

(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 126/90
T.A. No.

DATE OF DECISION 13-12-94

Shri Bhupendra J. Upadhyaya Petitioner

Shri D.T. Dave Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

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

CORAM :

The Hon'ble Mr. V. Radhakrishnan

Member (A)

The Hon'ble Dr. R.K. Saxena

Member (J)

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 ?

} No

(9)

2

Bhupendra J. Upadhyaya
Nenpur Railway Station
Western Railway.

Applicant.

Advocate Mr. D.T. Dave

Versus

1. Union of India
through General Manager
Head Office, Western Railway
Churchgate, Bombay.
2. Senior Divisional Commercial
Superintendent, Office of the
Sr. DCS at Pratapnagar, Baroda.
3. Area Manager
office of the Area Manager,
Ahmedabad 380 002.

Respondents.

Advocate : Mr. N.S. Shevde

J U D G M E N T

In

Date: 13-12-90

O.A. 126/1990

Per Hon'ble Dr. R.K. Saxena

Member (J)

This is an application moved by Shri Bhupendra Upadhyaya challenging the impugned order Annexure A-5, passed on 19/23-10-1989 in revision against the order Annexure A-4 which was passed on 12-7-1989 in appeal filed by the applicant.

D

...3..

10

3.

2. The brief facts of the case are that the applicant was working as Head Booking Clerk at Chandkheda Railway Station. He was served with the charge-sheet on 6/21-12-1988 with the charge that he remained absent in unauthorised way from 20.00 hrs to 22.00 hrs on 18-11-1988, and secondly he had got duplicate keys of two locks of the Booking Office made and violated instructions with regard to deposit of the collected cash. Soon after the charge-sheet was served Shri Petkar was made inquiry officer. The applicant was required to submit explanation and that was submitted through his representative Shri R.M. Barnala. The hearing of the inquiry was fixed on 17-2-1989 and thereafter on 20-2-1989. Since Shri Barnala — representative of the applicant was on leave, the hearing was adjourned to 24-2-1989. The applicant in the mean-time moved an application to the Disciplinary Authority for the change of the Inquiry officer. Such applications were moved on 22-2-1989 and 1-3-1989. When these applications for change of the Inquiry Officer, were pending disposal, the inquiry officer fixed the date of the Inquiry. The Disciplinary Authority, however, rejected the applications for change of inquiry officer on 7-3-1989, vide Annexure A-2. The order of rejection for the change of inquiry officer was, however, communicated to the applicant on 11-3-1989. The inquiry officer on the intimation being given ~~xx~~ by the applicant for not participating in the

inquiry because the application for change of the inquiry officer was pending, proceeded exparte. No statement of any witness was recorded by him and the report dated 12-3-1989 was submitted to the Disciplinary Authority which passed the order of compulsory retirement on 10-4-1989, Annexure A-3.

3. Feeling aggrieved by the order of compulsory retirement, the applicant approached the Tribunal by filing O.A. 169/89 which was subsequently withdrawn for the deficiency that the alternative remedies were not exhausted. Thereafter he moved an appeal before the Divisional Commercial Superintendent, which was partially accepted vide order, Annexure A-4. By this modification, the order of compulsory retirement was converted into reduction of the applicant in the lowest grade of Assistant Coaching Clerk of Rs. 975-1540 for a period of two years with future effect and his pay was fixed at Rs. 1200/- per month. This order was again challenged by way of revision which was rejected vide, Annexure A-5. Feeling aggrieved thereby, this application has been filed here.

4. The respondents contested the case and came with the plea that the applicant was charge-sheeted for the allegation of his unauthorised absence and for having got duplicate keys of the Booking Office. It is also contended that the applicant, for no valid reasons, had moved the Disciplinary Authority for change of the inquiry officer but these applications were

rejected. The applicant failed to appear before the inquiry officer and he made known his intention to the inquiry officer on 1-3-1989 in writing that he would not participate in the proceedings and therefore, the inquiry officer had no option but to proceed ex-parte. It is also averred on behalf of the respondents that on the consideration of the facts and circumstances, the order of compulsory retirement from service was passed by the Disciplinary Authority but in appeal it was modified to the reversion in the lower grade of Assistant Coaching Clerk for two years. The order was upheld in revision. It is, therefore, pleaded that there was no illegality in any of the orders.

5. We have heard the learned counsel for the applicant as well as the respondents. We have also perused the record including the original inquiry file in the matter.

6. The learned counsel for the applicant argued that the proper procedure has not been adopted in the inquiry and the opportunity for defending himself was also not given to the applicant. It is not disputed ~~fact~~ that the applicant had moved for the change of the inquiry officer and this application could be disposed of by the Disciplinary Authority only on 7-3-1989 and could be communicated to the applicant only on 11-3-1989. In such circumstances, it was necess

-ary for the inquiry officer to have started the inquiry thereafter. It would have been better if the Disciplinary Authority itself had given some time either by fixing a date or by giving some margin of period to the applicant as well as to the inquiry officer to start with the inquiry. Since it was not done, it was expected of the inquiry officer to have started with the inquiry only on the intimation of rejection of the application about the change of inquiry. From the facts on record particularly from the averment made by the respondents themselves in their reply, it is clear that the application for change of inquiry officer was rejected on 7-3-1989 and could be communicated to the applicant on 11-3-1989. The inquiry officer submitted the report on 12-3-89. It appears that the inquiry officer was in hurry to conclude the inquiry and submit its report.

7. It is also noticed that the inquiry officer did not examine any witness in respect of the charge. Even if the applicant failed to appear before the Inquiry Officer or avoided to co-operate with the inquiry, it was necessary for the inquiry officer to have recorded evidence oral or documentary in support of the charges. For having not done the same, the proper procedure has not been followed and the principles of natural justice have been violated.

8. In this connection the learned counsel for the respondents argued that the applicant had given in writing, admitting the absence and being in possession of duplicate

2

keys. This application of admission of facts was given before the charge-sheet was served on the applicant. If it was so, the Disciplinary Authority ought to have taken this fact into consideration before framing charge-sheet or serving the charge-sheet on the applicant or at least before appointing the Inquiry Officer. Also an opportunity was required to have been given to the applicant after the charge-sheet was submitted either to admit the confessional statement made through the said application of admission or to deny the same. Even this thing has not been done and thus it can easily be deduced that the proper procedure in the inquiry has not been adopted and sufficient opportunity of defending himself was not given to the applicant. In these circumstances, the orders of punishment starting from Disciplinary Authority right up to revisional authority including appellate authority are not sustainable.

9. The learned counsel for the respondents submitted that the case be remanded to the Disciplinary Authority for starting inquiry afresh. The Tribunal does not sit as an appellate authority and therefore, the order of remand on this ground is not tenable. The learned counsel for the applicant then came with the argument that the application about the admission of those facts on which charge-sheet was framed and

(15)

8

served was already given by the applicant and thus there is no dispute about the charges. The only question, according to him, is with respect to the quantum of punishment. Looking to the fact that the applicant was absent only for two hours on 18-11-1988 and have got duplicate keys which appears to be a common practice, we feel that the punishment awarded has ^{erred} ~~arrayed~~ towards harshness. Thus it becomes the ground on which the case may be remanded to the Disciplinary Authority.

10. On the consideration of the facts and circumstances of the case, we come to the conclusion that the orders of punishment are not sustainable in law and they are, therefore, quashed. The case is remanded to the Disciplinary Authority to consider the quantum of punishment afresh. The application is disposed of accordingly. No order as to costs.



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



(V. Radhakrishnan)
Member (A)

*AS.