

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

O.A.No. 198
T.A.No. 183/86 & 184/86 198

DATE OF DECISION 5.6.1987.

1. Virdhaval Dhananjay Worlikar
2. Vinayak Dhananjay Worlikar Applicant/s.

Mr.S.R.Atro Advocate for the Applicant/s.

Versus

Union of India through Respondent/s.

Central Rly.V.T.Bombay.

Mr.D.S.Chopra Advocate for the Respondent(s).

CORAM:

The Hon'ble **Vice-chairman B.C.Gadgil**
The Hon'ble **Member (A) J.G.Rajadhyaksha**

1. Whether Reporters of local newspapers may be allowed to see the Judgment? *ye*
2. To be referred to the Reporter or not ? *NO*
3. Whether to be circulated to all Benches? *NO*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

1. Virbhaval Dhananjay Worlikar in Tr.Appln.No.183/86
R/o Worlikar House,
Trombay Custom Road,
Bombay - 400 088.
 2. Vinayak Dhananjay Worlikar in Tr.Appln.No.184/86
R/o. Worlikar House,
Trombay Custom Road,
Bombay - 400 088.
- .. Applicants
(Original Plaintiffs)

V/s

The Union of India through the
Central Railway Administration,
Victoria Terminus,
Bombay - 400 001.

.. Respondents
(Original Defendant)

Coram: Hon'ble Vice-chairman B.C.Gadgil

Hon'ble Member(A) J.G.Rajadhyaksha

Appearance:

1. Mr.S.R.Atre, Advocate
for the applicants.
2. Mr.D.S.Chopra, Advocate
for the Respondents.

ORAL JUDGEMENT
(Per Vice-chairman B.C.Gadgil)

Dated: 5.6.1987.

These two Transferred Applications were originally Suits No.6437/81 and 6436/81 respectively on the file of the City Civil Court at Bombay and they have been transferred to this Tribunal for decisions. As the same points are involved in both the matters, they can be decided by a common judgement.

Both the applicants and one Mr.A.R.Chandok were Railway employees. The Competent authority dismissed these three persons from service without holding any departmental enquiry. The main reasons appear to be that these three employees were involved in 'Matka' gambling activities and that the Assistant Vigilance

.....2

Officer led a party which raided the place where the applicants were found dealing in 'Matka' gambling. The officer was accompanied by certain other colleagues from a subordinate office. In addition, there were panchas.

The competent authority, after looking into the papers, came to the conclusion that it is not reasonable and also practicable to hold an enquiry against the applicants as also against Mr.A.R.Chandok. Thus, dismissal orders were issued against all of them.

The main grievance of the present applicants is that the reasons given by the disciplinary authority for dispensing with an enquiry are irrelevant and that their consequent dismissal from service is bad.

The Respondents contended that an enquiry was dispensed with for good and cogent reasons. On this basis, they support the impugned order,

Mr.A.R.Chandok had filed a Writ Petition No.629/81, in the Bombay High Court. It was decided on 15.9.83. The dismissal order that was passed without holding any enquiry was set aside. The said judgement of the High Court is reported in 1984(49) Factory Law Reporter, Page 337. Mr. Atre relied upon the following observations in para 6 of the Judgement.

" The main evidence against the petitioner is of the raiding party. The Worlikar Brothers were caught red-handed while accepting the Matka betting and the petitioner could be connected with the crime only with reference to the recovery of the betting slips from his possession by the raiding party. The raiding party consists of the Vigilance Officer Mr.Patil, the two panchas and another officer of the Workshop. The reasons recorded by the disciplinary authority nowhere indicates that any member of the raiding party was afraid of the petitioner or would not have come forward to depose against the petitioner in a departmental enquiry. Shri Sethna very fairly stated that there was no apprehension that members of the raiding party would back out and not support the action which they have carried out."

.....3

The exact scope of Clause (b) of the second proviso to article 311(2) of the Constitution of India has been considered by the Supreme Court in the case of Mr. Satyaveer Singh vs Union of India & Others reported in A.T.R. 1986 SC, 76. The Supreme Court has held that decision to dispense with a departmental enquiry has to be on the basis of subjective satisfaction of the disciplinary authority. However, the Supreme Court held that there is scope for a judicial review of the decision to dispense with an enquiry. In para 108 of the Judgement, the Supreme Court came to the conclusion that an order dispensing with an enquiry and an order of penalty following upon it would be void if the court finds that the reasons for that ^{order} are not relevant.

We have already indicated that the main allegation against these two applicants is that the raiding party consisting of a Vigilance Officer and panchas found the applicants dealing in 'Matka' gambling. There does not appear to be any material to suggest that the raiding party and panchas were afraid to give evidence before the officer who would hold the departmental enquiry. Hence, in this background, it would be very difficult to accept the subjective satisfaction of the disciplinary authority, that there is no likelihood of witnesses turning up. Another reason given by the disciplinary authority is that the charges are based on some secret watch report and that revealing the identity of the officer concerned would adversely affect the Administration. In our opinion, it will not be possible for the disciplinary authority to dispense with an enquiry simply because the basis of charges are secret reports. Ordinarily, an employee is

entitled to have an enquiry before action is taken. We are satisfied that the reasons given by the disciplinary authority for dispensing with an enquiry are irrelevant and no prudent person would have dismissed applicants without enquiry on the basis of such reasons.

It was contended by Mr.Chopra that quashing of the impugned order would not be of any use. According to him, after the High Court has quashed the order against Mr.A.R.Chandok, the department has held departmental proceedings on the basis of the incident and a penalty of dismissal from service was inflicted on Mr.Chandok. He argued that similar would be the fate of these applicants at the close of the D.E.which will be held hereafter.

We are afraid the validity or otherwise of the impugned order cannot be scrutinised on the basis of such hypothesis. On the contrary, the above mentioned submission of Mr.Chopra would itself indicate that an enquiry was feasible and still a dismissal order was ordered against Mr.Chandok after dispensing with such an enquiry.


Thus the impugned orders are liable to be quashed and the applicants are entitled to be reinstated in service. Mr.Chopra urged that back wages may not be awarded in favour of the applicants and that they may be reinstated without any such back wages. We do not think that such course is permissible. Once an impugned order of dismissal from service is quashed and set aside, ordinarily necessary consequences of grant of back wages etc must follow. Hence, we pass the following order.

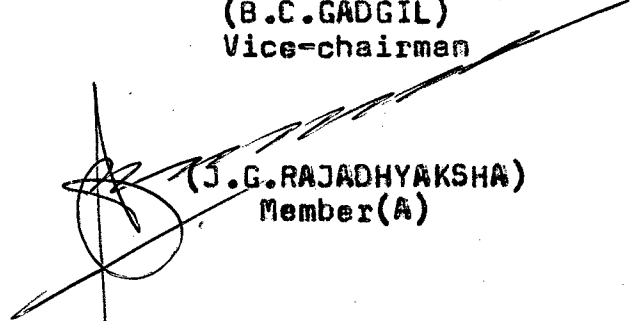
O R D E R

- 1) The Tr.Application Nos. 183/86 and 184/86 are partly allowed.

....5

- 2) The dismissal orders against the applicant Virbhaval Dhananjay Worlikar in Tr.183/86 and against Vinayak Dhananjay Worlikar in Tr.Application No.184/86 are quashed.
- 3) The Respondents are directed to reinstate both the applicants in service with all consequential benefits such as grant of salary and allowances as would be due according to rules.
- 4) It is, however, made specifically clear ^{order} that this ~~would~~ not come in the way of the Respondents to hold a departmental enquiry and pass an appropriate order therein.
- 5) The parties to bear their own cost of these applications.


(B.C.GADGIL)
Vice-chairman


(J.G.RAJADHYAKSHA)
Member(A)