

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO.
~~XXXXXX~~

116 of 1992.

DATE OF DECISION 12.3.1996.

Shri A.Manthiram Petitioner

Mr.K.K.Shah Advocate for the Petitioner (s)

Versus

Union of India and ors. Respondent

Mr.N.S.Shevde 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 A.Manthiram,
Ex-Waiter Under Sr.CTRI/ADI
Ahmedabad.

..Applicant.

(Advocate : Mr.K.K.Shah)

Vs.

1. Union of India,
Notice to be served through
The General Manager,
Western Railway,
Churchgate,
Bombay.
2. DRM,
Baroda Division,
Western Railway,
Pratapnagar,
Baroda.
3. Area Manager,
Western Railway,
Ahmedabad.
4. Sr.C.T.R.I.,
Western Railway,
Ahmedabad.

..Respondents.

(Advocate : Mr.N.S.Shevde)

J U D G M E N T

O.A.NO. 116 OF 1992.

Date : 12.3.1996.

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

The present case has been filed against the disciplinary action of imposition of compulsory retirement against the applicant.

The short facts of the case are as under :

The applicant had been served with a notice for imposition of penalty vide letter dated 22.5.1989 (Annex.3) and for the act of indiscipline which was grave enough as to tarnish the image of the Railways, the applicant was

compulsorily retired from service vide order dated 22.5.1989. The appeal against this order was rejected vide order dated 31.8.1984 (Annexure-A/2) and R.A. was also rejected vide order dated 19/24.6.1991 (Annexure-A). In his application the applicant has challenged the order on the ground of basic flaws in the conduct of inquiry which had caused prejudice to the interests of the applicant resulting in a mis-carriage of justice.

It is an admitted fact that the proceedings under the disciplinary authority were conducted ex-parte. However, at the revision stage, the revisionary authority had remitted the case for reopening the enquiry "to give an opportunity to the employee for producing his defence witnesses to tender their evidence". In this enquiry, the applicant was also allowed to cross-examine the prosecution witnesses.

The revision authority had remitted this enquiry for the limited purpose, as stated earlier of enabling the applicant to produce his defence witness and a report was to be sent back to the revision authority under Rule - 5. The enquiry officer had therefore, submitted his report taking into account the defence witness and this final enquiry was held on 25.4.1991 as per the revision authorities' order at Annexure-A. The findings of the enquiry officer and the final defence of 4.5.1991 were taken into account and thereafter also, the revision authority had decided to retain the earlier order of punishment viz. compulsory retirement.

The Tribunal had asked the respondents to produce the disciplinary proceedings to find out the nature of revision ordered by the revisionary authority and also to find out whether the enquiry report subsequently submitted after reopening of the enquiry had been given to applic

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and if not given whether it had caused any prejudice to the interest of the applicant.

Even after sufficient time, it has not been possible for the respondent to produce disciplinary proceedings. It is also not denied that the applicant was not given a copy of the revised enquiry report before the infliction of the punishment. The enquiry report was furnished to the applicant only on 8.7.1991 (Annexure-A/8).

It is obvious that the enquiry report being a 1991 report, a copy of this should have been given to the applicant as per Ramzan Khan's Judgment. It is obvious that the non-furnishing of the report is a serious flaw in the conduct of the enquiry and as decided by the Supreme Court in the case of Managing Director, ECIL, Hyderabad Vs. B.Karunakar, 1994 LAB. I.C. 762, the case will have to be remitted back to the revisionary authority so that it can consider the case again. Since, the copy of the Enquiry Report has been furnished subsequently, the question now remains of giving an opportunity to the applicant to make his submissions regarding the findings recorded in the Enquiry Report.

The Tribunal therefore, directs that this case may be remitted back to the respondent authorities to reach their final findings after consideration of the explanation offered if any by the applicant.


It may be herein mentioned that the counsel for the applicant stated, that taking into account the considerable time that has elapsed, he was prepared not to press the issue of the flaw and the prejudice that ~~he~~ was caused to him, only the revision authority were to show leniency in th


matter of punishment as he was genuinely remorseful about the whole incident.

This is a matter which may be considered by the revisionary authority when the matter comes up before him for consideration after remission.





In the particular circumstances of this case, we hope that the Revisionary Authority could take a sympathetic view in case he finds the sense of remorse being genuine and taking into consideration the time that has elapsed by now.


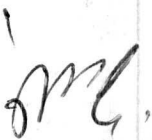


With the above reasons, the application is disposed of with however, no order as to costs.




(K. Ramamoorthy)
Member(A)


(N.B. Patel)
Vice Chairman

ait.

Date	Office report	Order
15.12.95		<p>Arguments of Advocate Mr.Handa heard. Adjourned to 21.12.1995, time being over.</p> <p> (K.Ramamoorthy) Member (A)</p> <p> (N.B.Patel) Vice Chairman</p>
21-12-95		<p>Adjourned to tomorrow i.e. 22-12-95.</p> <p>(K.Ramamoorthy) Member (A)</p> <p>(N.B.Patel) Vice Chairman</p>
22 $\frac{12}{95}$		<p>Arguments heard. Reserved for judgement-</p> <p> (K. Ramamoorthy) Member (A)</p> <p> (N.B. Patel) Vice Chairman</p>

Date	Office Report	ORDER
10.6.96		<p>None present for the parties.</p> <p>Adjourned to 9.7.1996.</p> <p> (K. Ramamoorthy) Member(A)</p> <p> (A.P. Ravani) Chairman</p> <p>vtc.</p>
9.7.96		<p>Mr. Shevde has filed reply on behalf of the respondents. Mr. Handa is not present.</p> <p>Adjourned to 16. 7.96 at the request of Mr. Shevde.</p> <p> (V. Radhakrishnan) Member(A)</p> <p>vtc.</p>
16-7-96		<p><u>M.A.330/96</u></p> <p>In view of the reply filed by the respondents, Mr. Handa seeks permission to withdraw the M.A. Permission granted. M.A. stands disposed of as withdrawn.</p> <p> (V. Radhakrishnan) Member (A)</p> <p>*ssh</p>

Date	Office Report	ORDER
5-11-96		<p>Mr.K.K.Shah is not present. Adjourned to 21-11-96.</p> <p> (V.Radhakrishnan) Member (A)</p> <p>ssh*</p>
21.11.96		<p><u>M.A.737/96</u></p> <p>M.A. allowed. Time is given upto 31.12.96. M.A. stands disposed of accordingly.</p> <p> (K.Ramamoorthy) Member (A)</p> <p>vtc.</p>