

(a)

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. No.
~~XXXXXX~~

270 OF 1989 with M.A./87/93.

DATE OF DECISION 24/06/1993.

Shri Pramukhbhai Parmar Petitioner

Shri K.S.Zaveri Advocate for the Petitioner(s)

Versus

Union of India and others. Respondent

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

CORAM :

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

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

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 ?

No

Shri Pramukhbhai Parmar,
H-37/438, Anandnagar Apartments
(G.H. Board Flats),
Near Akbarnagar,
Chandlodia Road,
Navavadaj,
Ahmedabad - 13.

...Applicant.

(Advocate : Mr.K.S.Zaveri)

Versus

1. Union of India,
notice to be served through the
General Manager,
Western Railway,
Churchgate,
Bomhaay.

2. Divisional Railway, Manager,
Western Railway, (Establishment),
Baroda Division,
Pratapnagar,
Baroda - 390 004.

3. Divisional Commercial Superintendent (Estb.),
Western Railway,
Baroda Division,
Pratapnagar,
Baroda - 390 004.

...Respondents.

(Advocate : Mr.N.S.Shevde)

ORAL JUDGMENT

O.A.NO. 270 OF 1989

with

M.A.NO. 87 OF 1993.

Dated : 24/06/1993.

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

The applicant who is a Railway employee was visited with a punishment order dated 03.09.1986 by the disciplinary authority, i.e., respondent no.3, by which his two annual increments were withheld with future effect.

It is the case of the applicant that he submitted an appeal against this order addressed to the Senior Divisional Commercial Superintendent (Est.), Western Railway, through

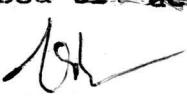
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proper channel. It is said that this appeal was dated 26.09.1986. According to the applicant, he has so far heard nothing about this appeal preferred by him. However, there is no dispute about the fact that the appellate authority, who has also the powers of reviewing such orders, issued a notice dated 22.1.1987 calling upon the applicant to show cause ^{as} to why the punishment awarded ~~to~~ him should not be enhanced. In the reply ~~of~~ ^{to} this notice, the applicant undisputedly pointed out on 29.1.1987 that he had already preferred an appeal against the punishment order and since that appeal was pending, the review proceedings could not have been initiated. Despite this reply, the Senior Divisional Commercial Superintendent passed ^{the} impugned order Annexure-A-VI, dated 18.04.1988 and thereby enhanced the punishment awarded to the applicant inasmuch as he directed that the withholding of the two annual increments will be with future effect. The applicant preferred appeal ~~to~~ to the Divisional Railway Manager against the aforesaid review order (Annexure-A-VI). This appeal was decided by the Area Manager by his order dated 22.4.1989 (Annexure-A-VIII), whereby he has restored the order of punishment passed by the disciplinary authority. In other words, the order of punishment which is now operative against the applicant is the order by which his two annual increments were withheld with ~~out~~ future effect.

2. Mr. K.S.Zaveri the learned advocate, appearing for the applicant, vehemently contended that the very initiation of the review proceedings by the Senior Divisional Commercial Superintendent, while the appeal preferred by the applicant was pending, was illegal and of no effect. On behalf of the Railways, the learned Standing Advocate Mr. N.S. Shevde, fairly conceded that, if the applicant had preferred an appeal, the reviewing authority had no jurisdiction to take up the punishment order in review. There cannot be any doubt that, if the order passed by the reviewing authority i.e., Annexure A-VI is bad on the ground of incompetence of the review proceedings, the appellate order dated 24-2-1989 (Annexure VIII) will also fall through and the appeal, if any preferred by the applicant will have to be heard and decided. The respondents have disputed the filing of any appeal by the applicant. In his rejoinder, the applicant has once again categorically stated that he had submitted a memo of appeal on 26-9-1986, to the Senior Divisional Commercial Superintendent Western Railway, through proper channel. He has also produced at Annexure A/XI a copy of the forwarding letter furnished to ^{him} ~~the applicant~~ by the Head of his office, whereby the Head of the Office, (Station Superintendent, Ahmedabad), has forwarded the applicant's appeal to the Senior Divisional Commercial Superintendent. It is thus well-established that the applicant had preferred an appeal against the order passed against him by the disciplinary authority and the appellate/reviewing authority had no jurisdiction to initiate the review proceedings. Consequently, the order Annexure VI passed by the reviewing authority as also the order Annexure A-VIII passed by the Area Manager, in the appeal

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against the reviewing authorities order were totally without jurisdiction and have got to be set aside. However, as a consequence of setting aside of these two orders, the appeal preferred by the applicant will arise for consideration and decision. In the result, therefore, the application is allowed. The orders Annexure-A-VI and A-VIII are quashed and set aside. The Senior Divisional Commercial Superintendent, Western Railway, (Baroda Division) is directed to hear the appeal dated 26.9.1989, preferred by the applicant against the order of punishment dated 03.09.1986 passed by the respondent no.3. The recovery ordered against the applicant by the order dated 06.02.1989, passed by Senior Divisional Commercial Superintendent, Western Railway, (Baroda Division) shall continue to be stayed till the disposal of the appeal and for a period of two weeks and thereafter it will be subject to the result of the decision in the appeal. Since it appears that the office of the Senior Divisional Commercial Superintendent is not in a position to trace the ^{appeal} memo submitted by the applicant, the applicant is directed to furnish a copy of the memo to the learned Standing Advocate of the Railways, Mr.N.S.Shevde to enable him to send the copy to the Senior Divisional Commercial Superintendent. M.A./87/93 does not survive and stands disposed of ~~accordingly~~. No order as to costs.


(V. Radhakrishnan)
Member (A)


(N.B. Patel)
Vice Chairman