Appeal) Rules that the inquiry report should be furnished to the punished employee along with the order of punishment and Supreme Court judgment in Union of India Vs. Mohmed Ramzan Khan, JT 1990(4) SC 456 had not seen the light of the day. However, the judgment in Mohmed Ramzan Khan case does not help the applicant as the punishment awarded to him is neither of dismissal, removal nor reduction in rank, the only three punishments figuring in Article 311(2) of the Constitution. We therefore hold that the ratio decidendi in Mohmed Ramzan Khan case is not applicable to the applicant's case which is not of removal, dismissal or reduction in rank. *h m. Sr*

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4. The applicant has been commendably frank in the appeal application in saying :

"Sir, this is to bear in mind in the issue that as an acting SS I was neither the practice maker nor the policy former in the issue of exchange of duties of staff. I acted as per the prevailing practice at Palej Station and at many other stations in Baroda Divn. The seriousness of the charge would have been more had I diverted the practice, I have instructed to ASMs to write in the charge book, the names of the persons physically performing the duty, so that responsibilities may be fixed for the working of station."

The above has two dimensions. The first dimension consists of an employee submitting^{to} or not resisting a questionable environment of questionable practices to challenge which an employee may neither muster courage nor support from his superiors and subordinates. The second dimension consists of administration selectively punishing an employee though apparently aware that the questionable practice is widespread. But our this observation may have a bearing on the quantum of punishment as an extenuating circumstance but not a ground for exoneration for the latter view would sanctify the wrong for the only reason that the same is widespread and the administration looking the other way. But this Tribunal has, in Union of India Vs. Parma Nanda (AIR 1989 SC 1185) held to have no authority, subject to some exceptions, to interfere with punishment awarded by a competent authority on the ground that it is not commensurate with the delinquency of the employee. The exceptions have not^{been pleaded} in the case before us nor have the same been pressed into use.

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5. In view of the above, we are left with no alternative except to dismiss this application as the applicant cannot be exonerated and we cannot decide the appropriate punishment.

6. We hereby dismiss the application without any orders as to costs.

Resnt.

(R.C. Bhatt)
Judicial Member

H. M. Sura.
22/7/91

(M.M. Singh)
Admn. Member