

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI
CENTRAL JUDICIAL BENCH94
T.A. No. 398 of 1987. 198

DATE OF DECISION 2.7.90.

Kasambhai Esakhai Eshaki Petitioner

Shri M.I.Sayyid,

Advocate for the Petitioner(s)

VERSUS

Union of India

Respondent

Shri P.R.Pai,

Advocate for the Respondent(s)

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The Hon'ble Mr. G.Sreedharan Nair, ViceChairman.

The Hon'ble Mr. P.S.Chattaburi, Member(Admn).

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?

(23)

CENTRAL ADMINISTRATIVE TRIBUNAL :NEW BOMBAY BENCH
NEW BOMBAY XIX

Tr. 398/87.

Shri Kasambhai Esakhai Eshaki (Plaintiff)
versus Applicant.
Union of India (Defendant)
Respondent.

P R E S E N T :

The Hon'ble Shri G.Sreedharan Nair, Vice Chairman.

The Hon'ble Shri P.S.Chaudhuri, Member(Admn).

For the plaintiff- Shri M.I.Sayyid, Advocate

For the defendant- Shri P.R.Pai, Advocate.

Date of hearing - 28.6.90.

Date of Order - 2.7.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman :

This relates to S.C.Suit No.7452 of 1982 in the
Bombay City Civil Court, Bombay, received on transfer.

2. The plaintiff was employed in the Western Railway and he retired from service as Senior Clerk in October, 1972. After retirement, a Memorandum of Charges was issued against him on 2.7.1976, alleging serious misconduct and failure to maintain integrity and devotion to duty. The imputation was that while functioning as Senior Clerk in the office of the Divisional Superintendent, Bombay Central, between July, 1971 and October, 1972, he committed gross misconduct in misappropriating a sum of Rs. 5,700/-, which he received as license fee for shooting of films in the Railway premises. It is alleged that he misled the senior officers that he would remit the amount in Government account and thereby obtained their signatures on the money receipts, but he did not remit the amount as required of him. The plaintiff denied the charges. An enquiry was conducted. A penalty

(26)

of permanent withholding of one-third of the pension, withholding of the gratuity and recovery of the amount of Rs.5,700/- from the pension was proposed by the Memorandum dated 25.9.1978. The plaintiff was afforded opportunity to submit representation. On 3.11.1978, the plaintiff submitted his representation. By the order dated 31.8.1981, the proposed penalty was imposed upon the plaintiff.

3. The plaintiff prays for a declaration that the order imposing the penalty is void, as being violative of the rules of natural justice and for quashing the same. It is alleged that the enquiry was unnecessarily delayed and that it was not held as per the Railway Servants (Discipline & Appeal) Rules, 1968, for short the "Discipline & Appeal Rules". There is also the plea that the basis of the charge was not properly investigated. An allegation of discrimination has also been made since the Chief Clerk and the Superintendent who were to check the accounts were not proceeded against.

4. In the written statement filed by the defendant, it is stated that the enquiry was conducted in accordance with the Rules and that there has not been any violation of the principles of natural justice.

5. The first point that was urged by the counsel of the plaintiff was that the proceedings were unduly delayed since the Memorandum of Charges was issued only in the year 1976 about four years after the retirement of the plaintiff. In view of para 2308 of the Railway Establishment Code, departmental proceedings can be initiated after retirement of a railway servant with the sanction of the President in accordance with the

procedure laid down in the Discipline and Appeal Rules ^{that took} provided it is in respect of any event ~~to~~ place within four years prior to the retirement. Admittedly, the plaintiff retired from service only by the end of October, 1972. The Memorandum of Charges was issued on 2.7.1976. It related to grave misconduct and was in respect of events that took place between July, 1972 to October, 1972. The proceedings were instituted with the sanction of the President and was conducted following the procedure laid down under the Discipline and Appeal Rules. Hence, the objection on this ground has to be rejected.

6. Secondly, it was urged by the counsel of the plaintiff that there has not been application of mind by the Inquiry Officer and the Disciplinary Authority since the original imputation was in respect of misappropriation of an amount of Rs. 7,450.00, but it was restricted to Rs. 5,700.00 in the Memorandum of Charges. This submission too is devoid of merit. It may be that on preliminary investigation it was found that the misappropriation relates only to Rs. 5,700/- though, to start with, it was felt that a greater amount was involved. The Memorandum of Charges dated 2.7.1976 is clear that it concerns only regarding the sum of Rs. 5,700/- which was received by the plaintiff as licence fee from the eight parties specifically referred to therein.

7. From the report of the Inquiry Officer, it is ^{less} clear that there ~~is~~ no dispute about the receipt of the

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(28)

4.

amount by the plaintiff from the concerned parties. The defence of the plaintiff was that he actually remitted the amount. However, the plaintiff was not able to establish the same in the course of the enquiry. The findings, being based on acceptable evidence, were rightly accepted by the Disciplinary Authority.

8. Counsel of the plaintiff submitted that there has been violation of the principles of natural justice as the plaintiff was not heard before the conclusion of the enquiry. There is no provision in the Rules warranting a personal hearing. After the close of the evidence, the delinquent railway servant is entitled to submit written brief. It is seen from the proceedings that though opportunity was afforded to the plaintiff for submitting written brief, he did not care to do so.

9. Lastly, counsel of the plaintiff prayed for reduction of the quantum of the penalty. In view of the decision of the Supreme Court in ~~P. Chaudhuri's~~ ^{e. g. v. P. Chaudhuri} ~~P. Chaudhuri's~~ case, this Tribunal has no jurisdiction to interfere with the quantum of penalty in cases where the penalty has been imposed after due assessment of the evidence on record.

10. The ~~plaintiff's~~ suit is dismissed.

O. Chaudhuri

(P.S. Chaudhuri)
Member (Admn)

G. Sreedharan Nair

(G. Sreedharan Nair)
Vice Chairman.

S.P. Singh/