

R.A. 9/1995 in O.A. 493/89

T.A.N.O.

DATE OF DECISION 13-2-1995

Mr. M.B. Barad Petitioner

Mr. M.D. Ranan **Advocate for the Petitioner (s)**

Versus

Union of India and Others	Respondent
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Advocate for the Respondent (s)

CORAM

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

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

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 ?

No

Mavshing Bhana Barad,
Driver, Western Railway,
Residing at Joshipura,
Junagadh.

Applicant.

Advocate Mr. M.D. Ranan

Versus

1. The Divisional Mechanical Engineer,
Western Railway, Bhavnagar,
2. Divisional Railway Manager,
Western Railway, Bhavaagar Para.
3. Chief Operating Superintendent.
Western Railway, Railway Bhavan
Churchgate, Bombay.

Respondents.

Advocate

By Circulation.

J U D G M E N T

In

Date: 13-2-1995.

R.A. 9/1995 in O.A. 493/89

Per Hon'ble Dr. R.K. Saxena

Member (J)

This Review Application has been moved with the prayer that the back-wages of the period when the applicant remained out of job be allowed. It is also mentioned that the Tribunal did not pass any orders with regard to back-wages.

2. We have gone through the judgment required to be reviewed. We had considered this aspect and had observed that the applicant had not worked from the date of the order of

punishment and he was getting pension after the conversion of the punishment order into compulsory retirement. We had also mentioned that the amount of pension being received by him during this period shall be treated as the amount of back-wages.

2. ² ~~Thus~~ We do not find any ground to review the judgment as prayed. The application stands rejected.



(Dr. R.K. Saxena)
Member (J)



(V. Radhakrishnan)
Member (A)

*AS.

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

Application No. 24/09/95 with 04/493/85 of

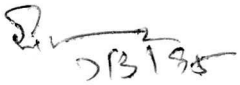
Transfer Application No. _____ of


CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided).

Dated : 24.02.95

Countersign :


Section Officer


Signature of the Dealing
Assistant

INDEX - SHEET

NAME OF THE PARTIES MR. M. B. Beed

0.01 to 0.21

[illegible]

1. Judgment / ~~Order~~ by Hon'ble Dr. D.K. Saxena JM dtd 31¹⁰/94
- (i) Hon'ble Mr. D.K. Saxena JM and
- (ii) Hon'ble Mr. V. Radhakrishnan AM
2. Both the aforesaid Members are functioning in this Tribunal.
2. Hence to be placed before the said Members i.e., Hon'ble Mr. D.K. Saxena JM & Hon'ble Mr. V. Radhakrishnan, AM
3. Hon'ble Mr. _____ still belongs to Local Bench but Hon'ble Mr. _____ is now a Member/V.C. of _____ Bench.
3. Hence may be sent for consideration by circulation to the said Members i.e., Hon'ble Mr. _____ & Hon'ble Mr. _____.
4. Both the aforesaid Hon'ble Members have ceased to be Members of the Tribunal.
4. Hence to be placed before Hon'ble V.C. for constituting a Bench of any 2 Members of this Bench.
5. Hon'ble Mr. _____ has ceased to be Member of Tribunal but Hon'ble Mr. _____ is available in this Bench.
5. Hence may be placed before Hon'ble V.C. for constituting a Bench of Hon'ble Mr. _____ who is available in this Bench and of any other Member of this Bench for preliminary hearing.
6. Both the aforesaid Members are now Members of other Benches namely _____ and _____ Benches.
6. May be placed before Hon'ble V.C. for sending the R.A. to both the Members for consideration by circulation. If one of the Members is of the view that the petition merits a hearing, reference may be made by Hon'ble V.C. to the Hon'ble Chairman seeking orders of the Hon'ble Chairman.
7. The case is not covered by any of the above contingencies.
7. Therefore, orders of the Hon'ble Vice Chairman are required to be obtained by Hon'ble Chairman.

cc:clerk
16.01.95

16/1/95
S.C.J.

Submitted,

Application has been scrutinized and not found
in order. ~~Jdg. dt. 3.12.94~~ ~~not filed.~~ Affidavit not
filed. We may notify this defect.

cecelap
12.01.95

Q. No. 2
30/11/95
SO(3)

31.1.1.
DR(3)

Resubmitted.

Advocate concerned has removed objection. May be
placed before Honble Dr. R.K. Saxena, JM by
circulation.

cecelap
30.01.95

Q. No. 2
30/11/95
SO(3)

31.1.145
DR(3)

ROST-67/94
1

Filed by Mr. J. D. Rana
learned Advocate for Petitioners
with second set & three spares
copies copy ~~served~~ not served to
other side

By 14/12/94 By Registrar C.A.T.
S. K. 2 Ahmed Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BENCH AT AHMEDABAD

(DISTRICT JUNAGADH)

REVIEW PETITION NO. 09 OF 1994-95

IN

ORIGINAL APPLICATION NO. 493 OF 1989

Mavshing Bhana Barad,
Adult, Hindu, Serving as goods
Driver, Western Railway, Residing
at Joshipura, Junagadh..... PETITIONER
(Original Applicant)

Versus

- 1) The Divisional Mechanical Engineer,
Western Railway, Bhavnagar.
- 2) Divisional Railway Manager,
Western Railway, Bhavnagar para.
- 3) Chief Operating Superintendant
Western Railway, Railway Bhuvan
Churchgate, Bombay 400 001.... RESPONDENTS
(Original Opponents)

Review petition as provided under the
provisions contained under Central
Administrative Tribunal Act, 1985..

MOST RESPECTFULLY SHEWETH:

.....(2):-

1) The Petitioner, herein, filed the original application before this honourable Tribunal challenging the order of dismissal dated: 31-10-88 and further order dated: 30-01-1989 reducing the penalty from that of dismissal into compulsory retirement from service.

2) The Petitioner challenged on various grounds including the grounds of violation of disciplinary rules and natural justice. Ultimately, the honourable Tribunal by its Judgment dated: 31st of October, 1994 allowed the application and set aside the departmental enquiry and orders of punishment. It was held that the petitioner is entitled to the reliefs claimed in the main application. However, the Tribunal did not pass any orders with regard to back wages for the period the petitioner was forced to remain at home.

3) In this view of the matter, the petitioner brings this review application for the review of Judgment portion so far as it denies the relief of backwages to the petitioner. The following are the grounds:

(a) Because once the main relief is granted the relief of backwages which is admittedly interconnected relief ought to have been granted to the petitioner.

(b) Because the Honourable Tribunal has come to a conclusion that the departmental enquiry and the orders of punishment were absolutely illegal and void.

(c) Because the tribunal ought to have exercised the discretion in favour of the Petitioner as the petitioner was forced to sit idelly for no fault of his own.

(d) Because the back wages would be legitimate entitlement which the petitioner would be entitled to receive from the Railway administation and that portion of his livelihood cannot be curtailed.

(4) The Petitioner relies on various Judgments of the Tribunal itsself and the Judgments of the principal Bench of the Tribunal including the judgment of the Gujarat High Court and Supreme Court.

(5) Petitioner prays that A

(a) Honourable Tribunal may be pleased to review the Judgment portion so far as it denies the back wages to the petitioner

(6) The Petitioner submits that this application for review is within the time limit calculating the period from the date the copy was received. It is therefore prayed that the same may please be entertained.

Dated:14-12-1994.

Place: Ahmedabad.



(HEMANG D. RANA)

ADVOCATE FOR THE PETITIONER.

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BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE, TRIBUNAL, AHMEDABAD.

(DISTRICT ::::: JUNAGADH)

IN THE ORIGINAL APPLICATION NO. 493-89.

(REVIEW APPLICATION NO. OF 1994.)

MAVSINGH BHANA BARAD,

SARDAR PARA, STREET NO. 5,

KHODIYAR KRIPA, JUNAGADH.

APPLICANT.

VERSES.

THE UNION OF INDIA, THE G. M. OF

WRLY, CHURCH GATE BOMBAY THROUGH

THE DIVISIONAL RAILWAY MANAGER,

BHAVNAGAR DIVISION, BHAVNAGAR PARA

OPONANT.

AFFIDEVIT.

I, Mavsingh Bhana Barad, adult hindu record on oath that the Railway Administration had passed the dismissal ordres for me and on appeal the appelete authority maintained the orders passed by the desciplinary Authority. I prefered the REVIEW application and the penalty of the dismissal orders were reviewd and modified by the COPS CCG to that of the Compulsory retirement. I have challenged the legality and the validity of the impugned ordres and the Honourable Central Administrative Tribunal have set and quash the ordres of the Compulsory retirement and the Railway Authorities have been ordred to REINSTATE ME in the Railway Services on 31-10-94. Unfortunately the Tribunal have not passed the orders for back wages, seniority, and step to step promotions during the interving period and as Such I have been compelled to file the Review application before the Honourable Tribunal. I also record on oath that during the entire interving period I have not served any where and have not recei

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2.

ved any gainful wages till now.

2. The facts and averments recorded in the Review application are quite correct and true to the best of my knowledge and in token of this I put my signature on the day of 25TH JANUARY 95.

M. Bhana

PLACE:::: JUNAGADH

(MAVSING BHANA)

SIGNATURE OF THE APPLICANT.

READ & EXPLAINED IN GUJARATI
BY ME.

J.J. Dave
(J.J. DAVE)

ADVOCATE, RANA ASSOCIATES.

solemnly Affirmed by *Mausing Bhana*
in presence of *J. J. Dave Adv.*
who has identified
(*H. Thakar Notary*) *HTK*
JUNAGADH.

25 JAN 1995



RA 51.67/94

BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD.

FILED IN THE OA 493-89 & RA NO. 03/45

OF 1994.

MAVSINGH BHANA EX DRIVER,
 LOCO SHED JETALSAR & RESIDING
 AT SARDAR PARA PLOT, JUNAGADH

APPLICANT.

VERSES.

THE UNION OF INDIA THE
 CARE THROUGH THE DIVISIONAL
 RAILWAY MANAGER, BHAVNAGAR
 DIVISION, BHAVNAGAR PARA

DEFENDENT.

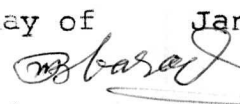
VERIFICATION.

The averements of the review application.

I, Mavsing Bhana, Adult Hindu, aged about 57 years and residing at the Sardar Para plot at Junagadh do hereby record on oath that the averments raised in the attached REVIEW APPLICATION in the matter filed in ORIGINAL APPLICATION NO. 493-89 are quite correct and true to the best of my knowledge and belief.

2. I also certify on oath that during the period of the compulsory retirement as a result of the orders issued by the CHIEF OPERATING SUPERINTENDENT, CHURCH GATE BOMBAY I have utilised the entire period for contesting the case before the Honourable Court and the Honourable Tribunal etc. I hereby record on oath that during this period I have not worked anywhere and have not drawn any salary for the same. For these OATH I solemnly record the statement of verification and have not suppressed any material fact in this and put my signature on the day of January 1995.

PLACE ::::: JUNAGADH


 (MAVSINGH BHANA)

SIGNATURE OF THE APPLICANT.

SIGNED IN MY PRESENCE

1/ J. T. Dave

CAT/J/13
CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO.
~~240/89~~

493 of 89

DATE OF DECISION 31-10-94

Shri M.D. Bared Petitioner

Shri J.J. Dave Advocate for the Petitioner (s)

Versus

Union of India and Ors. Respondent

Shri R.M. Vin Advocate for the Respondent (s)

CORAM

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

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

M. V. Singh D. Barad
Sardar Para Plot
Sheri No. 5, Khodiar Krupa
Junagadh.

Applicant.

Advocate Mr. J. J. Dave.

Versus

1. Divisional Mechanical Engineer (L)
Western Railway,
Bhavnagar Division,
Bhavnagar Para
2. Divisional Railway Manager,
Western Railway, Bhavnagar
Division, Bhavnagar Para
3. Chief Operating Supdt.
Western Railway, Churchgate
Bombay.

Respondents

Advocate Mr. R. M. Vin

J U D G M E N T

In

Date: 31-10-84

O. A. 493/1989

Per Hon'ble

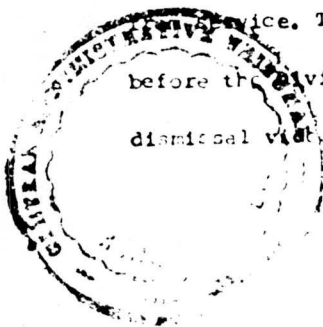
Dr. R. K. Saxena

Member (J)

The applicant has challenged the order dated 14-6-1988, passed by the Divisional Mechanical Engineer—Disciplinary Authority — whereby the applicant was dismissed from service. The order of punishment was challenged in Appeal before the Divisional Railway Manager who upheld the order of dismissal with effect dated 27/31-10-1988. The applicant

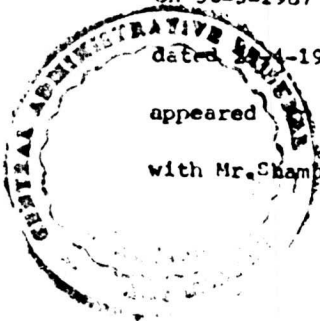
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14-6-88



thereafter filed review petition before Chief Operating Superintendent who vide order dated 30-1-1989 reduced the penalty of dismissal to that of compulsory retirement.

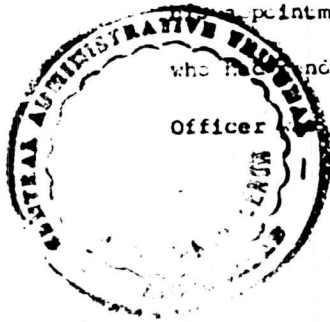
2. The facts of the case in brief are that the applicant was promoted on adhoc basis as goods driver Grade-'C' vide order dated 22-10-1982. He was required to pass selection test before being regularised on the said post. The written test for the purpose was conducted on 19-8-1985 at Jetalsar. The applicant appeared in the examination and secured 85 marks out of 100 marks. The complaint was made on 13-10-1985 with the allegation that the applicant had written answer books of himself as well as of his brother. The preliminary inquiry was made and it appears that no action was taken. Subsequently rival union, Western Railway Majdoor Sangh (for short WRMS) raised the matter against the applicant who was member of another union i.e. Western Railway Employees Union (WREU) and there upon the Senior Deputy General Manager put the applicant under suspension on 30-3-1987 and after some more inquiry, the charge-sheet dated 1-4-1987 was served. The charge was that the applicant appeared in the written test at Jetalsar on 19-8-1985 along with Mr. Shambhu Bhand, driver of JND and others for the



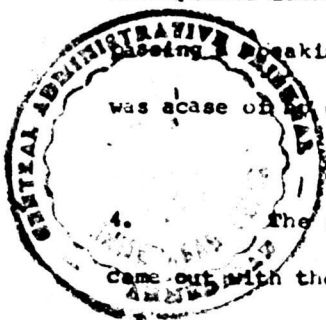
post of Driver Gr. '5' scale Rs. 330-560 (R). The charge further read that Shri Mavsingh B. Barad (the applicant) wrote his answer book as well as the answer book of Shri Shambhu Bhana, driver of JND who also appeared for the selection with him. The above act of Shri Mavsingh Barad constituted serious mis-conduct and unbecoming of Railway Servant and invokes the provisions of rule 3 (1) (ii) & (iii) of Railway Services (Conduct) Rules 1966. This charge sheet indicated 9 documents on which reliance was placed and were proposed to be produced. There is a note at the end thereafter that list of witnesses ~~xxx~~ by whom the articles of charge framed against Shri Mavsingh Barad driver were proposed to be sustained but as a matter of fact no name of witnesses was given. This fact was mentioned by the inquiry officer in his report.

No name of
witnesses

3. It is also averred by the applicant that initially Assistant Mechanical Engineer (L), Bhavnagar was appointed as Inquiry Officer on 30-9-1987 but subsequently appointment was cancelled on 13-10-1987 and Shri Hazari who had conducted the preliminary inquiry as Vigilance Officer appointed Inquiry Officer. The inquiry was



conducted without observing the rules of natural justice because neither the copy of the report of the preliminary inquiry was given nor was allowed the services of the defence Assistant. No witness was named in the charge-sheet and inquiry officer called Shri B.N. Joshi as witness on behalf of the department and recorded his statement. Shri B.N. Joshi had conducted preliminary inquiry. The Inquiry Officer through him got all the documents and the _____ statements of the witnesses proved. The applicant had made a request to summon Shri Sat Ramdas, L. Govind and S.L. Kureel as witnesses but the application was rejected. The report of handwriting expert was considered without affording an opportunity of cross examination. The witnesses Serv Shri B.V. Jobanputra and H.B. Parmar were examined on behalf of the applicant but their evidence was not appreciated. The order of punishment was passed by the incompetent authority without applying mind and without breaking order. It is also contended that it was a case of evidence.

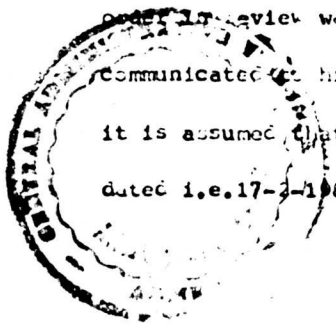


The respondents contested the case and came out with the plea that the application was time

barred and it was in-correct that the proceedings were started on the matter being agitated by the rival union. The appointment of Shri J.N. Hazari as Inquiry Officer is said to be quite legal and there was no violation of principles of natural justice. The applicant was given sufficient opportunity. The witnesses SarvaShri Sat Ramdas D. Govind and S.D. Kureel were not summoned and examined because they were not relevant to the inquiry, whereas Shri S.D. Kureel had retired. Moreover it is said that they were departmental witnesses. It is also contended that the orders of punishment, appeal and review are quite legal and requires no interference.

5. We have heard the learned counsel for the applicant and the respondents. The relevant record and the plethora of the case laws on the point ^{cited} have been perused.

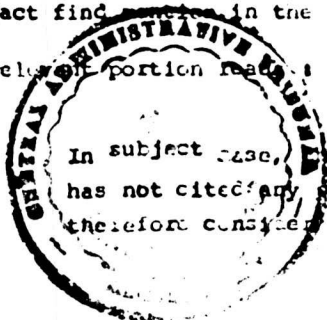
6. First question ~~xx~~ arises if the application is time barred. The case of the applicant is that final order in review was passed on 30-1-1989 but it could be communicated to him via letter dated 17-2-1989. Even if it is assumed that the service was effected on the same dated i.e. 17-2-1989, the period of limitation under section



21 of the Administrative Tribunals Act, 1985 is one year.

This application was presented in the Office of the Tribunal on 5-10-1989. Of course, it could be admitted only on 15-3-1990 because prior to that certain queries were made and formalities were completed. However, there can be no doubt that the application was presented on 5-10-1989 i.e. within 8 months of the ^{date of} communication of the order of review and within 9 months of the actual date on which the order of review was passed. It is therefore not correct that the application was time barred.

7. In this case the applicant has raised the question that there was no evidence in the case and thus it was a case of no evidence. We have gone through the record and as is pointed out earlier no witness was named in the charge-sheet which was served on the applicant. This fact finds mention in the report of the Inquiry Officer. The relevant portion reads:



In subject case, the Disciplinary Authority has not cited any prosecution witnesses. It was therefore considered necessary to get the record

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upon documents introduced through a Vigilance Inspector who had investigated the case. Shri E.N. Joshi who had investigated the case was summoned for the purpose of introduction of relied upon documents only.

It shows that neither the witnesses were mentioned in charge-sheet nor was anyone found material or necessary to be examined by the Department before the Inquiry Officer. The entire task was left over at the discretion of the Inquiry Officer. Sometimes when the Presenting Officer has not been appointed the Inquiry Officer may examine the witnesses present by putting searching questions concerning the matter under inquiry. Here it is not the situation. Since no evidence was mentioned in that charge-sheet it was really very difficult for any one to find out as to who could be witness concerning the incident. The Inquiry Officer in his discretion chose to summon Shri E.N. Joshi Vigilance Inspector who is neither a witness of fact nor anything had occurred in his presence. What appears to have been done by him is that he conducted preliminary inquiry. By no stretch of imagination, he can be said to be a witness of fact throwing light on the facts mentioned in the charge. It really surprises that the Inquiry Officer asks Shri Joshi

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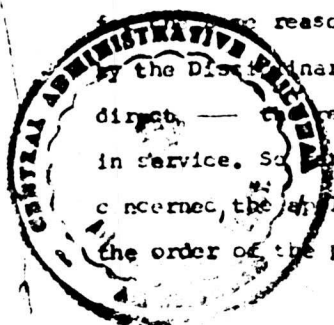
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to prove the documents and the statements recorded by him during the preliminary inquiry. That is really not a legal way of recording evidence. If the statement of Shri B.N. Joshi is discredited there remains no evidence in support of the charge.

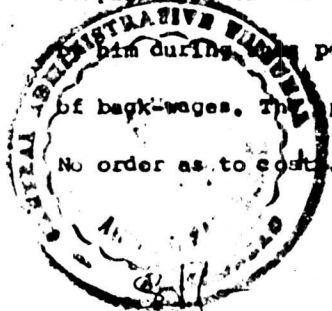
8. The Inquiry Officer dis-allowed the request of the applicant to summon Sarva Shri Sat Ramdas, D.Govind, and S.D Kureel for no valid reasons. The applicant was really deprived of fair opportunity by this act. The matter does not come to an end here. The Inquiry Officer also accepted the report of the handwriting expert without giving him opportunity of cross-examination. The material point in this case is whether the answer-book of Shri Shambhu Shana was in the handwriting of the applicant and it is contended on behalf of the respondents that the handwriting expert had given this report. In such a situation the report of handwriting expert should not have been accepted unless either the cross-examination was allowed or the applicant or the applicant accepted the report to be correct. In this way also the applicant was deprived fair and proper hearing which is a essential ingredient of principles of natural justice.

9. The report of the inquiry officer was based only on the statement of Shri B.N. Joshi who referred to several documents and the deposition of the witnesses during preliminary inquiry. The Disciplinary Authority while recording the order of punishment gave no reasons for non production of witnesses in support of the charge and how the statement of Shri Joshi was found sufficient. It indicates of non application of mind to the facts of the case.

10. On the consideration of all these facts discussed above we — come to the conclusion that there had ~~been~~ not been a fair — and proper inquiry. The applicant was dismissed from service by initial order and Appellate order when there was no evidence in support of the charge. The order passed by the Reviewing Authority for compulsory retirement can also not be substantiated for reasons. We therefore quash the orders passed by the Disciplinary Authority, ^{Appellate Authority} and Reviewing Authority and direct — the respondents to reinstate the applicant in service. So far as the question of back-wages is concerned, the applicant had not worked from the date of the order of the punishment and he was also getting



pension after the conversion of punishment order into compulsory retirement. The amount of pension received during the period shall be deemed as an amount of back-wages. The application is disposed of accordingly.
No order as to costs.



(Dr. R. K. Saxena)
Member (J)

31/10/94

(K. Radhakrishnan)
Member (A)

31/10/94

*AS.

Reviewed by: K. Radhakrishnan
31/10/94

[Signature]
31/10/94

RECEIVED
31/10/94