

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

(1)

AHMEDABAD

and dated 20.9.1993

R.A.St.13/93, in

O.A. No. 114/91

T.A. No.

199

DATE OF DECISION 22-11-1993.

<u>Divl. Railway Manager(E)</u>	<u>Petitioner</u>
<u>Western Railway, Rajkot</u>	<u>Advocate for the Petitioner(s)</u>
<u>Versus</u>	
<u>Shri S.K.Dave</u>	<u>Respondent</u>
	<u>Advocate for the Respondent(s)</u>

CORAM

The Hon'ble Mr. N.V.Krishnan, Vice Chairman

The Hon'ble Mr. R.C.Bhatt, 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 ? ✗

ORDER

(Hon'ble Shri N.V.Krishnan, Vice Chairman.)

O.A.114/91 was disposed of by our judgement dated 23-9-1992. The respondents in the O.A. have filed this application for a review of that judgement. We have perused the review application and are satisfied that this can be disposed of by circulation.

2. We disposed of O.A.114/91 relying upon the judgement of the Supreme Court in Mohd. Ramzan Khan's case AIR 1991 SC 471 because, the fact was admitted that a copy of the Enquiry Officer's report was not served on the applicant before the disciplinary authority found him guilty of the charges. Hence, we quashed the impugned orders and remanded the case to the second respondent, the Divisional Railway Manager, Western Railway, Rajkot to direct the disciplinary authority to proceed further with the enquiry, if he so chose, from the stage the Enquiry Officer's report was

served on the applicant.

3. In the present review application, the ground raised is that the Supreme Court has held that the judgement in Ramzan Khan's case is to apply only prospectively i.e. to orders of penalty issued after the judgement in the case. The order of removal in the instant O.A. was passed before that judgement. Hence it is contended that there is an error apparent on the face of the record and hence, a review is sought.

4. The review applicant has not even cared to refer to the particular decision of the Supreme Court he has in mind. Apparently, he has in mind the decision of the Supreme Court in 1992 SSC (L&S) 137 S.P.Vishwanathan Vs. Union of India, wherein a Bench of two Hon'ble Judges of the Supreme Court held that the law laid down in Mohd. Ramzan Khan's case will apply to orders of the disciplinary authority passed subsequent to the date on which judgement was delivered in Mohd. Ramzan Khan's case. This decision was not brought to our notice at the time of hearing and, therefore, factually, no error on the face of record exists.

5. That apart, we notice that a larger Bench of the Supreme Court of three Hon'ble Judges presided over by the Hon'ble Chief Justice of India, who rendered judgement in Mohd. Ramzan Khan's case also, has, subsequently to the judgement in S.P.Vishwanathan's case, rendered judgement in R.K.Vasisht Vs. Union of India 1993 23 ATC 444 SC. In that case also, the Supreme Court quashed the impugned orders of penalty which issued on 14-8-1987-i.e. long before Mohd. Ramzan Khan's case judgement- relying on the judgement of Mohd. Ramzan Khan's case.

6. In the circumstances, we find that our reliance on

the judgement in Mohd. Ramzan Khan's case does not amount to any error of law apparent on the face of record.

7. We, therefore, dismiss this review application as being without any merit. M.A.St.20 of 1993 for staying the operation of the judgement is also, therefore, dismissed.



(R.C.BHATT)
Member (J).



(N.V.KRISHNAN)
Vice Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD

Application No. RAST/13/92 in OA/114/91 of 199

Transfer Application No. _____ Old Writ Pet. NO. _____

C E R T I F I C A T E

Certified that no further action is required to be taken
and the case is fit for consignment to the Record Room (Decided).

Dated : 13/12/93

Counter signed :

M. K. K.
Section Officer/Court Officer

M. K. K.
Sign. of the dealing Assistant.

CAUSE TITLE... 2A-113/93 in on 114/91 ... OF 198 ☐.

NAMES OF THE PARTIES.....*D.V. Ptz. Manager Rajkot*.....

Mr. S. K. Datta

[illegible]

AHMED BAD

OA/TA/MA/RA/C.A. No.

st-13193 in off-in-l91

Div. Rly Managers
APPLICANTS)

APPLICANTS)

WIRLY

Rajkot-

VERGIL

Shree B.R. Kyada
COUNSEL

COUNSEL

Shri SK Dane

RES PONDENT (S)

COUNSEL

DATE	Officer Report	Orders

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD.

Review Application No. of 1992.

IN

O.A. No. 114 of 1991.

Divisional Railway Manager (E)
Western Railway, Rajkot, on behalf
of the Union of India

.... Applicant.

Vrs.

S.K. Dave

.... Respondents.

Review Application by the Applicant.

1. The Applicant states that the above case was filed originally by the Railway employee Shri S.K. Dave, who was removed from service by following the due process of Law. Against the said removal order he preferred appeal before the department and the same was confirmed. Being agrieved by the said removal he preferred appeal before this Hon'ble Tribunal bearing No. 114 of 1991 for quashing and setting aside the removal order, etc.
2. The Respondent railways filed reply on merit and contented that as per disciplinary rules he was given reasonable opportunity and ultimately he was removed from service and it was done in the interest of the administration. The above case had come up for hearing many times and finally by Order dt. 23-9-92, it was decided that on the basis of Mohammad Ramzan Khan case, that before passing the removal order the inquiry report should be given to the Delinquent. So far as this case is concerned, the same has not been done and therefore the Order passed by the Railway authority was quashed and set aside. It was further directed that it is open for the railway authority to start proceedings from that stage and take decision after

supplying the copy of the inquiry report and they were also directed to pay the consequential benefits etc.

3. The Copy of the Order was received by the Advocate of the Petitioner on ¹⁶⁻¹⁰⁻⁹²~~21-10-92~~ and after receiving the same it was sent by him along with his bill on ¹⁶⁻¹⁰⁻⁹²~~21-10-92~~ to the department and the department received it on ²¹⁻¹⁰⁻⁹²~~28-10-92~~. Thus considering the period from the date of receipt, this present application is within time.

4. The Applicant states that so far as Mohammad Ramzan Khan case is concerned, the same is not applicable in this case as the Hon'ble Supreme Court as well as our full bench has clearly decided that the ratio that the same will not apply retrospectively but prospectively only. The removal Order was passed before the decision of the Supreme Court or from the full bench of the Tribunal and therefore the ratio applied in the present case is nothing but an error of law decided by the Court and therefore the same is to be reviewed.

5. The Hon'ble Tribunal has also not considered the background of the Historical decision given by the Hon'ble Supreme Court and the full bench of the Administrative Tribunal. Even though the benefits of the earlier case decided by the Supreme Court herein, it was not decided that the said judgement will be applied retrospectively or prospectively. But after some period the Hon'ble Supreme Court has had the occasion to consider the ratio laid down in Mohammad Ramzan Khan case and it was held that the same will not be applied retrospectively but prospectively and date was fixed. Even though in the present case, the Hon'ble Tribunal has misread the Principle applied in the above case and decided the present case and therefore it is an apparent error and the same deserves to be reviewed.

30

6. The Applicant will advance other arguments on legal points at the time of hearing of this Application. Keeping the above circumstances, facts and ratio, the present application should be reviewed and the Order passed should be quashed and set aside.

7. The Applicant therefore prays that:

(i) Your Honour be pleased to allow this Review Application and review the Order passed in O.A. 114 of 1991 dt. 23-9-92

or

(ii) Any other Order for the ends of justice.

Ahmedabad.
Dt: *[Signature]*
(B.R. Kyada)
Advocate for the Applicants.

For and on behalf of the Union of India.
[Signature]
Assistant Personnel Officer
Divisional Railway Manager (E)
Western Railway, Rajkot.

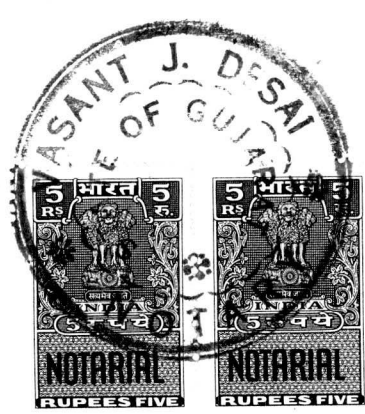


VERIFICATION.

I, P. GANGADHARAN PILLAI Asstt. Personnel Officer, on behalf of the Union of India, Western Railway, Rajkot do hereby verify that the contents of this reply are true on legal advice and that I have not suppressed any material facts.

Ahmedabad.
Dt: 26/11/92

[Signature]
Asstt. Personnel Officer,
Western Railway, Rajkot.



S NO 6200 1992
SOLEMNLY AFFIRMED
BEFORE ME

[Signature]
NOTARY

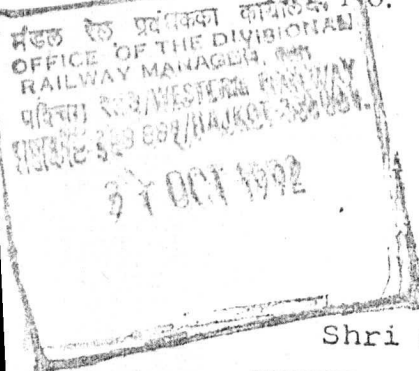
Filed by Mr. *[Signature]*
Learned Advocate for Petitioner
with second set & *[Signature]* spare
copies copy served/not served on the
other side

[Signature] on tour
Dt. 26/11/92 Dy. Registrar C.A.T.O.
A'bad Bench
[Signature]
26/11/92

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 114 of 1991

L.A. No.



DATE OF DECISION 23-9-1992

Shri Shirish K. Dave.

Petitioner

Ms. Arunaben Shah

Advocate for the Petitioner(s)

Versus

Union of India and Ors.

Respondent

Mr. B. R. Kyada

Advocate for the Respondent(s)

GRAM :

Hon'ble Mr. N. V. Krishnan

Vice Chairman.

Hon'ble Mr. R.C. Bhatt

Member (J)

(15)
Shirish K. Dave
Kholiyar Nagar Division I
Opp. Naroda Railway Station
Near Noble Nagar, Ahmedabad
Post Kuber nagar.

(8) 8
Applicant.

Advocate

Shri I. M. Munshi &
Ms. Arunaben Shah.

Versus

1. Union of India
To be served through
Chairman, Railway Service Commission
Chrchgate, Bombay.

2. Divisional Regional Manager,
Western Railway, Rajkot.

Respondents.

Advocate

Shri B. R. Kyada.

ORAL JUDGEMENT

In

O.A. 114 of 1991

Date : 23-9-1992.

Per Hon'ble Shri N. V. Krishnan Vice Chairman.

Shri I. M. Munshi and Arunaben Shah
for applicant.

Shri B. R. Kyada for respondents.



This application has been filed with prayers to quash the order dated 10-7-1989, passed by the Deputy Executive Engineer, Western Railway, Rajkot (Annexure A-1) in disciplinary proceedings removing him from service and the order dated 12-12-1989 (Annexure A-2) passed by the ADRM Rajkot rejecting his appeal and to give directions to the respondents to take him back in service with backwages and benefits.

2. The respondents have filed a reply resisting the application.

3. When the case came up for final hearing today, it was conceded by the parties that the case could be disposed of in the light of the judgement of the Supreme Court in RamzanKhan's case (AIR 1991 SC 471). It is an admitted fact that a copy of the Enquiry Officer's report wasnot served on the applicant before the Disciplinary authority found the applicant guilty of the charges.

4. In the view of the matter, we are satisfied that this application can now be disposed of with suitable directions to the respondents. We notice that the Disciplinary Authority himself is not on the party array, though the appellate authority is the second respondent. Keeping this lacuna in view, we

dispose of this application by quashing the impugned order dated 10-7-1989 of the Disciplinary Authority (Annexure A-1) and the impugned order dated 12-12-1989 of the Appellate Authority (Annexure A-2) and remand the case to the second respondent with directions that he should direct the Disciplinary Authority to proceed further with the inquiry, if he so chooses, and for this purpose, the Disciplinary Authority shall serve a notice on the applicant calling upon him to make representation in respect of the Enquiry Officer's Report, a copy of which has already been received by him. We also make it clear that in case the Disciplinary Authority intends to continue the disciplinary proceedings from this stage, he should take such a decision within a period of two months from the date of receipt of these directions, and continue the proceedings in accordance with law. In meanwhile, the applicant, should be reinstated in service within a period of one month from the date of receipt of this order. The manner in which the period between the date of removal from service and the date of reinstatement of the applicant shall be regulated and the amount of salary payable for this period shall be determined by the Disciplinary Authority in accordance with the extant rules and instructions in this regard.

Sd/-
(R.C. Bhatt)
Member (J)

*AS.

H.P. Gholshi
R.C. Bhatt
12/10/92

Sd/-

(N.V. Krishnan)
Vice Chairman.

10/10/92

12/10/92

True copy
for Bhatt
R.C.