

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 618/88

Transfer Application No:

DATE OF DECISION 14.12.1993

Shri Narayan B.Visave. Petitioner

Shri C.M.Jha. Advocate for the Petitioners

Versus

Union of India & 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.R.Kolhatkar, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not ?
2. 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

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH.

Original Application No.618/88.

Shri Narayan B.Visave.

.... Applicant.

V/s.

Union of India & Ors.

.... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,
Hon'ble Shri M.R.Kolhatkar, Member(A).

Appearances:-

Applicant by Shri C.M.Jha,
Respondents by Shri A.L.Kasturey.

Oral Judgment:-

{Per Shri M.S.Deshpande, Vice-Chairman} Dt. 14.12.1993.

The applicant challenges the finding of guilty and the penalty of depriving him of one increment for a period of two years and a penalty of reduction to the post of S.M. in the time scale of pay of Rs.1600-2660 on pay of Rs.1600/- for a period of two years with effect of postponing the future increments.

2. The applicant was working as Station Superintendent at Khar Railway Station on the Western Railway. He had been issued a pass and he made a report on 3.10.1985 to the Police Station that his Ist Class pass had been lost. On 21.10.1985 his son and daughter-in-law were found travelling on that pass and the Head TTE, Igatpuri made a report about the misuse of the pass by the applicant's son and daughter-in-law. A departmental inquiry was started against the applicant on the charge of serious mis-conduct, in that he was responsible for the fraudulent use of Ist Class Privelege

pass. The applicant pleaded not guilty. Reliance was placed on the report dt. 5.11.1985 which the Head TTE, Igatpuri Shri W. Sonavane had made. Shri Sonavane was not examined as a witness nor were the applicant or applicant's daughter-in-law to show that the pass had been used fraudulently. When the applicant's statement was recorded by the Enquiry Officer in answer to Question No.2 ~~who~~^{he} stated that the administrative witness Shri Sonavane had not been produced for ~~a~~ cross-examination and this was against the principles of natural justice. When the matter came to this Tribunal at the earlier stage the order of punishment passed by the appellate authority was quashed with a direction to the appellate authority to give a personal hearing to the applicant and pass a speaking order. In the memo of appeal the applicant had raised the ground that the Enquiry Officer had no jurisdiction to drop the administrative witness when he was available on Central Railway and this was against the principles of natural justice as he was the only witness cited and had produced and identified the couple who had misused the pass. He also referred in the proceedings to certain certificates issued by the authorities of the Dental College where his son was studying. The appellate authority in its order dt. 15.3.1988 has not referred to the contention raised by the applicant in this respect. It was elementary that if the report made by Shri Sonavane was to be ^{used} against the applicant and the applicant had made a grievance that Shri Sonavane had not been produced as a witness and made available for his cross-examination, care should have been taken to produce that witness. The main ^{who} point raised was that the couple ~~had~~ used the pass later were not the son and daughter-in-law of the applicant. In the absence of the examination of Shri Sonavane and

the failure to produce Shri Sonavane for the cross-examination of the applicant, it must be said that the principles of natural justice had not been followed in the present case and the appellate authority entirely missed this point. We find that there was total non-application of mind by the appellate authority. We therefore set aside the finding of guilty recorded by the disciplinary authority and the appellate authority as well as the penalty imposed on the applicant. The applicant would be entitled to the difference between the ^{wages} charges he would have earned had the order of penalty not been passed against him and those actually earned. This amount be calculated and paid to the applicant within three months from the date of receipt of the order by the authorities concerned. If the applicant is entitled on this basis to any revision in the pensionary benefits permissible to him, the same may also be given to him within the same period.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

M.S. Deshpande

(M. S. DESHPANDE)
VICE-CHAIRMAN

B.