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CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO.
XXXXXX 164 of 1989.
T. NO.
XXXXXX

DATE OF DECISION 08-12-1995.

Shri Jayantilal Ambalal Soni Petitioner

Shri Girish Patel Advocate for the Petitioner (s)

Versus

Union of India and ors. Respondent

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

CORAM

The Hon'ble Mr. N.B. Patel : Vice Chairman

The Hon'ble Mr. K. Ramamoorthy : Member (A)

JUDGMENT

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

N.J

Shri Jayantilal Ambalal Soni,
Near Swadhyay Society,
Behind Ankleshwar Mahadev,
College Road,
Godhra.

...Applicant.

(Advocate : Mr.Girish Patel)

Versus

1. Union of India,
(Notice to be served through
the Secretary,
Ministry of Railways,
New Delhi).

2. Divisional Mech. Engineer,
(Loco), Divisional Rail
Manager Office,
Pratapnagar,
Vadodara - 4.

3. Asstt. Divisional Railway Manager,
Pratapnagar,
Vadodara - 4.

...Respondents.

(Advocate : Mr.N.S.Shevde)

JUDGMENT
O.A.NO. 164 OF 1989

Date : 08-12-1995.

Per : Hon'ble Mr.K.Ramamoorthy : Member(A)

This application has been filed against an order of removal passed on the applicant vide order dated 1-1-1988. While upholding the charge, appellate authority however reduced the quantum of penalty to one of compulsory punishment on 13-4-1988. The order has been challenged on the ground that the inquiry proceedings suffered from a very serious flaw in not taking into account an important piece of evidence.

The applicant was appointed as Junior Clerk with the respondent department from 26-2-1958. Thereafter, he was transferred to Godhra in 1962, where he was promoted as Senior Clerk under Loco Foreman. He was suspended on 1-5-1985 on an allegation of acceptance of bribe.

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A chargesheet was issued on 18-9-1985. Thereafter, however, he was taken back on job on 30-10-1985. An enquiry officer was appointed on 24-1-1986, to look into the charges who submitted the enquiry report on 30-10-1987. After due consideration, removal order was passed on the applicant.

It is the contention of the applicant that the copy of the enquiry report was given only with the order of removal. The applicant has contended that non supply of the report had caused prejudice to the applicant resulting in his not being able to offer effective defence against the charge. Moreover, the applicant has also stated that the allegation of bribe was untrue. In fact, the applicant had lent an amount of Rs.150/- to one Himatbhai Tedvi which amount was returned through another employee one Mr.Gulabnabi to be given back to the applicant. In fact, during the examination of Mr.Himatbhai Tedvi, the applicant wanted to produce the writing dated 10-12-1984, purporting to have been written by Himatbhai Tedvi and witnessed ^{been} by one Mohiuddin to support this fact and this has not ^{been} allowed ^{to} to be produced. According to the applicant, this was a piece of evidence crucial for defence. By not choosing to consider this evidence, the applicant's case had been prejudiced to a very great degree resulting in miscarriage of justice.

The respondents, on the other hand, in their reply stated that there has been no error of procedure in conducting the enquiry. The respondents have also submitted that as per the then rules, since the matter pertained to the enquiry held in 1985, the non supply of the enquiry report cannot be considered as a flaw vitiating the proceedings. The Supreme Court has ruled in the case of U.O. vs E.C.I.L that the requirement of supply of enquiry report has only prospective effect and hence the procedure then being followed by the railways of giving the copy of the report along with

the removal order cannot be stated to be illegal. This is a valid plea filed by the ~~applicant~~ respondent.

The speaking order of the disciplinary authority given in the notice of the imposition of the penalty reads as under :

"I have gone through the findings and proceedings of DAR enquiry of Shri J.A.Soni, Sr.Running Booking Clerk under LF GDA (consisting of 43 pages as well as connected documents) and accept the same.

Shri J.A.Soni had demanded a sum of Rs.150/- as bribe to get relieved Shri Himatbhai C.Tadvi, on his transfer to Dabhoi as Fireman 'B' (promotion) is proved from the fact that this demand was made on 28-1-1985, in presence of independent witness. In case this money was borrowed one, there was no question of Shri Soni asking Shri Tadvi to hand it over to a third person. He could have taken it personally when he was present at the same place. This is proved during the enquiry proceedings.

Accused in demanding money from Shri Himatbhai Tadvi, Fireman, displayed gross lack of integrity and he should be removed from service".

The whole case therefore, hinges on the question as to whether the said amount of Rs.150 was in fact, a bribe or return of borrowed money as stated by the applicant. In support of his case, the applicant has stated that the question of relieving the complainant for taking up a job after transfer is not a matter within his competence and therefore, the question of the applicant demanding any bribe for such a service could not arise. The applicant has further filed an affidavit wherein a third person has averred on oath that the applicant did lend an amount of Rs.150/- to Mr.Tadvi who has complained about the demand of bribe by the applicant.

He had also sought to produce a copy of the note allegedly signed by Mr.Tadvi and witnessed by Mr.Meiudding about the fact of an amount of Rs.150/- having been taken as a loan. However, it is the contention of the applicant that he was not allowed to produce this important piece of evidence. In his affidavit dated 26-9-1994, the applicant has clearly stated that the note was produced before the enquiry officer who read it but returned it back to the applicant without taking it on record. If it is the defence of the applicant that the amount represented the return of amount on taken, if was necessary for the enquiry officer to consider this argument. To accept or not to accept the evidence was entirely within his discretion. However, consideration of this evidence was a necessary exercise. The fact that the enquiry officer has not chosen to even consider such a piece of evidence is a flaw that can be stated to have caused prejudice in the departmental proceedings.

Further more, this has been specifically referred during the proceedings at the appellate stage also as having caused prejudice to the applicant. It is seen that the appellate officer has not dealt with this argument in the appellate order and to that extent the charge of non application of mind to this aspect in the appeal memo has also to be sustained.

At this stage the counsel for the applicant stated that if the Tribunal found sufficient validity in his plea, the dismissal order itself should be quashed and the applicant should be reinstated and therefore, further proceedings should take place.

Under Section 22 (2)(a) of the Rules, it is specifically stipulated that in the case of an appeal the appellate authority has to consider "whether the procedure laid down in these rules has been complied with, and, if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice". The non compliance of the procedure by way of non consideration of a plea of evidence adduced by the applicant has certainly caused prejudice to the applicant in the consideration of his case.

At the same time for ^{the} very same reason, the respondent department should also be given an opportunity to meet with his plea.

The counsel for the respondents also stated that the Rules did, for the very reason provide for remittance of a case if any such evidence is to be considered or for any other suitable reason.

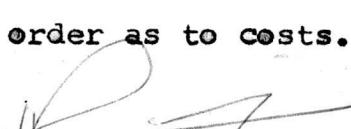
Since the rules also provide, vide proviso iv(b) to the same Rule 22 that the appellate authority itself can hold such an enquiry if it so deemed fit, the Tribunal directs that at this stage itself, without ordering reinstatement, this case be remitted back to the appellate authority so that enquiry can be concluded after taking into account this particular piece of evidence which the applicant wishes to produce in this defence as stated in his affidavit of 26-9-1994.

He will have two alternatives viz. (i) to record further evidence (germane to the note in question) himself or (ii) to remit it to the Inquiry Authority.

In either case, opportunity to tender additional evidence will have to be given to both the sides. The applicant will have the right to tender evidence to prove the authorship i.e. genuiness of the signature on the note and also to prove that the contents (i.e. whether, in fact, there was a transaction of borrowing of money by Himatbhai Tadvi from him) are true. The department will have the right to show that the note is a forged one or, at any rate, to show that the contents were not true but were concocted, with or without the complicity of Himatbhai, to fabricate a defence for the applicant against the charge or that even if there was a borrowing transaction, the amount paid on 28-1-1985 was not repayment of the borrowed money but was paid as a bribe.

The appellate authority may either take the additional evidence itself and then decide the appeal in the light of the existing evidence and the additional evidence. If, however, it remits the case to the Disciplinary Authority, the remission or remand may be for the limited purpose of recording additional evidence and certifying a fresh finding in the light of existing and additional evidence. In that case, if the finding of the Disciplinary Authority is adverse to the applicant, he may be given a copy thereof and an opportunity to plead additional grounds in support of his appeal which may then be disposed of by the appellate authority.

With the above order, the application is disposed of.
No order as to costs.


(K. Ramamoorthy)
Member (A)


(N.B. Patel)
Vice Chairman

ait.

Date	Office Report	ORDER
15.7.96	<i>Notice issued on 11.7.96. PPAO awaiting</i> <i>11/7/96</i>	<p>Notice of M.A. returnable on 12.8.96.</p> <p><i>VR</i></p> <p>(V.Radhakrishnan) Member (A)</p> <p>vtc.</p>
12.8.96		<p><u>M.A. 432/96</u></p> <p>Mr. Shevde states that copy of the M.A. was given to Mr. Patel. However, Mr. Patel is not present. In the circumstances stated by the applicant (orig. respondent) time extended upto 30.9.1996. M.A. stands disposed of accordingly.</p> <p><i>VR</i></p> <p>(V.Radhakrishnan) Member (A)</p> <p>vtc.</p>
5-11-96		<p>Adjourned to 22-11-96, at the request of Mr. Shevde.</p> <p><i>VR</i></p> <p>(V.Radhakrishnan) Member (A)</p> <p>ssh*</p>
22-11-96		<p><u>M.A. 738/96</u></p> <p>Both the counsel are present. M.A. allowed and stands disposed of accordingly.</p> <p><i>DR</i></p> <p>(K.Ramamoorthy) Member (A)</p> <p>ssh*</p>