

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 228/89.

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DATE OF DECISION: 6.1.95

Shri D. D. Mahale, Petitioner

Shri K. R. Jadhav, Advocate for the Petitioners

Versus

Union Of India & Others, Respondents

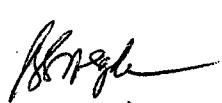
Shri J. G. Sawant, Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B. S. Hegde, Member (J).

The Hon'ble Shri M. R. Kolhatkar, Member (A).

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?


(B. S. HEGDE)
MEMBER(J).

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BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO.: 228 OF 1989.

Shri D. D. Mahale ... Applicant

Versus

Union Of India & Others ... Respondents.

CORAM :

Hon'ble Shri B. S. Hegde, Member (J).

Hon'ble Shri M. R. Kolhatkar, Member (A).

APPEARANCE :

1. Shri K. R. Jadhav,
Counsel for the Applicant.

2. Shri J. G. Sawant,
Counsel for the Respondents.

JUDGEMENT

DATED : 6.1.95

(Per. Shri B. S. Hegde, Member (J)).

1. The applicant filed this O.A. challenging the Impugned Orders dated 09.11.1987 and 16/26.05.1988 respectively and also prayed that he may be allowed to enjoy the benefit of his increment right from 01.10.1988 by quashing the illegal orders.

2. The applicant is working as Head Travelling Ticket Examiner and have 5 Travelling Ticket Examiners under him to manage the reserved coaches. It is an undisputed fact that it was the duty of Head Travelling

Ticket Examiner to depute the Travelling Ticket Examiners under him properly on the reserved coaches so as to avoid inconvenience to the passengers having proper reservation and it is also the duty of the Head Travelling Ticket Examiner and Travelling Ticket Examiners to prevent passengers not having reservation from entering reserved coaches. On 13.07.1986, the applicant was detailed to work as Head T.T.E. from Bhusaval to Dound on train No. 84 Up (Maharashtra Express). The train commenced its journey at Nagpur and the applicant took charge of the reserved coaches including one coach of first class. He had under him 5 Travelling Ticket Examiners and one first-class Coach Attendant. It was the duty of the applicant to depute the staff under him in such a way that no reserved coach should have been remained unmanned. Infact, the applicant had deputed one of the T.T.E. under him to manage 2 reserved coaches and in the same way, he could have deputed the remaining staff to other coaches. However, he failed to depute any of the T.T.E. to manage the coach Nos. 6497 and 9305. On that day, one of the passengers by name Shri Badrinath M. Ghiya, complained to Station Master, Yeola that he was detrained at Yeola. It is true that he did not have a reservation of the said train. On tracing that he does not have reservation, one of the T.T.E.s under the applicant, detrained him, thereby it is clear that the applicant has failed to manage all the reserved coaches with the help of the staffs working under him and left two reserved coaches unmanned. The applicant has stated that he looked after the Ist Class Coach which had one exclusive coach-attendant, itself goes to show that the applicant either

himself could have manned the said unmanned reserved coach leaving the coach attendant to look after the 1st class Coach or could have deputed any of the T.T.Es working under him to manage the reserved unmanned coach. Instead, the applicant chose to remain in 1st Class Coach which was attended by a Coach Attendant and thus neglected his duty to manage all the reserved coaches of the train. On the basis of the complaint recorded by Shri Ghiya, a fact finding enquiry was conducted by Shri S.S. More, Chief Ticket Inspector, who submitted his report dated 31.10.1986.

3. Pursuant to the report, the applicant was issued a Charge-sheet for minor penalty on 10.11.1986. The applicant submitted his reply to the charge-sheet stating that he was managing the 1st class coach in the train. However, he has not denied that the Coach Nos. 6407 and 9305 was not manned by him or any of his staff, which amounts to neglect of duty and careless working on the part of the applicant in performing his duties. After considering the reply of the applicant to the charge-sheet issued by the Respondents, the Disciplinary Authority i.e. Divisional Commercial Superintendent, imposed upon the applicant penalty of withholding of increment for a period of two years with non-cumulative effect vide his order dated 09.11.1987, against which, the applicant made a representation to the Senior Divisional Commercial Superintendent, Bhusaval, who is the Appellate Authority, against the order of penalty dated 09.11.1987. This appeal of the applicant was considered by the

Appellate Authority, who passed the orders rejecting the appeal and thereafter, he filed a mercy appeal addressed to the Divisional Railway Manager, Bhusaval. After considering the same, he took a lenient view in the matter and reduced the punishment of withholding of increment of one year (non-cumulative).

4. In the light of the above, the question to be seen here is, whether there is any infirmities in the order passed by the Competent Authority. It may be recalled that the charge-sheet was issued not on the ground of complaint preferred by an unauthorised reservationist, Shri Ghiya but for the lapse of duty on the part of the applicant. In the charge-sheet it is clearly mentioned that "the applicant, while working as Captain by 84 UP on 13.7.1986 from Bhusaval to Dhond, failed to check P/3 tier 'D' Coach No. 6497, as a result of which, unauthorised passengers travelled in the said coach. Had he supervised the said coach properly and issued message to CTI/GRP/RPF Manmad for assistance to remove the unauthorised passengers from the said reserved coach and detrained the unauthorised passengers from the coach, the complaint lodged in the Public Complaint Book at Yeola Station by Shri Badrinath M. Ghiya, could have been avoided." This amounts to neglect of duty and careless working on the part of the applicant. The grounds raised in the application stating that he has not been given reasonable opportunity to examine the actual complaint, does not appear to have any merit on the penalty imposed by the Competent Authority because the applicant was not held guilty of detraining Shri Ghiya

but he was found guilty of not properly manning all the reserved coaches in the train, which constituted failure on his part in performing his duty. The Competent Authority, after considering the representation of the applicant, have passed the required order, which cannot be assailed, once the procedure laid down has been complied with. In view of the ratio laid down by the Supreme Court in Parma Nanda's case that "if there has been an enquiry consistent with the rules and in accordance with the principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the Competent Authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority," etc. etc. Further, it is clear from the duty chart what duties are to be discharged by the Chief Ticket Inspector and Travelling Ticket Examiners incumbent upon them that it is the duty of the Ticket Examiner to examine the tickets of all passengers travelling by the train and initial/Nip every ticket checked properly, etc., etc.

5. In the light of the above, and for the reasons stated above, we are of the view, that the applicant failed in his duties, as he was in-charge of the train at that point of time and thus, we do not see any merit in the O.A. and the relief made at para 7 of the O.A. is therefore, dismissed but no order as to costs.

M.R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A).

B. S. Hegde

(B. S. HEGDE)
MEMBER (J).