

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO.

314 of 1990.

~~TA NOX~~

DATE OF DECISION 08.06.1994.

Shri Hiralal K.Saini Petitioner

Shri K.K.Shah 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. N.B.Patel : Vice Chairman

The Hon'ble Mr. K.Ramamoorthy : Member (A)

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 ?

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Shri Hiralal K.Saini
B-19, Nairuti Park,
Opp. Navino Battery
Makarpura Road,
Baroda - 10.

...Applicant.

(Advocate : Mr.K.K.Shah)

Versus

1. The Union of India,
notice to be served through
The General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.
2. The General Manager,
to be served through,
Chief Project Railway Electrification
Manager (RE) BRC.,
Northern Railway,
Allahabad.
3. Divisional Railway Manager,
Shri H.N.Lal or his successor,
Western Railway,
Bhavnagar.
4. Chief Operating Superintendent,
Shri M.V.Srinivasan or his successor,
Western Railway,
HQ Office,
Churchgate,
Bombay.

...Respondents.

(Advocate : Mr.R.M.Vin)

J U D G M E N T

O.A.NO. 314 OF 1990.

Date : 08.06.1994.

Per : Hon'ble Mr.K.Ramamoorthy : Member (A)

The application relates to relief sought
against the order of compulsory retirement passed by
the Disciplinary Authority and upheld by the Appellate

Authority. The impugned order has been challenged both on the grounds of procedural, irregularities and illegalities and also on the ground that the quantum of penalty was excessive.

2. The applicant was an employee of the Railways who held the post of Movement Inspector and had allegedly on 26.3.1982, claimed illegal T.A. for that day by showing false presence at Rajkot. He was also detected travelling on a wrong route thereby misusing the Railway Pass issued to him. By these acts he had committed serious misconduct and acted with doubtful integrity showing lack of devotion and behaving in a manner unbecoming of a Railway employee. Though the Inquiry Officer did not find the fact of the applicant's false presence in Rajkot as having been proved, he had found the charge of misuse of pass as having been proved. The Disciplinary Authority however, came to the conclusion that the applicant was not in Rajkot on 26th instant and, therefore, found both the charges as having been proved.

3. The applicant was compulsorily retired from service which order was also upheld by the Appellate Authority vide ~~its~~ order dated 25.5.1990, by a speaking order passed by the Chief Operating Supdt. on 25.5.1990.

4. The following legal infirmities in the Disciplinary proceedings have been cited by the counsel for the applicant .

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- (i) The charge sheet was issued by the Additional Chief Elect. Engr.(R.E.) and not by the Chief Project Manager who was the appointing authority.
- (ii) The enquiry was finalised after a long delay. While the charge sheet was issued on 20.9.1982, the penalty order was issued in February, 1990.
- (iii) The charge sheet language also showed that the Disciplinary Authority had already made up its mind.
- (iv) The copies of all the supporting documents were not supplied.
- (v) When the Disciplinary Authority did not agree with the I.O., a fresh notice was not issued.
- (vi) In addition to the procedural irregularities, and illegalities, the counsel for the applicant also has averred that the punishment was excessive. In fact, for a misuse of a pass there was a definite penalty prescribed in the Railway Pass Manual-1977 and the applicant's case was covered under penalty at Sl.No.29 under Rule - 111. The punishment for compulsory retirement far exceeded this penalty. This penalty was thus illegal and excessive.

5. The counsel for the respondents stated in reply that the punishment was levied after a proper inquiry following the due procedure required while imposing the penalty under Rule - 6 of the Discipline and Penalty Rules. The appeal was also disposed of by a regular speaking order

dated 24.5.1990. As regards the quantum of punishment, a railway employee was liable to disciplinary action in addition to the penalty for misuse of the railway pass and this is specifically provided for in the foot-note to the said Rule itself. And, therefore, the action taken by the respondents was in order.

6. The matter was argued at length by both the counsels.

7. Since basic issues regarding the conduct of the inquiry have been raised, it is necessary to go at some length regarding the Disciplinary proceeding. The applicant Shri Saini was deputed on duty to go to Rajkot on official duty to be performed at Rajkot on 26.3.1982. It is the case of the Railways that he was actually found in a First Class coach in a train reaching Rajkot from Bhavnagar on 27.3.1982, and, therefore, his claim for T.A. for performing duty on 26th was false. The formal order to hold the enquiry against the applicant under Rule-9 of the Discipline and Appeal Rules was received on 3rd September, 1982. Apart from the two charges mentioned in the foregoing para, this letter also contained the statement of imputation. The letter also contained the list of five witnesses and the list of five documents on which the inquiry was to be relied upon. The enquiry officer and DSO submitted his enquiry report on 08.1.1990. During this enquiry, out of the list of witnesses one witness for the prosecution did not turn up and as regards the documents, copies of five documents at Sl.No.2,6,7,8, and 9, were also not given to the applicant. The

disciplinary authority partly differed from the Inquiry Officer's report and held the applicant fully guilty of both the charges and thereupon a formal order was passed by the DRM, BVP for compulsory retirement from Railway service with immediate effect on 5.2.1990. The applicant filed an appeal against this order which was rejected by the Chief Operating Supdt. vide the order dated 24.5.1990.

7. The point of difference between the rival versions lies in the fact that while the prosecution alleged that the applicant was actually away in Bhavnagar and actually reached Rajkot on 27.3.1982, it is the applicant's contention that he was in Rajkot on 26.3.1982 and had met with an accident because of which he could not attend the Divisional Office on that date. It is also not denied by the applicant that he was found actually on a train coming to Rajkot on 27.3.1982. It was the contention of the applicant that he was travelling in that train only from an outskirts of the town since he was actually staying at Bhaktinagar with a friend.

8. The first objection of the applicant about the status of the official who served the punishment order is not accepted. The schedule - 2 under Sub-Rule-2 of Rule-7, clearly spells out the authority who can pass order for compulsory retirement. This could be the Appointing Authority or an officer of equivalent rank or higher authority. In this particular case, the order of punishment has been passed by the DRM, BVP, who has been cited as appointing authority for all Grade-A and C staff being highest authority of the division. It is also seen that the DRM and authority like CPM are equivalent authorities.

9. As regards factor of delay, the lapse of period of 8 years is an accepted fact. The factors for causing delay in completing the proceedings have been explained in para-10 of the statement filed on behalf of the respondents on 10th November, 1990, by the Additional Divisional Railway Manager. While the time taken is unduly long, that by itself cannot be a reason to annul an enquiry proceeding. We do not find anything basically wrong in the wording of the charge-sheet either.

10. At this stage, it is also necessary to deal with some of the judgments cited by the counsel of the applicant, particularly in regard to the infirmities noticed or on the subject of non-issue of specific notice separately when the Disciplinary Authority has chosen to differ from the Inquiry Officer. The counsel for the applicant has cited the case of Premnath Sharma, Bombay, reported in ATC-1988-P.904. A similar reference was also made in the High Court's judgment delivered by the Gujarat High Court reported in 1984 Gujarat Law Herald, wherein the High Court has specifically remarked that notwithstanding the 42nd Amendment, if "the Disciplinary Authority disagrees with the findings recorded by the Inquiry Officer, it would be necessary to furnish to the delinquent reasons for doing so, so that the delinquent can meet with them in the representation which he may make to the Disciplinary Authority". The counsel for the applicant also brought to us earlier Supreme Court Judgment stated in the case of The State of Assam and another Versus

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Bimal Kumar Pandit, AIR 1963 SC 1612 (V.50 C 241), which also stressed the need for the entitlement for public officer to defend the conclusions against him where necessary. The counsel also cited another SC judgment reported in AIR 1964, P.364, on the same point.

11. Notwithstanding the pronouncements mentioned in this case, wherein law for ensuring the natural justice has been laid down, on the specific question of Disciplinary Proceedings and supply of Inquiry Officer's report, as in the present case, definite law in the matter, particularly in the light of the 42nd Constitution amendment has emerged finally in 1990, when the Supreme Court decided Mohd. Ramzan Khan's case. In a Organisation like Railways, there has been a long standing system of enquiry and particular procedures have been adopted for disciplinary action. As stated in the subsequent Supreme Court case of Managing Director, ECIL, Hyderabad Versus B.Karunakar, reported in Service Law Reporter, 1992(4), 601 (SC), "till 20th November, 1990, i.e., the day on which Mohd. Ramzan Khan's case was decided, the position of law on the subject was not settled by this Court. It is for the first time in Mohd. Ramzan Khan's case, that this Court laid down the law. That decision made the law laid down there prospective in operation, i.e. applicable to the orders of punishment passed after 20th November, 1990." The present case is clearly before the date of the Ramzan Khan's case, as the decision in this case has been taken in February, 1990, and, therefore, quashing the punishment order, on such an infirmity will not arise.

12. It is significant to note that even on the substantive issue, the main consideration is not a mere technical requirement so as to reduce the rules of justice to a mechanical ritual. "The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial ~~of~~ to him of the report, has to be considered on the facts and circumstances of each case."

13. In facts of this particular case, the main charge is the charge of claiming illegal T.A. for 26.3.1982, on which date, he did not attend the Divisional Office at Rajkot. Whether, the applicant was actually at Bhavnagar as was held by the Disciplinary Authority or whether the fact of his having been in Bhavnagar as not having been proved beyond doubt were not the real issues. The applicant himself has admitted that he did not attend the DRM office on that day as he had met with an accident in which he was hurt. The fact is also not disputed that the Railways found the applicant to be travelling on a route to which he was not entitled to travel by virtue of his pass. Whether his journey was a limited journey from Bhaktinagar to Rajkot or whether the journey was longer from Bhavnagar to Rajkot is not relevant so far as the issue of misuse of pass is concerned. Thus, the non-supply of all the documents mentioned in the Inquiry Report ~~or~~ the non-supply

of a specific show cause notice in this case did not substantially prejudice the main facts which are not dispute - viz., the fact of the applicant not having physically reported officially for duty to Divisional Railway Manager's office on 26.3.1984, but claiming illegal T.A. for the day or the fact of travelling in the train in an unauthorised route and his failing to pay the additional fare as demanded. It is clear that the case of the applicant has not been seriously prejudiced because of the infirmities in the procedure stated above.

14. It is also necessary to deal with the specific argument regarding double jeopardy in the matter of punishment. The counsel for the applicant pointed out that there was a specific provision for penalties consequent to misuse of Railway pass. According to this Rule travelling by a wrong route, for an employee in service the punishment proposed is of recovery of fare in question. The counsel for the respondents, on this point stated that the provision of recovery of fare is an independent provision and is provided to check ticktless travelling and is applicable to all travellers whether they be railway employees or not. The Rules specifically also provide that in the case of railway servants this will not preclude disciplinary action.

15. We agree with the view, that starting of a disciplinary proceeding cannot be stated to be resulting in a person getting punished twice for the same offence. The provision against the misuse of passes ensures recovery of the financial loss and cannot by itself bar

taking of disciplinary action. The Railways are, therefore, well within their rights to start a specific disciplinary action on this point. It is also relevant to note that the charge sheet for disciplinary action also includes another charge in addition to the misuse of pass.

16. The Tribunal would now like to deal with the point raised regarding the excessive nature of the punishment. It is true that the Railways should take a serious view of misuse of a railway pass which the Railways issue to their employees as a matter of privilege for working with them. It is also to be borne in mind that in this particular case, the pass in question has been issued for travelling on duty. At the same time, the fact of the employee reporting for duty at Rajkot a day later also has not seriously jeopardized the work of the Railways. It is also true that even if the railway servant chose to go to Bhavnagar a fact not proved beyond doubt, while on tour to Rajkot, he could have done so by virtue of getting a travel pass for that purpose but by a specific request. In that case, ultimately, the offence of the applicant was one wherein the applicant has again tried to short-circuit the procedures and take the administration for granted in regard to this administrative procedure. This behaviour is certainly unbecoming of a railway servant. To make a scene when he is actually discovered violating the conditions of the pass also smacks of absence of fulsome regard for standard procedures and discipline. This misdemeanour however, is not one which calls for such a serious punishment as compulsory retirement and such a

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punishment is in the opinion of this Tribunal disproportionate to the charge involved. If the proceeding had gone on in time the implementation of this punishment would have deprived almost 12 years of active service. In fact at the time when the case came up for final hearing we were told that the applicant has already reached the date of normal age of his super annuation, on 28.02.1989.

18. Therefore, the question of reinstatement of the employee would not now arise.

19. If the punishment of compulsory retirement is considered as excessive, the question of entitlement of employee's wages involved from the date of his compulsory retirement to the date of his actual retirement is also a matter which now requires consideration. The question of entitlement of the employees' wages involved from the date of his compulsory retirement to the date of normal super-annuation is a matter which will arise for consideration. Since, the employee had not physically performed any function he would not be normally entitled to payment of wages under the 'no work no pay' provision. The liability of wages payment in a case where there is punishment order would be covered by (1993) 25 Administrative Tribunal Cases - 784, Central Administrative Tribunal, Madras. It might be urged that he was disabled to work by virtue of the railway order. In any case, as stated above, the misdemeanour is one which calls for a definite punishment and in our view, the non-payment of wages for this period will be the kind of punishment that the employees would have to undergo for such a misdemeanour.

In this view of the matter also, the Tribunal is of the view that the employee will not be entitled to any back wages.

20. The Tribunal is aware of the limitation on the jurisdiction of the Tribunal in dealing with the discretion of ^{the} disciplinary authority in regard to quantum of punishment. The Supreme Court in its judgment in Civil Appeal No. 392 of 1994, reported in Services Law Reporter, (Para-2-page-524), has stated -


"the proper course to be adopted in such situations would be to send the matter either to the Disciplinary Authority or the Appellate Authority to impose appropriate punishment." Normally, we would have preferred the case to go before the Appellate Authority, but in this particular case, the employee's normal date of his retirement is also over. The case is one which relates to an incident which happened 12 years before. In the peculiar circumstances of this case, to remit the matter to the Disciplinary Authority or Appellate Authority for reconsideration of this aspect only would entail further delay and, therefore, the Tribunal has chosen to proceed to suggest final action as ^{below} ~~above~~, which in our opinion will meet the ends of justice in this case.


21. For the reasons stated above, the present application is allowed to the following extent and the following orders are passed.

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- (a) The order of ~~respondents~~ compulsory retirement is quashed and the applicant may be deemed to have been reinstated and continued till the date of superannuation. The applicant will however, not be entitled to payment of any wages for this period of deemed reinstatement.
- (b) The pay of the present applicant shall thereafter be fixed from time to time, from year to year on notional basis. Superannuation benefits of the applicant shall accordingly be refixed on the basis of such pay on the date of his retirement.
- (c) The pension and relief so fixed shall be paid from 01.03.1994.
- (d) The above directions shall be completed within a period of three months from the date of receipt of a copy of this order.

The application stands disposed of accordingly with no order as to costs.


(K. Ramamoorthy)
Member (A)


(N.B. Patel)
Vice Chairman