

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY

Transferred Application No. 400/86

Shri K.S. Rao,  
265, Narayan Peth,  
Poona-411 030.

.. Applicant.

vs.

1. Union of India, through  
Secretary, Ministry of Railways,  
New Delhi.
2. The General Manager,  
Central Railway,  
Bombay V.T.

.. Respondents.

Coram: Hon'ble Member(A) Shri J.G. Rajadhyaksha.  
Hon'ble Member(J) Shri M.B. Mujumdar.

Appearances :

1. Mr. Pundale, Advocate  
for the Applicant.
2. Mr. V.G. Rege, Advocate  
for the Respondents.

ORAL JUDGMENT

Date: 7/4/1988.

{ Per: Shri M.B. Mujumdar, Member(J) }

Regular Civil Suit No.746/1979 filed by the applicant Shri K.S. Rao in the Court of the Civil Judge, Senior Division, at Pune is transferred to this Tribunal under section 29 of the Administrative Tribunals Act, 1985.

2. The relevant facts for the purpose of this judgment are these :  
In 1956 the applicant was appointed as untrained candidate. After he completed the training course, he was appointed as trained candidate in December, 1956. In October, 1965 he was transferred to Talegaon as rest-giving clerk. In September, 1967 he was promoted as Senior Parcel Clerk and transferred to the Parcel Office at Byculla. In January, 1969 he was transferred to Pune Coaching Office as Senior Assistant Coaching Clerk.

3. On 26.12.1974 a statement containing two charges was served upon him. The first charge was that while functioning as reservation clerk (Sr. Assistant Coach Clerk), Central Railway, Pune on 7.9.1973, at Window No.9 he demanded and accepted Rs. 5/- from Shri T.G. Kumar for allotting reservations of 4 berths in 83 Dn. Maharashtra Express from Pune to Nagpur on 4 tickets as a motive or reward for showing favour. The second charge was that thereafter on the same day he demanded and accepted Rs.15/- from the same Shri T.G. Kumar for altering the date

of reservation of all the four berths allotted to him and his three friends from 7.9.1973 to 8.9.1973, instead of cancelling the previous four tickets and deducting 30% amount of the ticket fares, and thereby causing a pecuniary loss of about Rs.40/- to the Railway Administration and illegal gain to himself. It was alleged that the applicant by the above acts exhibited lack of integrity and conduct unbecoming of a railway servant thereby violating Rule 3 of the Railway Servants (Conduct) Rules, 1967.

4. By an order dt.14.7.1975 one Shri R.N. Kapoor, Assistant Commercial Superintendent was appointed as Enquiry Officer. But he could not conduct any inquiry. By another order dt. 25.7.1976 one Shri Y.S. Narayanan, Vigilance Officer, was appointed as Enquiry Officer. He examined 11 witnesses including the complainant Shri T.G. Kumar. The applicant also examined himself in support of his defence. By the report dt. 8.10.1976, the Enquiry Officer held that both the charges framed against the applicant were established. By memorandum dt. 15.12.1976 the disciplinary authority i.e. the Divisional Superintendent, Bombay informed the applicant that he was agreeing with the findings of the Enquiry Officer and holding that the charges were proved. The applicant was further informed that the Disciplinary Authority had provisionally come to the conclusion that the applicant was not a fit person to be retained in service and hence the penalty of removal from service was proposed to be imposed on him. The applicant was, therefore, given an opportunity of making a representation on the proposed penalty on the basis of the evidence adduced during the inquiry. Along with the memorandum, a copy of the report of the Enquiry Officer was sent to the applicant. The applicant replied to that memorandum on 24.12.1976. The reply was of 4 pages and therein he had challenged the findings of the Enquiry Officer also. The Disciplinary Authority, however, did not accept the explanation given by the applicant. By order dt. 19.1.1977 he held that both the charges framed against the applicant were proved and imposed the penalty of removal from service w.e.f. the date of receipt of the order or from 31.1.1977, whichever was earlier. The applicant received the order on 22.1.1977 and from that date he was not in service.

5. The applicant preferred an appeal against the above order on 26.2.1977. The appeal was decided by the Appellate Authority on 18.3.1977. The order of the Appellate Authority reads as under :

"I have gone through the appeal of Shri K.S. Rao Reservation Clerk, Pune (BB Division). He had been removed from service for serious misconduct.

He has come and personally seen me, expressed regrets and pleaded for mercy.

However, considering his age and general record of service, as an act of mercy, I am agreeable to take him back in service, but with the penalty of reduction to lower post of Assistant Commercial Clerk grade Rs.260-430 (RS) at the minimum of the grade Rs.260/- for a period of five years. On restoration, the period of reduction will have effect on his seniority. He should not be entrusted with any work connected with cash during this period of reduction.

He should be warned to be careful in future so that there is no recurrence".

6. On 6.4.1979 the applicant has filed the present suit challenging the order of penalty passed by the appellate authority on 18.3.1977. Consequently, he has also ~~thus~~ requested for arrears.

7. The respondents had filed their written statement when the suit was pending in the Civil Court. Issues were also framed. The record shows that the applicant was partly examined in the Civil Court on 3.1.1985. But thereafter nothing was done before the suit was transferred to this Tribunal under section 29 of the Administrative Tribunals Act, 1985.

8. We have heard Shri R.S. Pundale, the learned advocate for the applicant and Shri V.G. Raje, the learned advocate for the respondents. We have also considered the relevant record carefully.

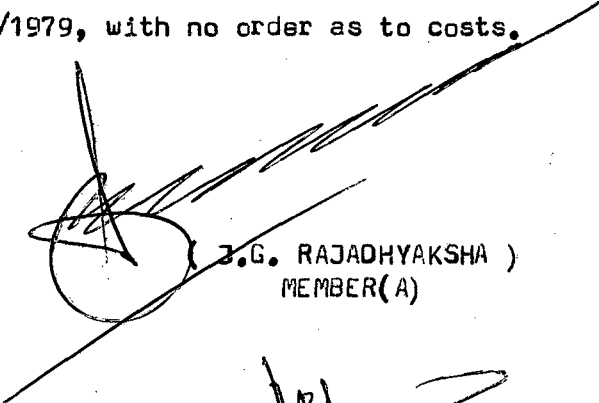
9. It is now well settled that this Tribunal cannot re-appreciate the evidence laid before the Enquiry Officer. This is not a case of no evidence. Before the Enquiry Officer 11 witnesses including the complainant Shri T.G. Kumar were examined. The applicant had also examined himself. After considering all the evidence in detail, the Enquiry Officer has held the applicant guilty of both the charges. Thereafter a show cause notice was given to the applicant along with a copy of the report of the Enquiry Officer. After considering the reply of the applicant, the Disciplinary Authority has held that the charges framed against the applicant were proved and therefore, he imposed the penalty of removal from service on the applicant.

10. The applicant had preferred an appeal against the order of penalty passed by the Disciplinary Authority. The order of the Appellate Authority shows that the applicant had personally seen the appellate authority and expressed regrets and pleaded for mercy. It is in view of that request for mercy that the appellate authority, considering age and record of service reduced the penalty and imposed the penalty of reduction to the lower post of Assistant Commercial Clerk at the minimum of the grade, Rs.260/- for a period of 5 years. On restoration, the period of reduction was to affect <sup>his</sup> seniority.

11. It was argued before us by Mr. Pundale, the learned advocate for the applicant, that the applicant had never met the appellate authority and prayed for mercy. But the statement in the order of the appellate authority is not denied in the plaint anywhere. Hence it is difficult to accept the submission that the applicant had never met the appellate authority. Moreover, if the applicant had not really met the appellate authority, the appellate authority would not have made such a statement in his order. Hence we hold that the appellate authority had reduced the penalty because of the request of mercy made by the applicant. The applicant had also expressed regrets which impliedly means that he was accepting the findings of the Enquiry Officer and the Disciplinary Authority that both the charges were proved. We, therefore, find no merit, whatsoever, in this case.

12. Lastly, Mr. Pundale submitted that the applicant was not given promotions which were due to him according to rules even after the penalty period was over, But we were told that by an order dt. 3.5.1982 i.e. after the period of penalty was over the applicant was restored to his original grade of Rs.330-560. Again by an order dt. 10.2.1987, probably under the scheme of restructuring of cadres, the applicant was promoted to the grade of Rs.425-640 w.e.f. the date of the order. If the applicant feels that he should have got higher promotions, and that too from some earlier dates, his remedy is to file a separate application after exhausting the departmental remedies available to him.

13. With these observations we dismiss this application i.e. the Regular Civil Suit No.746/1979, with no order as to costs.

  
( J.G. RAJADHYAKSHA )  
MEMBER(A)

  
( M.B. MUJUMDAR )  
MEMBER(J)