

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 22 243/88

Opposition Application No:

DATE OF DECISION 15.12.92

J D Kengle Petitioner

Mr D V Gangal Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Mr. J G Sawant Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice S K Dhaon, Vice Chairman

The Hon'ble Shri Ms. Usha Savara, 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 ?

NO

Saw
Vice Chairman

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(12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PREScot ROAD; BOMBAY-1

O A NO.243/88

Javjee Deoiji Kengle
Railway Quarter no.H-1
Dombivili
(Maharashtra)

Applicant

v/s

Union of India through
General Manager
Central Railway
Bombay-VT

Divisional Railway Manager
Central Railway
Bombay VT

Respondent

Coram: Hon. Shri Justice S K Dhaon, V.C.
Hon. Ms. Usha Savara, Member (A)

APPEARANCE:

Mr. D V Gangal
Counsel
for the applicant

Mr. J G Sawant
Counsel
for the respondent

ORAL JUDGMENT:
(Per: S K Dhaon, Vice Chairman)

DATED: 15.12.1992

The applicant, the then Cabin Assistant Station Master, Kalyan, was subjected to disciplinary proceedings. The Inquiry Officer recommended that charges nos. 1 and 2 as leveled against him stood proved. The punishing authority on 17.3.88 while agreeing with the recommendation of the Inquiry Officer passed an order compulsorily retiring the applicant from service. In an appeal preferred by the applicant, the appellate authority while maintaining the order of the punishing authority modified the punishment awarded to the applicant. He directed that the applicant should be reduced to the grade of Rs.1400-2300 (RPS) from the grade of Rs.1600-2660. In this application the only

prayer made is that the order of punishing authority may be quashed.

2. It appears that this application was presented before this Tribunal during the pendency of the appeal preferred by the applicant. However, the appeal stood disposed of on 25.4.88 when this application was admitted.

3. A charge memo was given the applicant. The gravamen of the charge was that on 7.7.86 the applicant was on duty during 1500-2300 hours. While on duty he was under the influence of alcohol. He absconded from duty at about 2210 hours. The other charge was that he has been on a number of occasions on different dates punished on account of dereliction towards duty.

4. The enquiry Officer recorded the finding that while replying to question no.8 the applicant admitted the charge of absconding from the place of duty at 22.10 hours. He also recorded the finding that the said admission of the applicant was corroborated by no less than six witnesses. He also recorded the finding that the Doctor's statement recorded on 17.8.87 disclosed that he examined the applicant at about 3.10 hours on 10.7.87 and found him under the influence of alcohol.

5. Regarding the charge no.2 the inquiry officer recorded that the applicant had admitted in his own statement that he had been punished earlier on six occasions vide the answer given by the applicant to Question no.16.

6. Four contentions have been advanced in support of this application. The first is that the list of the documents referred to in the charge memo were not supplied to the applicant. Shri Sawant, the learned

counsel for the respondents, has produced before us the relevant record. It is demonstrated from it that copies of the documents were duly received by the applicant. Moreover, we find from the memorandum dated 8.1.87 issued by the punishing authority that the applicant was informed that he could inspect the relevant record and also take extracts from them. It is not the case of the applicant before us that he was not allowed the inspection of the documents. It is also not his case that he was not permitted to take extracts of the documents which he so desired.

7. Technicality apart, in the facts and the circumstances of the instant case, no prejudice whatsoever was caused to the applicant even if it is assumed that the copies of the documents were not supplied to him. We have already indicated that the Inquiry Officer has recorded the finding that the charge no.1 was brought home to the applicant on account of his own admission corroborated by the testimony of not less than half a dozen witnesses. The establishment of charge no.1, in our opinion, was enough to entitle the punishing authority to pass an order of punishment.

8. The second submission is that the applicant was denied the assistance of a trained lawyer. We have seen the order passed by the relevant authority. It has pointed out in its order that under the rules it was not permissible to allow the applicant the assistance of a trained lawyer. However, the order itself gave an option to the applicant to engage the services of an assisting railway employee. Thus the applicant was not prejudiced at all by the mere fact that he was not

allowed to engage a lawyer.

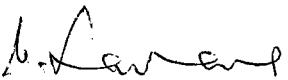
9. The third submission is that the applicant was not permitted to cross examine the witnesses. Shri Sawant has read out to us the specific question put to the applicant as to whether he was satisfied with the proceeding and the answer given by him was that he was fully satisfied with the proceedings conducted by the Inquiry Officer.

10. Shri Gangal has not been able to point out to us that at any stage even a single application was given by the applicant to the Inquiry Officer complaining therein that he was not permitted to cross examine the witnesses. We may note that the applicant has signed the proceedings before the Inquiry Officer in English. We, therefore, find no justification in the argument advanced by Shri Gangal that the applicant being an illiterate person he could not be expected to make an application before the Inquiry Officer to the effect that he was denied the right to cross examine the witnesses.

11. The last submission is that the appellate order stands vitiated as the applicant was not afforded an opportunity to advance oral arguments. We have already indicated that in this application no prayer has been made for quashing the appellate order. However, in the interest of justice we have permitted the applicant to address us even on the appellate order. The appellate order recites the fact that the applicant was given a personal hearing. We are satisfied that the appellate order contains reasons. We have already indicated that the appellate authority modified the order of compulsory

retirement into an order of reducing the grade of the applicant for a certain period. Therefore, there is no escape from the conclusion that the appellate authority applied its mind to the memorandum of appeal preferred by the applicant.

12. There is no substance in this application. It is dismissed, but without any order as to costs.


(Usha Savara)

Member (A)


(S K Dhaon)
Vice Chairman


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