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IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. No. 769 of 1988

~~TA. No.~~

DATE OF DECISION 15/12/1994.

Shri Harsukhbhai Dayabhai Petitioner

Shri P.H.Pathak Advocate for the Petitioner(s)

Versus

Union of India and ors. Respondent

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

CORAM :

The Hon'ble Mr. V.Radhakrishnan : Member (A)

The Hon'ble Mr. Dr.R.K.Saxena : Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

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Shri Harsukhbhai Dayabhai,
Near Taluka Shala,
Jetalsar Junction,
Jetalsar,
Dist. Rajkot.

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...Applicant.

(Advocate : Mr.P.H.Pathak)

Versus

1. Union Of India,
(Notice to be served through
the Secretary,
Ministry of Railway,
Rail Bhavan,
New Delhi).

2. The General Manager,
Western Ra ilway,
Churchgate,
Bombay.

3. Divisional Railway Manager,
Western Railway,
Rajkot Division,
Rajkot.

4. Shri B.S.Pawar,
and/or his successor-in-office,
AME/BVP, Divisional Office,
Bhavnagar Para,
Bhavnagar.

...Respondents.

(Advocate : Mr.N.S.Shevde)

ORAL JUDGMENT

O.A. NO. 769 OF 1988.

Date : 15/12/1994.

Per : Hon'ble Dr.R.K.Saxena : Member (J)

The applicant has approached the Tribunal seeking quashment of the orders of punishment (Annexure-A/1 passed by the Disciplinary Authority and Appellate order dated 15.9.1987, (no copy of appellate order has been brought on record), and the order passed in revision by the Divisional Railway Manager (E) on 28/29-3-1988, (Annexure-A/2). Briefly stated the facts of the case are that the applicant was serving as substitute Khalasi.

For regularisation, the applicant was asked to obtain medical certificate of his fitness in December, 1980. The medical Officer found the applicant unfit.

Thereafter he absented himself but after about two years he again tried to get himself regularised and obtained a memo for medical examination. In pursuance of that memo, the applicant was required to approach the medical officer, but in his place it is said that he sent some other person on 28.7.1982, who was found medically fit. The medical certificate of fitness was, however, issued on 29/30-7-1982, in the name of the applicant. The applicant then reported for duty but subsequently it was detected that the applicant had sent some-body in his place for medical examination on 28.7.1982. Therefore, the charge-sheet (Annexure-A/4) was served on him for the charge of obtaining fitness certificate by employing fraudulent means. He denied the charges. The matter was enquired into and it appears that the hand writing and thumb impression of the applicant were sent for examination by Finger Print Expert. The report of the Finger Print Expert had been taken into consideration by the Enquiry Officer. But his conclusion was that the applicant had sent some other person in his place and therefore, the charges were established. On consideration of the report of the Enquiry Officer, the applicant was removed from service with immediate effect vide order Annexure-A/1.

The appeal preferred by him was also rejected and thereafter was rejected the revision which he had preferred challenging the order passed in appeal. Feeling aggrieved by those orders, he approached the Tribunal.

The main contention of the applicant is that proper procedure has not been followed and the principles of natural justice had been violated. The learned counsel for the applicant also drew our attention towards the facts that the report of the Finger Print Expert which has been considered by the Enquiry Officer, is different one. The reason given is that the report of Finger Print Expert of Rajkot was taken into consideration whereas the matter was referred to for opinion of Finger Print Expert, Bhavnagar. The learned counsel for the respondents however, points out that all marks of identification ~~examined~~ examined by the Finger Print Expert are not similar. Besides, the Enquiry Officer in the case of Shri S.D.Ranga, Loco-Foreman, who had issued the memo, had concluded that the thumb impression as well as the marks of identification were tallying with the thumb impressions and marks of identification on medical certificate documents. The report of the Enquiry Officer in the case of Shri Ranga has been brought on record as Annexure-A/11. In this way, the contention of the learned counsel for the applicant is that there are two opinions on the same point. In the case of the

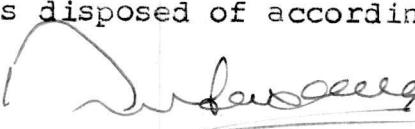
applicant, the Enquiry Officer concluded that the another person was sent for medical examination because the Finger Print Expert found the thumb impression and marks of identification of different persons. Whereas the Enquiry Officer in the case of Shri S.D.Ranga found that the marks of identification and thumb were tallying. In case, the marks of identification and thumb impression on the memo as well as on the medical certificate tally, the possibility of different persons having been sent in the place of the applicant is completely ruled out. It is, therefore, necessary to ascertain as to which of the two reports passed on ~~is genuine &~~
~~and whether the opinion of finger print expert~~
~~one and the same opinion of the Finger Print Expert~~
~~is one and the same, or if different, which of them~~
is correct. As a matter of fact this evidence is material one.

No doubt the learned counsel for the applicant also argued that the copies of the documents demanded by the applicant were not furnished to him, besides it was a case of ~~no~~ evidence. The case can be said having no evidence only when it is clear that the report given by the Enquiry Officer in the case of Shri S.D.Ranga based on the opinion of the Finger Print Expert, is correct. For this purpose it becomes necessary that this fact be ascertained at the level of the Disciplinary Authority ~~who~~ passed the order of punishment. It can be done only when the case is remanded to the concerned authority.

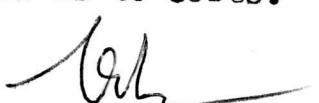
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Having considered all these facts, we come to the conclusion that the necessary interference in the matter is essential and therefore, the order of punishment by the Disciplinary Authority, Appellate Authority and Revisional Authority, are quashed. The case is remanded to the Disciplinary Authority to ascertain as to which of the two reports of the Enquiry Officers is correct and then to proceed with the matter, according to the provisions of law. The enquiry on the point shall either be held by the Disciplinary Authority himself or by some other officers than the previous officers. If there is necessity to examine the Finger Print Expert, the right of cross-examination shall be available to the delinquent employee. The application is disposed of accordingly. No order as to costs.


(Dr. R. K. Saxena)

Member (J)


(V. Radhakrishnan)

Member (A)

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