Removal (yes)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. No. 182/90 198

~~T.A. No.~~

DATE OF DECISION 11-12-1991

Mr. Yogeshchandra H. Patel Petitioner

Mr. H.J. Trivedi Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

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

CORAM :

The Hon'ble Mr. R.C. Bhatt . . . . Member (J)

The Hon'ble Mr. S. Gurusankaran . . . . Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal. Yes

Gurusankaran (MCA) 3/12/91

Mr.Yogeshchandra H.Patel
Shahid Chowk, Sheth Sheri,
Bajwada, Baroda. : Applicant

(Advocate: Mr.H.J.Trivedi)

Versus

1. Union of India
   Through: Respondent No.2.

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

3. The Divisional Railway
   Manager, Pratapnagar,
   Baroda. : Respondents

(Advocate: Mr.N.S.Shevde)

J U D G M E N T

O.A.182/90

Date: 11-12-1991

Per: Hon'ble Mr. S.Gurusankaran : Administrative Member

1. The case of the applicant is that while he was working as substitute Assistant Commercial Clerk (ACC for short) at Baroda, he was served with a major penalty charge-sheet dated 19.2.1984 (Annexure A-18) for certain alleged misconduct of fraudulently obtaining refund on a used Excess Fare Ticket (EFT for short) on 26.6.1983. The applicant has stated that he was forced to give a confessional statement under duress and coersion to the Chief Supervisor (CS for short) in the CS's office as per the dictating of C on 26.6.1983 itself in presence of other witnesses. Since he had to catch a train immediately, the applicant gave the confessional statement. The applicant has stated that he subsequently denied the statement in his deposition to the Traffic Inspector Accounts (~~I.R.~~ T.I. A.) on 9.7.1983 and again before the Vigilence Inspector (VI) on 27.8.1983. The Disciplinary proceedings were continued under an Enquiry Officer (E.O.) nominated by the Disciplinary Authority (D. However, the applicant has stated in para 21 of the

application that he was neither shown nor allowed to take extract nor supplied copies of the relied upon documents listed as 3.1, 3.2, 3.3, 3.4, 3.5,& 3.8 in the chargsheet. He has also pointed out that he was not given copies of 3 documents relating to the cancellation of two II class tickets from Bombay Central to Baroda. The applicant has stated that he actually took refund for these two tickets only and production of these documents would have helped him to defend his case properly. He has also pointed out that his request for charge of E.O. due to bias was not agreed to. Further, when his request for change of E.O. was pending with the D.A., the enquiry was continued in violation of the instructions contained in Railway Board's letter No.E (D & A) 70 RG-6-14(1) dated 19.6.1974. The applicant has maintained that the enquiry proceedings were conducted ex-parte, when he could not attend the enquiry due to sickness and he was also later refused the privilege of cross-examining the P.W.S., on the ground of his earlier absence from the enquiry proceedings. He has also pointed out to certain inconsistencies in the statement of the P.W.S. The applicant has pointed out that the V.I. who was not originally listed as a P.W., was called and his statement was taken. The applicant has alleged that he has been falsely implicated by other staff and the proper accounting procedure has not been adopted in the maintenance of the refund statement. The applicant, therefore, filed a Civil Suit No.335/85 on 25.2.1986 in Civil Court for seeking a stay on the further proceedings of the Disciplinary enquiry and the Civil Judge (S.D.), Baroda granted a stay for maintaining status-quo. This Civil Suit was later transferred to this Bench by the Civil Court, but was subsequently retransferred to the Civil Court by order dated

8.10.1987, since no suit instituted after 1.11.1985 could be transferred to the Tribunals. The D.A. imposed the penalty of removal from service vide his order dated 24.8.1987 (Annexure A-12) enclosing a copy of the E.O.'s findings. He preferred an appeal to the Appellate Authority (A.A.) on 17.10.1987 (Annexure 43) It was kept pending for a long time and when he met the A.A., he was advised that the appeal can be disposed of only if the Civil Suit was withdrawn. He, therefore, withdrew the suit and requested the A.A. to reinstate him in service and give him any penalty other than removal from service as the case has been ~~pointed~~ foisted on him and he is facing serious domestic problems. He also undertook not to claim any backwages. He has pointed out that inspite of this, the A.A. disposed of the appeal vide his order dated 16.11.1989 (Annexure A-48) conforming the orders of the D.A. The applicant has therefore, filed this application praying for quashing the orders of the A.A. dated 16.11.1989 upholding the decision of the D.A. and to reinstate the applicant in service with all consequential benefits including backwages, promotion, etc.

2. The respondents have filed reply refuting the claims of the applicant. They have stated that the applicant was allowed to inspect all the relied upon documents and was also allowed to take extracts or copies. They have referred to Annexures R-1, R-2 and R-3 and pointed out that vide R-3, the applicant has admitted that he has taken copies of all the documents, except that he has not received "photo-stat or xerox copies" of items 3.1 and 3.8 of the relied upon documents and one refund statement, which the applicant

wanted as additional document. They have stressed the fact that item 3.1 and 3.8 were produced at the enquiry. The respondents have stated that the applicant did not point out the relevancy of the additional documents to the E.O. or D.A. They have also pointed out that there was nothing wrong in scoring out the refund entry after the applicant had returned the amount of refund received by him and no new document was constructed as alleged by the applicant. They have indicated that the applicant was kept under suspension vide order dated 5.8.1983, which was revoked on 21.12.1983. Regarding the examination of the additional witness, viz, V.I., who was not originally included, they have pointed out that by letter dated 8.10.1984 issued by him, E.O. had indicated that the V.I. would be examined on 20.10.1984 and thus the applicant had advance knowledge of the same. They have stressed the fact that this is permissible under the Rules. The respondents have stated that the representation dated 8.11.1984 filed by the applicant alleging bias on the part of E.O. was disposed of on 25.7.1985 and his second representation dated 1.9.1985 was disposed of on 20.1.1986. The respondents have maintained that the representations did not contain any valid ground to show bias on the part of E.O. They have stressed the fact that on more than one occasion the applicant was sick, but no intimation was given to the E.O. about his sickness.

3. We have heard counsel for both the parties and gone through the relevant records. At the beginning of the arguments, it was mentioned that the report of the E.O. was supplied to the applicant only along with the D.A.'s order imposing the penalty and on this ground alone as per Mohd. Ramzan Khan's case (1991 (1) SLJ

SC 1919), the orders of A.A. and D.A. can be set aside. However, the counsel for the applicant pleaded that the Tribunal should decide the case on the merits of other points also so that the applicant is not faced with a second round of litigation. We now deal with the points raised by the counsel for the applicant one by one.

4. The first point elaborately argued by the counsel for the applicant was about the non-supply of certain documents. The counsel took elaborate points to show that extra copies of certain documents listed as exhibits were not given to the applicant apart from copies of certain additional documents ~~reported~~ requested by for by the applicant. We find no merit at all in this contention. After close scrutiny of the various documents produced, we find that the applicant's statement in para 21 of the application that he was never shown, nor allowed to take extracts nor given copies of certain documents relied upon is not correct. At the bar, it was finally conceded by the counsel for the applicant that he was not only given xerox/photostat copies of two relied upon documents, namely, the passenger foil of EFT and the upper class refund statement. But both these statements were inspected by him prior to the enquiry and they were also produced during the inquiry. We are ~~assure~~ aware that no xerox copy can ordinarily be taken of the EFT. The counsel for the applicant relied upon the judgment of the Supreme Court in the cases of Kashinath Dixit vs. Union of India (AIR 1986 SC 2119), and U.P. State Road Transport Corporation vs. Muniruddin (1990 (3) Judgment Today 494). We have gone through the judgments in the above cases and find that they are distinguishable from the

present case. In the present case as far as relied upon documents are concerned only xerox copies of the documents were not supplied, but they were not only shown before the enquiry, but the applicant was allowed to take extracts also. Asking for xerox copy of the EFT appears deliberate since normally no copy can be made of the same. It is a very small document with very little writing on it. As indicated during the arguments by the counsel for the applicant, the copies were requested for only to compare his alleged hand writings on them by showing to a hand writing expert at his own cost. The applicant also wanted xerox copy of one additional document of a refund statement in which he had taken refund of 2 II class tickets, as per his own admission, so that he could compare his signatures. While we find some merit in this, non supply of xerox copies of these documents alone could not be said to have amounted to denial of natural justice. We find that it is applicant's own non-coperative attitidue in participating in the inquiry proceedings has gone against him. When the other witnesses claimed it was his signature/initial , he would have offered himself as a witness for the defence and refuted that it was not his signature/ initials. Then it would have become incumbent on the part of the prosecution to prove this point. In Kashinath Dixit case (supra), the appellant was not even been allowed to take copies of the documents listed as exhibits with the help of a stenographer. There were as many as 112 documents in that case. So, this does not help the applicant. In the case of U.P. State Road Transport Corporation (supra) the case of the respondent was that certain important documents were not made available to him during the enquiry viz, carbon copies of pay way bills to establish the

erasures and thereby his innocance. This again is not the case here as no carbon copy was asked for to prove erasures. The relevant documents were produced at the enquiry and were marked as exhibits as ~~52~~ S2 & ~~55~~ S5 by the E.O., when the applicant and his defence assistant were present and they ~~were~~ cross examined the P.Ws also. One N.R.Pandya, who was the refund clerk, has said during the corss examination also that the applicant was paid the alleged refund. Even though the respondents have stated that the applicant never revealed the reasons for asking for copies of the additional documents either to the D.A. or E.O., we do not find any substance in this statement. On 4.8.1984 during the examination of P.W. Shri B.A.Vasava, the defence assistant has clearly stated that he wanted the additional document of II class refund statement to establish the signature of the applicant. Hence, the applicant has clearly indicated to the E.O. the reasons for his asking for the additional document. However, we find that the E.O. has stated that since Shri Vasava is not a hand writing expert and the request is ~~r~~elated he would go ahead with the enquiry. The E.O., however, recorded that the D.A. will be requested to advise whether the documents were available and if so, send them to E.O. for perusal and deciding whether they should be made available to the applicant. The E.O. even gave a clue to the applicant that after the documents have been obtained, the applicant could point out to the E.O. the difference in the two signatures. Evidently, the applicant did not attend the enquiry after that regularly and did not ~~only~~ not only pursue his demand, but also did not present himself as a D.W. to deny the

signature on the alleged refund.

5. The counsel for the applicant also pointed out that the signatures of the applicant on the alleged refund statement have not been ~~pressed~~ proved as required under the Evidence Act. The counsel drew our attention to the judgment of the Supreme Court in the case of Bhagwan Kumar vs. Maharaj Sharma (AIR 1978 SC 1346) and stated that hand writing expert should have been examined. We find that this cannot help the applicant as this is a case of departmental enquiry, where ~~assist-~~ existence ~~ance~~ of preponderance of evidence will be adequate. In the case of Union of India vs. T.R.Varma (AIR 1957 SC 382) the Supreme Court have held as follows regarding the applicability of the Evidence Act to departmental enquiries.

> "The Evidence Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a Court of Law. Stating it broadly and without intending it to be exhaustive it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed".

Even apart from this, except for his denial that he did not take the alleged refund, he has not brought out any evidence during the enquiry to prove his point nor

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did he present himself as a witness to deny the same at the enquiry to lend credence to his defence. Hence, we are of the opinion that based on the preponderance of evidence tendered by the P.Ws., we cannot find fault with E.O. coming to the conclusion that it was the applicant who had taken the refund. We also find that the confessional statement goes against him and he has not produced any proof to refute the same and also the statements of other witnesses.

6. The next point agitated by the counsel for the applicant was that the V.I. was examined as an additional P.W., even though his name was not included in the original list of witnesses. As pointed out by the respondents, we do not find any irregularity in this at all. First of all no additional documents were introduced, which had not been shown to the applicant. The E.O. felt that the V.I. as the official, who conducted the investigation in the case, may have some additional light, which the other P.Ws. may not know. The E.O. issued notice on 8.10.1984 to the V.I. to appear as a witness on 20-10-1984. The copy of the notice dated 8.10-1984 has been produced by the applicant himself at Annexure A-25, which is mainly addressed to him. The applicant was present on 20.10.1984, when the V.I. was examined. But since the defence assistant was not present, the right to cross examine the V.I. and other witnesses was reserved for the next sitting. Apart from this, we find from the Railway Servants (Discipline & Appeal) Rules, 1968, Rule 9(18) makes a provision for the same even before

the close of the case. The only stipulation made is that notice must be given to the delinquent official and he must be given atleast 3 clear days time to give an opportunity to thedelinquent official to inspect the additional documents proposed to be introduced. In this case no additional documents were introduced, adequate notice was given to the applicant and this was done even before all the P.Ws. were examined and cross examined. Hence, the applicant has to fail.

7. The next point brought by the counsel for the applicant was that the provisions of the Indian Railway Commecial Manual was not followed in allowing the refund and paras 323(1) and 324 were not followed in that the daily refund statement was not checked and signed by the Station Master. The counsel for the respondents pointed out that this is not relevant to the case against the applicant. Apart from this, Baroda being a very major station under a Station Supperintent, the Station Master is only in charge of operational duties and the Reservation Supervisor is in sole charge of the commercial functions. We agree with the fespondents.

8. The counsel for the applicant next pointed out that the E.O.'s findings are based on "no evidence" and his conclusions are based on conjuctures. Hence, the E.O.'s findings should be set aside. He also referred to the judgment of the Supreme Court in the case of Union of India vs. H.C.Gore (AIR 1964 SC 364) to support his contention. We may observe that this principle is well established. The counsel for the applicant took us through the evidence tendered at the enquiry in an elaborate manner. It has been held by the

Supreme Court in the case of State of Maharashtra & Anr. v.Madhukar Narayan Murdikar (1991 (1) SLJ (SC) 164) that reappreciation of evidence by the High Court as if it sets in appeal against the decision of the departmental authority is unsustainable. In the case of Shri Charan Singh vs. Union of India & Ors (1988(3) SLJ (CAT) 525), a bench of this Tribunal has held that in a judicial review, it is established law that the court cannot go into the details of evidence and the degree of sufficiency of proof. The Court can, however, go into the matter, if the findings of the E.O. and the D.A. is based on no evidence or is based on conjuctures and extraneous not led before the E.O. In our opinion, this is not a case of no evidence and we cannot in any manner call the findings of the E.O. as perverse. Hence, we have to reject this contention also.

9. The next point urged by the counsel for the applicant was that the enquiry proceedings were continued, when his request for change of E.O. on grounds of bias was pending with the D.A., in violation of Railway Board's letter dated 19.6.1974 (supra). The counsel for the respondents pointed out that the applicant did not inform the E.O. about his letter dated 8.11.1984 to the D.A. for change of E.O. When the E.O. came to know of the same, the enquiry was not held for quite some time till the D.A. advised the applicant to attend the enquiry. Inspite of this the applicant did not attend the enquiry on the dates fixed stating that he was sick, but he did not advise the E.O. about his sickness. His representations for change of E.O. were also replied.

We find from the records that there is lot of force in the arguments of the respondents. Even as per the statement of the applicant, about his period of sickness, we find that he had adequate time to inform the E.O. , which he failed to do. We observe that the applicant has generally adopted a delaying ~~laches~~ tactics and has always written letters to the D.A. instead of the E.O. , who has been nominated to conduct the enquiry. Hence, we find no merit in the contention of the applicant and it cannot be said that any prejudice was caused to him.

10. Regarding the question of non-supply of the report of the E.O. to the applicant before the D.A. imposed the penalty, the punishment has to be set aside on this ground alone as per the ratio laid down in Mohd. Ramzan Khan's case (supra). But this is applicable only where the delinquent official has availed the opportunity of taking active part in the disciplinary proceedings and presented his case. In such a case, the delinquent will be aware of all the evidence adduced and hence, if the findings of the E.O. are supplied to him, he can make his representation on the interpretation of the evidence. In this case, after the initial setting the applicant has found one excuse or the other to delay the enquiry proceedings and did not take part in all the settings, so much so, the E.O. has conducted the proceedings ex-parte. In the case of Dr.D.B.Rathod versus Union of India and Others (1990 (3) SLJ (CAT) 291) the New Bombay Bench of the Tribunal have held that the failure to supply a copy of the E.O.'s report before the D.A. imposed the penalty does not amount to denial of reasonable opportunity in a case, where the

enquiry has been held ex-parte, we are in respectful agrement of this view.

11. Finally, the counsel for the applicant pointed out that the A.A.'s orders dated 16.11.1989 (Annexure A-48) does not show application of mind and does not cover all the points raised in his appeal dated 17-10-1987. On going through the appellate orders we find that the A.A. has given a personal hearing to the applicant and given his findings on ~~end~~ each of the points raised by him during the course of the hearing, which are also the main issues raised in the appeal. It is true that certain other points raised in the appeal like the source of the used EFT, examination of additional witnesses to establish whether the said S.D. Gupta travelled upto Baroda, scoring out the refund entry etc, have not been commented upon by the A.A. But since these are not relevant to the changes and have not been brought out during the enquiry, the failure to comment upon them will not prove non-application of mind to vitiate the orders.

12. In the result, we find no merit in the application and consequently, the application is dismissed.

(S.Gurusankaran)
Administrative Member

(R.C.Bhatt)
Judicial Member

M.A./114/
with
MA/113/91
in
OA/182/90

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te	Office Report.	Orders
4.1991		Present: Mr.U.R.Patel, learned counsel for the applicant. Mr.N.S.Shevde, learned counsel for the respondents. .... O R D E R M.A./113/91 allowed as not opposed. Counsel may incorporate the amendment within a week of this order and serve an amended copy on the respondents. The respondents shall have one weeks time to reply. [illegible]r which the applicant will have two weeks time for rejoinder if any. M.A./114/91 cannot be taken up for decision in view of the amendment. M.A/114/91 is rejected. The main matter may be listed for final hearing some time in last week of June. (R.C.Bhatt) Judicial Member (M.M.Singh) Administrative Member a.a.b.