

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(4)

O.A.337/87 & O.A.513/87

(1) Jagjit Singh,
C/o. Shri G.S. Walia,
Advocate,
89/10, Western Rly. Employees Colony,
Matunga Road,
Bombay - 400 019. .. Applicant in
O.A.337/87

vs.

(1) Union of India
through
General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.
(2) Chief Mechanical Engineer(Planning)
Western Railway,
Churchgate,
Bombay - 400 020.
(3) J.N. Hazari, Inquiry Officer,
Headquarters,
Churchgate,
Western Railway,
Bombay - 400 020.
(4) Sr. Divisional Mechanical Engineer,
(Loco),
Bombay Central,
Western Railway,
Bombay - 400 008.

.. Respondents in
O.A.337/87

(2) Bhojraj H. Balani
C/o. G.S. Walia
Advocate,
89/10, W.Rly. Employees' Colony, Matunga Road,
Bombay - 400 019. .. Applicant
in O.A.513/87

vs.

(1) Union of India
through
General Manager,
Western Railway,
Churchgate,
Bombay.
(2) General Manager,
Western Railway,
Churchgate,
Bombay.
(3) Goods Supdt.,
Carnac Bunder,
Western Railway
Bombay. .. Respondents in
O.A.513/87

Coram: Hon'ble Shri Justice U.C.Srivastava
Vice-Chairman

Hon'ble Shri M.Y.Priolkar,
Member(A)

Appearances:

- (1) Mr.G.S.Walia
Advocate for the
Applicants.
- (2) Mr.A.L.Kasturey
Advocate for the
Respondents.

ORAL JUDGMENT:
(Per U.C.Srivastava, Vice-Chairman)

Date: 23-8-1991

As identical question is involved in these two cases, they are being disposed of together. All the applicants are employees of Western Railway. A complaint under Section 3 R.P.(U.P) Act was filed against them and the charges against was that "on 13-2-1977 at about 1.30pm or thereabout near the over head water tank cattle platform at Bandra Marshalling Yard of Western Railway at a distance of about 1 furlong from the unloading point i.e. HSD oil tank were found in possession of 2750 litre of HSD oil then valued at Rs.4500/- which was in the second compartment from the engine side of the tanker no. MES 5147 which was sent by the Indian Oil Corporation on 12-2-1977 filled with 11,000 litres of HSD oil in its four compartments as per challan no.92 WR 4574 dated 12-2-1977 to be delivered to the diesel foreman on behalf of Western Railway at BAMY as per rate contract no. IOC/PO8/7/RC 9378/IOC/HSD/37 dated 1/2/1975 and which was being driven back to go out side the BAMY premises enroute to city after decanting HSD oil from its only three compartments at unloading point and without decanting the HSD oil from the remaining compartment reasonably suspected of having stolen or unlawfully obtained railway property and thereby committed an offence punishable u/s. 3 R.P.(U.P) Act,

r.w. 34 of the Indian Penal Code," and in the alternate they have committed an offence punishable u/s 3 R.P. (U.P.)Act r.w. 511 and 34 of the IPC"

2. In the Criminal Court the Learned Magistrate acquitted the applicants. It is observed:

"the result is that the accused No.4 to 7 clearly deserved to be acquitted as the HSD oil is proved to be of the accused No.7 and not of the Western Railway the proper order regarding the disposal of it would be to return it to the accused No.7."

The judgment in another case pronounced that:

"the accused No.1 and 3 to 5 are acquitted of the offence with which they are charged. the property be retained by the railway administration."

None of the applicants was named as accused No.7.

3. After their acquittal a chargesheet was issued by the Railway administration ~~on 19th July 1978.~~
~~charging them~~ The charges read as follows:

In the case of applicant in O.A.337/87 it was mentioned that he failed to supervise the work of Fuel Checkers and Fuel Clerk who have not correctly recorded flow meter readings in the respective registers and thereby lot of quantities of HSD Oil has not been accounted for and thus caused wrongful loss to the Railway Administration and thereby Shri Jagatsingh Mansasingh by his above acts exhibited lack of integrity and devotion to duty and acted in a manner of unbecoming of railway servant and thus

he contravened the Rule 3(1) and Rule 3(2) of the Railway Services (Conduct)Rules,1966."

In the case of applicant in O.A.513/87 it was mentioned that:

"While issuing the HSD Oil to the Loco Engine did not record proper entries in issue register of HSD Oil in respect of opening and closing balance of the said Oil and thereby caused wrongful loss to the Railway Administration and thus he contravene Rule 3(1) of C.C.S(Conduct)Rules,1961."

4. Before the disciplinary proceedings concluded the applicants approached this Tribunal challenging the enquiry proceedings on the ground that the same tantamounts as the charges are practically the same which were before the Criminal Court, and further contended that before the Inquiry Officer the prosecutor is CBI official who is well versed with law while the applicant was not allowed defence assistant who may also be conversant with law. On behalf of the Railways the prayers made by the applicants have been opposed and it has been contended that so far as criminal court is concerned it was a trial for an offence under the Railway Protection Act and Indian Penal Code. So far as the present prosecutions are concerned the chargesheet against the applicants are not identical with the charges which were before the criminal court. As a matter of fact the applicants should have raised this objection before the Inquiry Officer and it was for the Inquiry Officer to decide this question. In case the Inquiry Officer satisfied

that the charges are not identical the Inquiry Officer could have proceeded with the enquiry and in case he is of the view that the charges are identical he should have dropped the enquiry.

Anyhow this objection may be raised before the Inquiry Officer who will decide the question.

In case he comes to the conclusion that the charges are not identical he will proceed with the inquiry. Learned counsel contended that in that case he will be entitled to have defence assistant as the prosecutor is CBI official. As this is a matter for the Inquiry Officer to decide we are not deciding the question.

In this connection reference has been made to the case of J.K. Aggarwal v. Haryana Seeds Development Corporation & Ors., 1991(2)SCC 283.

This is a matter for the Inquiry Officer to decide.

In case the prosecutor is wellversed with law there is no reason why the Inquiry Officer ~~is~~ has also not allow the applicant to have defence assistant who may also conversant with law so that the case of the applicant is not prejudiced.

5. With this observation these applications are disposed of. The applicants stated that they will be filing an application in this behalf before the Inquiry Officer within two weeks from the date of receipt of a copy of judgment and even though applicants prayer has been rejected the Inquiry Officer will reconsider in view of the above observation. Inquiry Officer will now proceed with the enquiry in an expeditious manner in case he comes to the conclusion that enquiry can go ahead.