

Re *date*
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

(4)

O.A. No.
~~XXXXXX~~

88 OF 1989

DATE OF DECISION 26-03-1992.

Shri R.P.Jobanputra Petitioner

Shri P.K.Handa 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. R.C.Bhatt : Judicial Member

The Hon'ble Mr. R.Venkatesan : Administrative Member

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?

Shri R.P.Jobanputra,
Ex-Sr.Assistant Commercial Clerk,
1, Akshay Kunj Society,
Behind Vejalpur Village,
Jeevraj Park,
AHMEDABAD- 380 051.

...Applicant.

(Advocate : Shri P.K.Handa)

Versus

1. Union of India,
Secretary,
Ministry of Railways,
Rail Bhavan,
NEW DELHI.

2. The General Manager,
Western Railway,
Churchgate,
BOMBAY.

3. The Divisional Railway Manager,
Western Railway,
Pratapnagar,
VADODARA - 390 004.

4. The Senior Divisional Commercial Supdt.
Western Railway,
Pratapnagar,
VADODARA - 390 004.

...Respondents.

(Advocate : Shri N.S.Shevde)

O R A L J U D G M E N T
O.A.NO. 88 OF 1989

Date : 26-03-1992.

Per : Hon'ble Mr.R.C.Bhatt : Judicial Member

The applicant was working as a Sr.
Assistant Commercial Clerk at Ahmedabad with the
respondents, while working from 1.12.1984 to 10.12.1984.
It was alleged ~~to have~~ ^{in that he} committed a misconduct with
ulterior motive while working on upper class refund
counter, for which the applicant was served with the
imputations in Standard Form No.5, issued by D.C.S.,

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Baroda, while Annexure-A/2, along with the articles of authorities. The Enquiry Officer subsequently made the enquiry into the imputations and charges ~~etc.~~ ^{etc.} against the applicant that the applicant had ~~filed~~ ^{violated} the provisions of Rule-3, (i), (ii), and (iii), of Railway Service Conduct Rules, 1966. The Enquiry Officer who held the inquiry as per the Rules, after giving full opportunity to the applicant of being heard and after considering the evidence ~~laid~~ ^{re read} before him and admission about over writing made by the applicant in his statement gave inquiry report produced ~~and held~~ at Annexure-A/3, that the charges levelled against the applicant while working as such at Ahmedabad, (B.G.), booking office from 1.12.1984 to 10.12.1984, as Refund clerk and that he had manipulated figures of amounts of refund given to the passengers in the Upper Class advance booking refund statement of refunds ~~were~~ ^{re} established. It was also held that the charge that the applicant did with ulterior motive and had misappropriated the amount by cheating the bonafide passengers is substantiated by preponderance of probability in respect of only two items of refunds. The disciplinary authority then pass an order at Annexure-A, dated 28th May, 1987, ~~accepting~~ ^{re ed} the findings of the enquiry officer, ~~removing~~ ^{re and ed} the applicant. The applicant feeling aggrieved of the said order of the disciplinary authority preferred appeal which was decided by the Sr.D.C.S. (E) B.R.C., i.e., on 19th January, 1988. The appellate authority, after considering the circumstances of the case particularly the applicant's poor state of health and burden of responsibility ~~re reduced~~ of his family, ~~the penalty of removal from service to compulsory retirement~~ purely on humanitarian grounds. The applicant then

filed Review Application against that appellate order which was considered by D.R.M. Baroda, and the decision was given on 28th December, 1988, vide Annexure-A/1. The said revisionary authority has held that the mercy sought by the employee on account of his poor health and large family commitments has already been taken into account by Sr.DCS when he reduced the Punishment from "Removal from service", to "Compulsory Retirement", ~~purely~~ on humanitarian grounds, and the appellate order was confirmed after considering all aspects of the case.

2. The applicant feeling aggrieved by ~~all~~ these orders referred to above ~~has~~ filed this application under Section-19 of the Administrative Tribunals Act, 1985, seeking the relief that the said orders of the disciplinary authority, appellate authority and the Revisionary authority be quashed and set aside as the charges levelled against have not been proved and the applicant be re-instated in service.

3. After some argumentations by the applicant on merits and after perusing ^{all} the documents on record, the learned advocate for the applicant under the instructions of his client submitted that the applicant does not attack any of the orders on merits. But the fact that the applicant is suffering from tuberculosis that he has a large family and that he having not completed 20 years of service in the department will not be eligible for pension if he

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is compulsorily made to retire the family of the applicant would be ruined and hence the revisional authority which had decided the Revision Petition of the applicant on 28th December, 1988, may again be asked to sympathetically consider these aspects of the applicant namely, his disease tuberculosis, has and his large family and he having not completed 20 years of his service. And the Reviewing authority may sympathetically consider to give less punishment if it so thinks fit on the totality, of the facts and circumstances. We make it clear to the learned advocate for the applicant Mr.P.K.Handa, that the orders of the authorities concerned are based on proper evidence and they do not suffer from any infirmities. He therefore, submitted that an observation be made that the Revisional authority may sympathetically consider the above case of the applicant on the grounds mentioned above. Hence we dispose of this application with the observations that the Revisional authority may sympathetically consider the case of the applicant and if it so deems just and proper may pass any other order. This is only an observation and not a direction and the applicant will not be entitled to approach this Tribunal if he feels aggrieved by the ultimate order of the Revisional authority. The application is disposed of. No order as to costs.

R Venkatesan
(R.Venkatesan)
Administrative Member

R.C.Bhatt
(R.C.Bhatt)
Judicial Member