

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 490/87

Transferred Application No: XXX

DATE OF DECISION 29.4.1993

Shri V.D.Bhosale

Petitioner

Shri Y.H.Appa

Advocate for the Petitioners

Versus

Gen. Manager, W.Rly. Bombay & Ors. Respondent

Shri A.L.Kasturey

Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

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

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 ?


(M.S.Deshpande)
Vice Chairman

NS/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

(13)

OA.NO. 490/87

Shri V.D.Bhosale

... Applicant

v/s.

General Manager,
Western Railway, Bombay & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri M.Y.Priolkar

Appearance

Shri Y.H.Appa
Advocate
for the Applicant

Shri A.L.Kasturey
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 29.4.1993

(PER: M.S.Deshpande, Vice Chairman)

The applicant challenges the order removing him from service in pursuance of finding of guilty recorded against him under a departmental enquiry.

2. The enquiry was held on three heads of charges. The first was that he took a lorry on 10.12.1982 from Umbargaon Station to Bridge No. 213 loaded with 10 sleepers and directed the Khallas to proceed on UP main line towards Gholvad for unloading at Bridge No. 213. He neither accompanied the lorry himself nor deputed any P.Way Mistry to accompany the lorry. Secondly, he did not obtain written permission of the Station Master, Umbargaon before placing the lorry on the line and thirdly, he failed to obtain either full block or partial block in writing for working material-lorry and thereby contravened the provision of para 1805, 1828 & ESR1828 of Way and Works Manual and SR 224(1)(b) and SR 224(4) of the Indian Railway GR & SR of 1968. After considering the evidence adduced, the enquiry officer observed at A-11 as follows :

"The M/lorry was allowed in the block section by SM/UBR. There was proper prot^o2

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tion arranged (vide answer to Q.No.18 put to Shri Bhanna Chhana, Trolleyman). It is true that Shri V.D.Bhosale did not accompany the material lorry. However, he was in the UBR 'A' from where the trains were to be admitted in the block section and from where he commanded the view of the M/lorry also. As this work was of short duration which was to be completed before the arrival of the next train, it was imperative that he stayed at 'A' cabin from where the next train was to be sent in block section and from where he could expeditiously convey the clearance of M/lorry from UP line, after unloading of sleepers to both the switchman UBR "A" cabin & SM UBR (vide answer to Q No.24 put to Shri Bhana Chhana, Trolleyman).

The SHRIT shown by Shri Bhosale PWI, was to obey the Orders of his PWI, without observing the safety Rules as laid down in GR&SR."

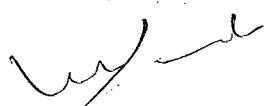
The disciplinary authority observed that he had gone through the allegations, charges, proceedings, findings submitted by the Enquiry Officer and he was in agreement with the findings and therefore accepted the same. He also observed that Bhosale did not take partial block or full block which is obligatory for working of material lorry in order to ensure safety of travelling public, Rly labour, equipment etc. He even did not ask for partial block/full block. By doing so he had violated the safety Rules and such violation can lead to a serious accident. In his view the employee was not fit to be retained in service on account of unsafe working and he did not observe the Safety Rules. The appeal against this order was made to the General Manager and failed.

3. The first submission of the learned counsel was that though initially a chargesheet for minor offence was issued to the applicant the major punishment was imposed upon without giving reasons for altering the charges. In his submission, the Articles of charge did not show any misconduct. We were taken to Rule 6 of the Railway Servants Disciplinary & Appeal Rules, 1968 and it is apparent that the procedure for imposing a minor penalty such as Censure could not have been followed in the present case. The question here was of non-observation of the safety rules and that could have amounted only to misconduct.

The learned counsel for the applicant referred us to the observations in (1989) 9 ATC 369 BEJOY GOPAL MUKERJEE VS. UNION OF INDIA AND OTHERS, but there all that was pointed out was that omission to do an act which though desirable was not directed by rules to be done could not be a misconduct and could not form the subject matter of inquiry.

In UNION OF INDIA V. J AHMED, AIR 1979 SC 1022 the Supreme Court held that Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake do not constitute such misconduct. In the present case the safety rules provided certain norms to be observed and certain formalities to be performed. Non-compliance of these norms, in our view, is a misconduct and it was not necessary to show what the motive of the applicant was.

4. We were also taken through the evidence that was recorded and particularly to the statement of R.M.Bangali who stated that he had made a complaint to the authorities on the information which he had received from Bhana Chhana, the trolleyman. According to the learned counsel the report had not been produced at the time of enquiry. Nothing turned on this aspect because of the core situation obtaining here. Only verbal permission was sought from the Station Master without filling up the necessary papers. There is no dispute that the lorry was taken upto a distance of 2 k.m. and the applicant was not accompanying the lorry. Bengali had stated that he had brought back the trolley from the bridge. Obviously it was left to Bhosale to retrieve it in order to avoid any accident though it was really the applicant's duty to take the lorry back from the bridge to the railway station. Having gone through the evidence we find that the disciplinary authority cannot be faulted for finding the applicant guilty. With regard to the submission that oral permission of the Station Master had been obtained, we do not think that the oral permission was sufficient as under the rules written permission was necessary. If the work



was carried out without the written permission, it did cause violation of rules. The learned counsel for the applicant urged that the work was to take only a short time and filling up of the prescribed forms and obtaining the requisite permission would have taken about 85 minutes. This could not be an excuse for not following the rules and the applicant could not have pleaded this as a justification for ignoring the rules. It is not the function of this Tribunal to reappreciate the evidence on the basis of which findings were recorded. Suffice is to say that there was evidence before the enquiry officer for taking the view. He did. It was also stated that the appellate authority should have passed a speaking order while upholding the finding and imposing the punishment. We do not think so as the appellate order was one of affirmance.

5. Though the point was not raised in the original application, the learned counsel for the applicant referred us to Rule 24 of the Railway Servants (Discipline & Appeal) Rules, 1968. Sub-rule 2 provides that :

"A Class III Railway servant including a skilled artisan, who has been dismissed, removed or compulsorily retired from service, may after his appeal to the appropriate appellate authority, has been disposed of, and within two months thereafter, apply to the General Manager for a revision of the penalty imposed on him. In this application, he may, if he so chooses, request the General Manager to refer the case to the Railway Rates Tribunal for advice before he disposes it. On receipt of such a request, the General Manager shall refer the case to the Chairman, Railway Rates Tribunal, for advice sending him all relevant papers."

The learned counsel for the applicant pointed out that in the appeal to the General Manager, he had made a request that the matter should be sent to the Railway Rates Tribunal. Learned counsel for the respondents stated that action in terms of the Rule had been taken and if an objection were to have been raised in the original application, he could have stated this in his reply. He, however, showed us the order in which it was mentioned that a reference had been made to the Railway Rates Tribunal and the Tribunal did not find any illegality in the order. The



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General Manager had taken this advice into consideration and rejected the review petition. In view of this position, we do not think that the applicant could have derived any assistance from Rule 24.

6. The learned counsel for the applicant urged that there was a violation of Article 21 of the constitution in that the applicant was removed without following the proper procedure as prescribed under Rules 9(1), (6)(ii), 10(1) and 22 of the Railway Servants (Discipline & Appeal) Rules. We do not think that this contention is well conceived because there had been due compliance of those rules. With regard to the quantum of punishment, we find that since the authority has taken the view that the non-compliance of the rule could have caused an accident, the quantum of the penalty imposed was justified.

7. In the result, we see no merit in the application. It is dismissed.

M.Y. Priolkar
(M.Y. PRIOLKAR)
MEMBER (A)

M.S. Deshpande
(M.S. DESHPANDE)
VICE CHAIRMAN