

Removal (Jud)

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CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~NEW XXXXXXXXXX~~

O.A. No. 295 of 1988
~~XXXXXX~~

DATE OF DECISION 18.4.1991

Shri Teja Nonghan Petitioner

Mr. B.B. Gogia Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. R.M. Vin 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? No
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes

O.A. No.295 of 1988

Shri. Teja Nonghan,
Post Hadmatata (Ardar),
(Via) Semla,
Taluka Kotda,
DIST. RAJKOT
(Advocate : Mr. B.B. Gogia)

... Applicant

Versus

1. Union of India, through,
General Manager,
Western Railway,
Churchgate,
RAJKOT.
2. Divisional Railway Manager,
Western Railway,
Bhavnagar Division,
BHAVNAGAR PARA
3. Divisional Engineer (II)
Western Railway,
Bhavnagar Division,
BHAVNAGAR PARA
(Advocate : Mr. R.M. Vin)

... Respondents

J U D G E M E N T

Dated : 18.4.1991

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

... Vice Chairman

The petitioner Teja Nonghan in his application No.OA-295/88, under Section 19 of the Administrative Tribunals Act 1985, has impugned the order of his removal from service dated 25/31-5-1972 and appellate order dated 3-2-1988 rejecting his appeal. The petitioner has stated the history of his earlier suspension from service in which according to him a charge sheet was issued on 25.3.1969 which was later on cancelled on 26.4.1969 and then he was given another charge sheet, but that enquiry was not proceeded with further. On the same facts a criminal case was started against him but he was acquitted of the charges. Thereafter his suspension order was revoked, but the period of suspension was not treated as on duty. The petitioner thereafter was ordered, to be transferred to Lalpur in Gang No.3 near Kanalus under FWI Lalpur. The petitioner challenges this order as malafide. He pleads that due to

sickness in his family he could not carry out the order. The criminal case was also then going on against him and therefore he could not join in his post at Lalpur. For this reason he was served with a charge sheet dated 13.4.1970 for unauthorised absence from 29.5.1969. He replied by a representation dated 24.4.1970 that he being illiterate, does not know English and documents sent to him may be translated into Gujarati so that he can reply to the charges effectively. He also made a grievance that as he was not served with the transfer order after acquittal from criminal charges he may be served with transfer order and that he be paid full wages for his period of suspension. He was asked to see PWI Gondal for explaining the contents of the document dated 30.4.1970 in Gujarati. He thereupon sent a letter dated 18.7.1970 that he has not been explained anything in Gujarati nor supplied with copies of the documents. An enquiry officer was appointed by Memorandum dated 12.7.1970 but according to the petitioner no enquiry was held in his presence. An order for punishment was served on 31.5.1972 ordering removal from service with effect from 29.5.1969, the date from which he was alleged to be absconding. He submitted an appeal petition to the Divisional Engineer, Bhavnagar, against this order, but to which he received no reply. He submitted further Review Petition to the Divisional Railway Manager, Western Railway, Bhavnagar, and he received a reply dated 26.7.1979 that his petition was time barred. He filed a Civil Suit which was transferred to this Tribunal as No.TA/1290 of 1986. This Tribunal directed on 4.8.1987 that the appellate authority should decide the appeal within 4 weeks condoning the delay. He filed an appeal on 20.8.1987 which was rejected by the appellate authority by its order dated 3.2.1989. The petitioner challenges his transfer on the ground that it was of the nature of penalty and that it was not in the

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interest of the administration and was for irrelevant and extraneous reason. The petitioner also alleges that the enquiry officer proceeded in the matter mechanically without proper application of mind and that being illiterate from the respondents' reliance upon document which were in English and which were not translated into Gujarati he suffered from a disadvantage. The appellate authority also dealt with the appeal petition mechanically and did not apply his mind to Rule 22 (2) of the Discipline and Appeal Rules.

2. In reply the respondent Railway Administration has denied that the transfer of the petitioner was malafide or had any nexus with criminal case against him. The disciplinary proceeding against the petitioner was carried out according to the Rules and there was no violation of Article 14, 16, 311 of the constitution. The respondents could not furnish DAR proceedings files as they date from 1969 and are now not traceable. The petitioner was not honourably acquitted but was given benefit of doubt and therefore he was not paid more than his subsistence allowance during the period of suspension. He was transferred to Lalpur in Gang No.3 and the petitioner refused to carry out the transfer order. The petitioner should have obeyed the transfer order and then submitted his representation if he had any bonafide grievance about it. The petitioner's failure to comply with the transfer order which is a condition of service is an act of indiscipline and disobedience. As far as furnishing of documents in Gujarati is concerned the function of the respondent is that the Rules do not provide for translation to be furnished and therefore FWI, Gondal was directed to explain to the applicant the contents of the documents in Gujarati and he had done this in the presence of the Asstt. Station Master, at Kothariya on

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8.7.1970. The petitioner was served with the transfer order and this is seen from the petitioner taking plea of family sickness for not reporting to Lalpur. According to the respondent an enquiry was held in the presence of the applicant and he was removed from service properly. His appeal petition should be filed within 45 days as per rules and was therefore barred by the limitation but was decided on 3.2.1988.

3. On perusal of the pleadings and the documents, we are not inclined to accept the plea that the transfer orders were not served upon the petitioner or that he was not aware of it. During the hearing Learned Advocate for the petitioner did not press this contention. It has not been possible to ascertain merits of the rival contentions regarding the translation of the documents or explaining the question put to the applicant because the disciplinary proceedings are stated to be untraceable. The respondents have made the bare averment that the petitioners transfer was in administrations interest and is not malafide nor has any nexus with the criminal charges against the petitioner, but they have not thrown any light on the question why the petitioner's transfer was made necessary. The petitioner is a very humble servant of the Railway and his status shows that he is only a member of the Gang and has to work under the Permanent Way Inspector. It is true that Gangs are transferred as whole from place to place according to the exigencies of work. In this case there is no plea that a whole Gang has been transferred or was required to be transferred. It appears that the petitioner was picked out and transferred. It cannot be ruled out that administrative interest made it necessary, but it would be somewhat extra ordinary that such a functionary singly should need to be transferred, and the reason to do so would need some explanation. No light is thrown on this reason in the reply or in the

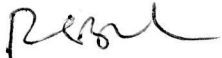
document or by the Learned Advocate for the respondent during the hearing. The charge of the petitioner therefore that there was nexus between the criminal charge against him and the disciplinary proceedings drawn upon against him is therefore not satisfactorily repelled.

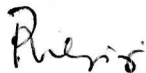
4. Regarding the Memorandum of charges and the documents not been translated in Gujarati and therefore ^{defeating} ~~giving~~ natural justice which should have informed the disciplinary proceedings also, we do not find the respondents' explanation to be satisfactory. Neither side had produced relevant Rules on this subject. The respondents have not disputed that the petitioner does not understand English. In the absence of the disciplinary proceeding records we have no means to verify whether in the course of the enquiry translation of the charges and the documents was made and read out to the petitioner as has been alleged by the respondent. In any case ^{leaving} ~~giving~~ to the officials of the respondent's administration to translate the documents into Gujarati and to explain that to the petitioner in the course of the disciplinary proceedings appears to be a highly unsatisfactory and unjust mode. The rules of natural justice require that the petitioner should have notice of the charges levied against him and the documents on which the respondents relies for their establishment in the disciplinary proceedings. This can be satisfied only by giving a translated copy to the petitioner in the language he understands. If this is not done there would always remain a doubt whether the petitioner had adequate notice of the charges against him and of the documents on the basis of which the charges against him are made. Absence of any instruction or the Rule for translation to be provided is no answer to the question of the burden imposed by requirements of natural justice regarding notice to the petitioner being adequate for the purpose. On this count alone we find that the disciplinary proceedings are vitiated.

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5. The appellate authority also has not itself applied seriously to this lacuna in the enquiry. There appears to be no examination to the complain about the respondents officer not having explained clearly in Gujarati, the relevant charges and the documents. There is reason to believe that the respondent authority's officer's statement in this regards has been accepted without further scrutiny.

6. For the above reasons we find that the petition has merit and the impuned orders dated 3.2.1988 and 31.5.1972 need to be quashed and set aside and the petitioner to be declared to be continued in service with all consequential benefit on being reinstated forthwith. It is so declared and directed, ^{and} that the petitioner may be given his pay and allowances as due in terms of this direction within four months of this order failing which interest @ 12% ~~to~~ be paid from the expiry of that period. Order of reinstatement be passed within 15 days of the date of this order.
No order as to cost.


(R.C. BHATT)
Judicial Member


(P.H. THIVEDI)
Vice Chairman