

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
 NEW BOMBAY BENCH  
 XXXXXXDXDXXXXX

O.A. No. 506/87  
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198

DATE OF DECISION 6-9-1988

Shri Sunil Marutirao Tivarekar Petitioner

Shri C. Nathan

Advocate for the Petitioner(s)

Versus

Union of India & 5 Ors.

Respondent

Shri Mohan Sudame (For D.S. Chopra) Advocate for the Respondent(s)

## CORAM :

The Hon'ble Mr. C. Venkataraman, Member (A)

The Hon'ble Mr. M. B. Mujumdar, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A.506/87

Shri Sunil Marutirao Tivarekar,  
40, B.D.D. Block, 12/B,  
Govindji Keni Road,  
Naigaum, Dadar,  
Bombay - 400 014.

.. Applicant

vs.

1. The Divisional Commercial Superintendent(II), Central Railway, Bombay V.T. Bombay - 400 001.
2. The Sr.Divisional Commercial Supdt., Bombay Division, Central Railway, Bombay V.T. Bombay - 400 001.
3. The Additional Divisional Railway Manager (G), Central Railway, Bombay V.T. Bombay - 400 001.
4. The General Manager, Central Railway, Bombay V.T. Bombay - 400 001.
5. The Chief Ticker Inspector, Central Railway, Bombay V.T. Bombay - 400 001.
6. The Union of India, Ministry of Railways, Rail Bhavan, New Delhi - 110 001. .. Respondents

Coram: Hon'ble Member (A) Shri C. Venkataraman  
Hon'ble Member (J) Shri M.B. Mujumdar

Appearances:

1. Shri C. Nathan  
Advocate for the  
Applicant.
2. Shri Mohan Sudame  
(for Shri D.S. Chopra)  
Advocate for the  
Respondents.

... 2/-

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Date: 6-9-1988

ORAL JUDGMENT

(Per M.B.Mujumdar, Member (J))

In 1974 the applicant joined service with the Respondents as Lower Grade Ticket Collector. In 1981 he was promoted as Sr.Ticket Collector in the scale of Rs.330-560. As Sr.Ticket Collector at Bombay V.T. it was his duty to apprehend and prosecute offenders under the Indian Railway Act 1890. For some incident on 6-2-1985, a vigilance enquiry was held and by an order passed on 17- 10-85 by the Divisional Commercial Superintendent (II) Bombay V.T. he was removed from service. The order deserves to be quoted and it reads as under:

"Whereas on the basis of complaint about involvement and association of Shri S.M.Tivarekar, Sr.TC BBVT in taking illegal gratification from the complainant, threatening them for prosecution on 6.2.85 thus by compelling the complainant to part with their money and his subsequent identification by the complainant amongst many other TCS of Bombay VT on 20 & 21.8.1985 in presence of an independent witness, I am convinced of the genuiness of the complaint made by S/Shri V.George and M.J.Mathew officials of Milk Co-operative Societies of Kerala, as there could be no reasons for the strange complainant to pin point at the above named Shri S.M.Tivarekar Sr.TC BBVT. Therefore the denial of his involvement without sufficient proof is not convincing.

Whereas I also find that further enquiries under DAR will not lead to any results as due to flat denial without supporting evidence.

Now therefore I, in exercise of the powers vested in me under rule 14(II) of the Railway servants(Disciplinary Appeal) Rules 1968 have decided to impose upon Shri S.M.Tivarekar Sr.TC BBVT the penalty of removal of service, as by his act a serious complaint has been caused and discredit to railway administration.

Under Rule 18 & 19 of Railway servant (Discipline Appeal)Rules,1968, appeal against these orders lies to senior Divisional Commercial Superintendent, Bombay V.T.

The appeal shall be preferred in his own name and under his own signature and presented within 45 days on receipt of these orders to the Appellate Authority sending a copy of the same to the undersigned.

The appeal shall be complete in itself and shall contain all material statements and arguments on which he relies and shall not contain any disrespectful or improper language."

Against that order the applicant had preferred an appeal on 9-12-1985 but it was rejected on 23-1-1986 by the Sr. Commercial Superintendent, Bombay V.T. Against that order the applicant had preferred second appeal to the General Manager on 8-4-1986. In fact there is no second appeal as such according to the rules, but it was treated as a Review Petition. The Additional Divisional Railway Manager(G) reviewed the order and reduced the penalty of removal from service to that of reduction to the lower grade fixing the pay of the applicant at the bottom of the grade, i.e., Rs.260/- in the grade of Rs.260-400 for a period of three years with cumulative effect. Accordingly the applicant joined service again on 17th May,1986.

Against that order the applicant preferred an appeal

on 4-7-1986 to the General Manager who by his order dtd. 22-7-1986 only directed that the period from 16-10-1985 to 16-5-1986 be treated as dies-non with brake in service. By subsequent order dtd. 215-7-1987 the applicant was transferred to Solapur as Ticket Collector. The applicant has challenged all the above orders including the order of transfer by filing this application under Section 19 of the Administrative Tribunals Act, 1985.

The respondents have resisted the application by filing their written statement on 29-1-1988. The main point to be considered in this application is whether the Divisional Commercial Superintendent was justified in dispensing with the regular enquiry against the applicant under Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968. That rule is analogous to the clause (b) of the second proviso to Article 311(2) of the Constitution of India. These provisions are considered at length by the Supreme Court in Union of India vs. Tulsiram Patel, A.I.R. 1965 SC 1416. Summary of the principles laid down in that case is given usefully in a subsequent ruling of the Supreme Court in Satyavir Singh v. Union of India, A.I.R. 1986 SC 555. In Tulsiram Patel's case the Supreme Court has held that there are two conditions precedent which must be satisfied before clause (b) of the second proviso to Article 311(2) of the Constitution, which as already pointed out is analogous to Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968 comes into play. These conditions are:

- (i) There must exist a situation which makes the holding of an inquiry contemplated by Article 311(2) not reasonably practicable, *and*
- (ii) The disciplinary authority should record

in writing its reasons for its satisfaction that it is not ~~permissible~~ reasonably practicable to hold such inquiry.

It is clear that if these two conditions are not satisfied the Courts will be justified in quashing not only the order by which the regular enquiry was dispensed with but also the consequent orders of punishment.

In this case the Divisional Commercial Superintendent in his order dtd. 17-10-1985 has no doubt given some reason for dispensing with the regular enquiry. As we could make out the reason given by him was that regular enquiry will not lead to any results due to flat denial by the applicant without any supporting evidence. As we can see from the order the Divisional Commercial Superintendent appears to be of the view that it was not practicable to call the persons who had lodged the complaints <sup>as they were</sup> against the applicant from Kerala. But in our view these reasons are not at all legal and sufficient for dispensing with the regular enquiry. It is the case of the applicant before us that he was present in the Court of the 31st Metropolitan Magistrate Bombay on 6-2-1985. It is difficult to find out at what time the incident in question had taken place. Apart from this, without entering to the merits of the case we feel that the finding of the Divisional Commercial Superintendent ~~(H)~~ that it was not practicable to hold a regular enquiry was not justified. We therefore set aside his entire order dtd. 17-10-1985 and subsequent orders of the different authorities in appeal and review.

At the same time considering the allegations against the applicant it will be proper to allow the respondents to hold regular enquiry against the applicant and pass appropriate orders.

The applicant has also challenged order dtd.15-7-1987 by which he was transferred from Bombay to Solapur. As we had refused to stay the transfer he has taken ~~over~~ <sup>charge</sup> at Solapur on 5th September, 1987.

Mr. Nathan submitted that that order of transfer is by way of punishment. We are unable to agree with him and we do not find any ~~any~~ fault in the transfer of the applicant from Bombay to Solapur.

In result we pass the following orders:

- 1) The orders passed (i) by the Divisional Commercial Superintendent (II) Bombay V.T. on 17-10-1985 (Ex. 'B' to the application) (ii) order passed by the Senior Divisional Commercial Superintendent on 23-1-1986 (Ex. 'D' to the application), (iii) order passed by the Additional Divisional Railway Manager (G) <sup>(Ex F)</sup> Bombay on 16-5-1986, and (iv) order passed by the Additional Divisional Railway Manager (G) <sup>(Ex H)</sup> V.T. on 22-7-1986 are hereby quashed and set aside with consequential benefits due to the applicant according to the rules.
- 2) The request of the applicant for cancelling his transfer from Bombay to Solapur by the order passed by the Divisional Railway Manager Bombay by letter dtd. 10-7-1987 is rejected.
- 3) The respondents will be at liberty to hold fresh regular enquiry, if they so want against the applicant for the incident on 6-2-1985.

4) The order in clause 1 regarding consequential benefits to the applicant shall be implemented within two months from the date of receipt of a copy of this order.

5) Parties to bear their own costs.

~~(M.B.MUJUMDAR)~~  
~~Member (J)~~

~~Chintakanam~~  
6/9/1988

~~(C.VENKATARAMAN)~~  
~~Member (A)~~