



Khimabhai Mavabhai Mahida  
3, Laxmi Society  
'Dhoop Chanv',  
Rajkot.

Applicant

Advocate: Mr. M.K. Paul

Versus

1. The Union of India  
Owning Western Railway,  
Through: The General Manager  
Western Railway, Headquarter Office,  
Churchgate  
Bombay- 400 020.
2. The Divisional Railway Manager  
Western Railway  
Divisional Office, Kothi Compound  
Rajkot.

Respondents

Advocate: Mr. N.S. Shevde-

ORAL ORDER

IN

OA/468/93

Dated 2.3.98

Per Hon'ble Mr. V. Ramakrishnan, Vice Chairman:

We have heard Mr. Paul for the applicant and Mr. Shevde the learned Standing Counsel for the Railways.

2. The applicant ~~is~~ a Railway servant is aggrieved by the action of the respondents in inflicting the penalty initially of removal from service by the Disciplinary Authority which was reduced to compulsory retirement by Appellate Authority by its order dated 13.11.92 as at Annexure A-18.
3. The applicant was proceeded against by a chargesheet dated 27.2.91. The charges against him were that he was in a state of intoxication and that he misbehaved with a lady official. The Inquiry Officer held the charge of intoxication as not proved but came to the

finding that the charge of misbehaviour with a lady official was established. A copy of the Inquiry Report was given to the applicant and he made his submissions to the Disciplinary Authority which is A.D.R.M. Rajkot by his letter dated 16.6.92 as at Annexure A-15. In his reply to the Inquiry Report he contended that there was no adequate evidence to hold that he had misbehaved with the lady as there was only her word against his. However, A.D.R.M. inflicted the penalty of removal from service by its order dated 19.6.92 as at Annexure A-16. The applicant then filed an appeal in July 1992 as at Annexure A-17. In this appeal, he had taken a number of grounds including the contention that despite his request the Inquiry Officer did not call one Shri Pankaj Shukla as a defence witness. From the tenor of the appeal, it would seem that he had also argued that the Inquiry Officer had over-stepped his limits and had put words into the mouths of witnesses. These were raised for the first time in the appeal. This appeal was disposed of by the Appellate Authority who is Chief Commercial Manager by its order dated 13.11.92 - Annexure A-18. The Appellate Authority had only stated that the applicant had misbehaved with the lady staff and was guilty of unbecoming behaviour. It went on to say that he had committed an act of moral degradation but there is no element of moral turpitude. The Appellate Authority proceeded to reduce the penalty of removal of service to that of compulsory retirement from service. It is clear from

the orders of the Appellate Authority that various contentions which were raised in the appeal regarding the failure to examine Mr. Shukla as Defence witness and the conduct of the Inquiry Officer etc. had not been dealt with at all. We are therefore constrained to observe that the Appellate Authority had not applied its mind properly before issuing the Appellate Order.

4. In the circumstances of the case, we quash the orders of the Appellate Authority dated 13.11.1992 as at Annexure A-18 and remand the matter back to the Appellate Authority with a direction to look into the appeal again and issue a speaking order on the points raised by the applicant in his appeal. It is seen that applicant was given a personal hearing earlier. If the applicant were to request for a personal hearing again, the Appellate Authority shall accede to such request and shall pass speaking orders within three months from the date of receipt of a copy of this order.

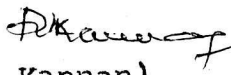
5. We also make it clear that whatever amounts have already been paid to the applicant by way of reduction of punishment from that of removal from service to that of compulsory retirement shall not be recovered from him.


There is no possibility of the punishment being enhanced from that of compulsory retirement. Mr. Shevde also agrees with this proposition. In view of these, respondents shall continue to pay to the applicant

the pension which <sup>he</sup> is getting at present.

6. Mr. Paul submits that if the applicant is still aggrieved by the orders of the Appellate Authority as directed by us, he may be given liberty to approach this Tribunal by filing a fresh O.A. We grant such liberty.

7. With the above direction, the O.A. is finally disposed of. No costs.

  
(P.C. Kannan)  
Member(J)

  
(V. Ramakrishnan)  
Vice Chairman

pmr

CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH, AHMEDABAD

Application No.                     21/668/93                    

Transfer Application No.                     —                    

CERTIFICATE


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

Date:- 10/3

Countersign:-

2031348

Section Officer

Signature  of the Dealing  
Assistant

