

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

ORIGINAL APPLICATION NO.937 OF 1988.

Shri V.S. Sharma,
Assistant Station Master,
at Bandra, Western Railway,
Bombay Division,
Bombay - 400 008.

... Applicant

V/s.

- 1) Union of India, through
The General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.
- 2) The General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.
- 3) Additional Divisional
Railway Manager,
Western Railway,
Bombay Central,
Bombay - 400 008.
- 4) Sr.Divisional Operating Supdt.,
Bombay Division,
Western Railway,
Bombay Central,
Bombay - 400 008.

... Respondents

Coram: Hon'ble Member(J), Shri M.B. Mujumdar
Hon'ble Member(A), Shri M.Y. Priolkar

Appearances:

1. Mr.G.S.Walia,
Advocate for the
applicant.
2. Mr.P.R.Pai,
Advocate for the
Respondents.

ORAL JUDGMENT:
(Per: M.B.Mujumdar, Member(J))

Dated: 3.1.1989.

The applicant is working as Assistant Station Master at Bandra. By an order dated 31.5.1988 passed by the Senior Divisional Operating Superintendent, Bombay

....2/-

Central, he is removed from service on the basis of the Inquiry Officer's report. The applicant had challenged that order by filing Original Application No.400/88. After hearing the advocates for both the sides we disposed of that application at the admission stage itself on 28.6.1988 by passing the following order:

"The operation of the impugned order is stayed till disposal of the appeal to be filed by the applicant and in the event of the appeal being dismissed by the Appellate Authority, for a further period of two weeks."

2. The applicant received the order removing him from service and immediately, on 6.7.1988 preferred the appeal. On 5.2.1988 the appellate authority i.e. the Additional Divisional Railway Manager (G), Bombay Central has disposed of the appeal by passing the following order:

WESTERN RAILWAY

No.E/T/308/3/12(88)

DRM's Office,
Bombay Central,
Dated: 5.12.1988.

To,

Shri V.S. Sharma,
ASM - BA.
(Through: SS - BA)

Sub: DAR - N.G.Staff Shri V.S.Sharma, ASM.BA.
Ref: Your appeal dated 6.7.88 in reference to
Sr.DOS-BCT's NIP of even no dt.1.6.1988.

I have applied my mind to the fact of the case and also the defence and appeal submitted by you and do find as under:-

1. The findings of the disciplinary authority are warranted by the evidence on record.
2. The penalty imposed is adequate.

....3/-

You have not brought forward any new points in your appeal dt. 6.7.88. Most of your submissions are only repetitions of which you had earlier stated during enquiry and in your defence. I therefore feel that no useful purpose will be served in giving personal hearing. In your appeal you have stated that you have taken customary divorce and that Mrs.S.V.Sharma has nothing to do with your life. But you had not been able to produce the necessary documentary evidence for customary divorce even on repeated requested from Enquiry Officer, therefore legal divorce has not been proved. On the other hand you have tried to find fault in the documents for second marriage and said that there is no proof of second marriage according to you. But strangely enough I do not find anywhere categorical statement from you, that you have not married for the second time.

I am, therefore convinced this is a case of Bigamy, against the Govt. Service conduct rules.

The appeal is turned down.

Please note and acknowledge receipt.

Sd/-
ADRM(G)BCT.

(underline supplied by us)

3. A copy of the appeal memo dated 6.7.1988 shows that the applicant had raised a number of points in the appeal memo. In our opinion, the appellate authority should have dealt with these points in his order. However, what is more important is that in Clause 2 of our order dated 28.6.1988 we had directed the appellate authority to decide the appeal after giving the applicant an opportunity of being heard. However, in his order dated 5.12.1988 the appellate authority has observed that no useful purpose would be served by giving

personal hearing to the applicant. In our opinion, this is quite contrary to the direction given by us. It may be noted that we had given the direction regarding hearing on the basis of the judgment of the Supreme Court in Ramchandr v. Union of India and others A.T.R. 1986(2) S.C. 252. We had given the direction regarding hearing and it should have been followed by the appellate authority. It is the experience that during personal hearing parties can explain their case in a better way and try to convince the authority about the points raised by them. As the appellate authority has dis-obeyed our direction and as the order is not a speaking order inasmuch as the points raised by the applicant in the appeal memo are not dealt with by the authority, we feel that the appellate order is liable to be quashed. We also propose to saddle the respondents with some costs because the appellate authority has dis-obeyed the directions given by us.

4. By the order dated 21.12.1988 we had admitted the application and adjourned the case to today for interim relief. However, as the facts are not at all in dispute we are disposing of the application finally after hearing the advocate for both the sides.

5. In result, we are practically at the same point at which we were when we had disposed of the applicant's previous C.A. 400/88 on 28.6.1988. Hence we pass the following order:

O R D E R

- ✓ order ✓
- (1) The ^{order} passed by the appellate authority i.e. Additional Divisional Railway Manager (G), Bombay Central on 5.2.1988 (copy of which is attached is Ex.'P' at page 68 of the application) is hereby quashed and set aside.

....5/-

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- (2) The appellate authority shall dispose of the appeal preferred by the applicant on 6.7.1988 after giving the applicant a personal hearing and by dealing with the points raised by him in the appeal memo.
- (3) The operation of the order passed by the Disciplinary authority i.e. The Senior Divisional Operating Superintendent, Bombay Central on 1.6.1988 (a copy of which is attached at Ex.'M' at page 58 of the application) is stayed till the disposal of the appeal preferred by the applicant on 6.7.1988 and in the event of the appeal being dismissed by the appellate authority, for a further period of two weeks.
- (4) The respondents shall pay costs of Rs.250/- to the applicant within one month from the date of receipt of a copy of this order.


(M.Y. PRIOLKAR)
MEMBER(A)


(M.B. MUJUMDAR)
MEMBER(J)