

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

Re. Application No. 203/86

P.S John,
R/o. Sapre Bldg.,
Opp. Dr. A. bedkar Garden,
MIRAJ.

... Applicant
(Original Plaintiff)

Vs.

1. Union of India,
through
The General Manager,
South Central Railway,
Secundarabad,
Andhra Pradesh.

... Respondent.
(Original Defendant)

Coram: Hon'ble Vice-Chairman, B.C. Gadgil,

Hon'ble Member, J.G. Rajadhyaksha.

Appearance:

1. Mr. A.Y. Bedekar,
Advocate for the
applicant

ORAL JUDGEMENT

(Per B.C. Gadgil, Vice-Chairman)

Date: 15-1-1987.

Regular Civil Suit No.108/85 on the file of the Jt.Civil Judge,
Jr.Division, Miraj has been transferred to this Tribunal and is numbered as
Transferred Application No.203/86.

2. To understand the grievance of the applicant it will be necessary to refer to a few facts. In 1982, the applicant was working as Conductor on South Central Railway. One of the duties as Conductor is to accompany a particular passenger carriage where seats are reserved and to see that the passengers who have reserved seats are guided and accommodated properly. On 17-6-1982 the duty assigned to him was to accompany 203 Mahalaxmi Express running from Bangalore to Bombay via Miraj. His duty was between the stations Hubli and Miraj. He entered the concerned carriage at Hubli. It was a First Class compartment. One passenger viz. Om Prakash was travelling in that compartment from Bangalore to Bombay.

... 2...

The line between Bangalore to Miraj is meter gauge and one has to change over to a train on a broad gauge line at Miraj. It appears that Om Prakash made enquiries with the applicant about his onward reservation from Miraj. It is alleged that the applicant did not give proper response and did not give proper replies. In this way, it is alleged that he has committed misconduct. An enquiry was held. The enquiry report went to the Disciplinary Authority viz. Divisional Commercial Superintendent. On 27-6-1983 the Disciplinary authority exonerated the applicant and informed him accordingly. On 12-2-1985 the General Manager of the South Central Railway ordered a fresh enquiry by exercising his revisional powers under Rule 25 of the Railway Servants (Discipline and appeal) Rules, 1968. It is this order that is being challenged before us. Notices have been issued to the respondents after the matter was transferred. The respondents did not appear though notices were served.

3. The impugned order is at Ex.3/4 in the suit. By that order the General Manager has directed a fresh enquiry into the charges levelled against the applicant at the hands of some other Enquiry Officer. It was further directed that the enquiry should be held at Secunderbad though the original enquiry was held at Miraj. Though a number of contentions were raised before us by Mr. Bedekar, we are inclined to accept only one and we do not intend to go into the other contentions.

4. The revisional powers are given in Rule 25. Mr. Bedekar submitted that a "fresh enquiry" is not admissible by the revising or reviewing authority under that rule. According to him what is permissible is a "further enquiry" and not a "fresh enquiry." There is some substance in the submission. However, the written statement of the respondents indicates that they contemplated 'further enquiry'. In this contingency much cannot be made simply because the reviewing authority has used the words 'fresh enquiry' instead of 'further enquiry.'

5. Mr. Bedekar then submitted that the reviewing authority should have given an opportunity to the applicant of being heard before passing such an order. It is true that Rule 25 does not contemplate such an opportunity. However, the reason given by the respondents in the written statement is that

Mr. Om Prakash did not press his allegation against the applicant during the enquiry. Later he alleged that he did not press the charges on account of undue influence and duress. It is material to note that during enquiry Om Prakash was examined himself. He has made a statement suggesting that he has no complaint to make against the applicant and that his grievance was against the railway authorities in general. It is also alleged in the written statement that Om Prakash made a grievance that for his own safety he did not press the grievance at Miraj and that he was willing to give further evidence in an enquiry at any other place. According to Mr. Bedekar the reason given by Om Prakash for not ~~pressing~~ pressing the charges in the enquiry is so surprising that the General Manager should not have accepted it for the purposes of directing further enquiry. There is much substance in this submission and in the peculiar circumstances of this case we think that it would be in the fitness of things if the General Manager gives an opportunity to the applicant of being heard before passing any order in revision. Hence we pass the following order :-

The impugned order or memorandum dt. 12-12-85 (No.90/D & A/UBL/PSJ/207) is quashed and set aside with a direction that the General Manager should give an opportunity to the applicant of being heard before passing any order in revision as to whether the matter should be remanded for further enquiry.

Patties to bear their own costs of the application.

B.C. Gadgil
(B.C. Gadgil)
Vice-Chairman.

J.G. Rajadhyaksha
J.G. Rajadhyaksha
Member (A)