

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL

AHMEDABAD BENCH

NO
Removal

B
S

O.A. No. 214 OF 1990.
~~XXXXXX~~

DATE OF DECISION 12.3.1993.

Pratapbhai Sanabhai, Petitioner

Mr. V. L. Ashar for Mrs. K. V. Sampat, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

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

CORAM :

The Hon'ble Mr. R. C. Bhatt, Judicial Member.

The Hon'ble Mr. V. Radhakrishnan, Admin. 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? ✗

Pratapbhai Sanabhai,
Gangman,
PWI, Station Building,
Godhra,
C/o. Jitendra K. Ved,
Hon. Secretary,
General Workmen's Union
Godhra,
Dist: Panchmahal.

..... Applicant.

(Advocate: Mr. V.L.Ashar for
Mrs. K.V. Sampat)

Versus.

1. Union of India, represented
by the General Manager,
Western Railway, Churchgate,
Bombay.

2. Divisional Railway Manager,
Western Railway,
Pratapnagar, Vadodara.

3. DEN (III (Civil))
Western Railway, Pratapnagar,
Vadodara.

4. Assistant Engineer (Civil)
Western Railway,
Down Yard Near Rly.Institute
Godhra, Panchmahal.

..... Respondents.

(Advocate: Mr. N.S.Shevde)

ORAL ORDER

O.A.No. 214 OF 1990

Date: 12.3.1993.

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

Heard Mr. V.L. Ashar for Mrs. K.V. Sampat,
learned advocate for the applicant and Mr. N.S.Shevde
learned advocate for the respondents.

2. This application under section 19 of the
Administrative Tribunals Act, 1985, is filed by the
applicant, serving as Gangman, seeking the relief that
the order dated 27th June, 1989/4th July, 1989 passed by
the Assistant Engineer, Godhra be quashed and set aside.

The applicant has amended the application during the pendency seeking the relief that the appellate order passed by the respondent No.3 dated 25th April, 1990, Annexure A-9 also be quashed and set aside and that the applicant be reinstated in service with all the benefits.

3. The applicant has alleged in the application that the applicant had applied for sick leave on strength of medical certificate during which period he was handed a charge sheet dated 24th December, 1988 for major penalty alleging absence without leave vide Annexure A-1. The applicant had entered in defence before the enquiry officer. The enquiry officer sent the report to the disciplinary authority which passed an order of removal of the applicant from service vide Annexure A-3 dated 4th July, 1989. The applicant feeling aggrieved by the order of the disciplinary authority filed appeal on 7th August, 1989 which is produced at Annexure A-5, which was dismissed by the respondent No.3 on 25th April, 1990 confirming the order of the disciplinary authority.

4. The applicant has alleged that the appellate authority has not passed a speaking order /there is no application of mind of the appellate authority and the points which were raised in appeal also were not considered by the appellate authority and hence the said order is bad in law. The main grievance

of the applicant as found in the appeal memo para-4
is as under :

"It is further contended that the order was passed by the Assistant Engineer Godhra, who is not the competent authority or disciplinary authority to pass order or removal for the applicant from service. Order passed against the applicant is bad in law and not maintainable for this reason."

5. The respondents have filed reply denying that the procedure of enquiry was wrong or in-
valid as alleged. It is also contended that the enquiry was conducted as per rules and by an authority entitled to conduct the enquiry. The respondents have not disputed that the order of removal from service of the applicant was passed by the Assistant Engineer Godhra, but have denied that the said Assistant Engineer Godhra, respondent No.4, was not the appointing authority of the applicant. They have also controverted the other averments made by the applicant in his application.

6. The applicant has filed rejoinder.

7. At the time of hearing, we find that the applicant has filed written arguments along with the xerox copies of some judgments. Reading the written arguments we find that the main point on which the decisions of the authority concerned are attacked is that the applicant's preliminary objection that the charge sheet was served by Assistant Executive Engineer Godhra an officer not the appointing

authority and not the disciplinary authority under the Railway Servants Discipline and Appeal Rules was not considered. In para 2 of the written arguments the applicant has mentioned that the Assistant Engineer is neither the appointing authority nor a disciplinary authority and this point though raised in the appeal memo, the appellate decision is silent in regard to this vital issue raised by the applicant.

8. We have perused the decision given by the appellate authority and we have to say that the order passed by the appellate authority namely, respondent No. 3, apart from the fact that it has not considered this vital point raised by the applicant in appeal has not given even the reasons for dismissing the appeal except stating that he has carefully considered the appeal and that the applicant had been punished many times in the past. In our opinion, this can not be considered as a reasoned order. We do not say that the appellate order should be independent very long but it must show the application of mind by the appellate authority as to why the appeal is rejected and that independent application of mind is missing in this order which is a serious lacuna. Therefore we quash the order of the appellate authority and remit the appeal for fresh hearing on merits and to decide it by a reasoned order. Hence we pass the following order.

O R D E R

Application is allowed. The order of the appellate authority, respondent No.3, dated 25th April, 1990 confirming the removal order of the applicant is quashed and set aside and the matter is remitted to the said authority to decide the appeal afresh after considering the grounds mentioned in the appeal and after passing the reasoned orders. The appellate authority is directed to dispose of the appeal according to law within four months from the receipt of the order of this Tribunal. No order as to costs.

Mr.
(V.Radhakrishnan)
Member (A)

Sen.
(R.C.Bhatt)
Member (J)

vtc.