

(24)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 662/89

Transfer Application No:

DATE OF DECISION: 26.10.1994

Shri J.S.Kharat Petitioner

Shri L.M.Nerlekar Advocate for the Petitioners

Versus

G.M. C.Rly. Bombay V.T. & Anr. Respondent

Shri S.C.Dhawan Advocate for the Respondent(s)

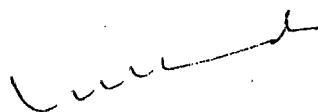
CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri P.P.Srivastava, Member (A)

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


(P.P.SRIVASTAVA)
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN

(23)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 662/89

Shri J.S.Kharat

... Applicant

v/s.

General Manager,
Central Railway,
Bombay V.T. & Anr.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri L.M.Nerlekar
Advocate
for the Applicant

Shri S.C.Dhawan
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 26.10.1994

(PER: M.S.Deshpande, Vice Chairman)

The applicant who was 'C' Grade Driver was charge-sheeted in respect of accident dated 24.12.1985, on 7.1.1986. A joint enquiry was held against the applicant with Anwar Mohd. Khan. During the enquiry the applicant's ARE, Shri Koparkar completed the cross-examination of witness No. 6 and the evidence of Witness No. 7 was recorded from 12.5.1986 onwards. In the midst of cross-examination a request was made for adjournment because Shri Koparkar had not turned up for cross-examining that witness. The adjournment was not granted by the enquiry officer because Koparkar had not produced a medical certificate to support the ground of his illness. The applicant did not thereafter associate with the enquiry and withdrew from the enquiry. An application was sent on 22.5.1986 to the Disciplinary

Authority (Annexure-VIII) mentioning inter alia that Koparkar was suffering from High temperature and was under the treatment of A.D.M.O. Kalyan and he had participated in the enquiry till 11.5.1986. A grievance was made that the adjournment was not granted even on the ground of illness of the ARE and the proceedings thereafter were conducted in the absence of the applicant. The disciplinary authority did not reply to this letter though allegations of bias were made against the enquiry officer. The enquiry officer completed the enquiry on 25.5.1986 and the disciplinary authority passed the order of removal on 4.6.1986. The applicant's appeal was dismissed on 12.8.1986. By the present application several grounds have been raised by the applicant including the one that the disciplinary enquiry had not been initiated by the officer competent to file a charge-sheet but the learned counsel for the applicant Shri Nerlekar stated before us that he was not pressing that ground. The only grounds which are being pressed at this stage are that of bias of the enquiry officer which was made known to the disciplinary authority but no action was taken by the disciplinary authority and that a fair opportunity had not been granted to the applicant to make his defence by cross-examining the witnesses from witness No. 7 onwards by declining an adjournment though ARE Koparkar was ailing. The reason why the adjournment was not granted was that no medical certificate was produced in respect of Koparkar's illness. The learned counsel for the applicant produced before us the fitness certificate and sick certificate to show that Koparkar was ailing from 12.5.86 to 20.5.1986. The learned counsel for the respondents did not question the authenticity of the medical certificate which was issued by the medical officer of the Central

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Railway Hospital. It would, therefore, be clear that Koparkar could not remain present at the time of cross-examination of Witness No. 7 and thereafter on the ground of illness with the result that Witness No. 7 could not be cross-examined further. It appears to us that the enquiry officer should ~~have~~ given time to the applicant to produce medical certificate in respect of Koparkar if he was not satisfied that the ground which had been put forward was not ~~true~~. His not doing so has resulted in a denial of opportunity to cross-examine the witness. We cannot therefore find fault with the applicant for his non-participation in the enquiry when a fair opportunity was not being given to the applicant to make his defence.

2. We have considered also the allegation of bias. We are told that the enquiry officer Shri Gujare has since retired and therefore no question of his continuing with the enquiry can arise even if we were to direct continuance of the enquiry and Shri Nerlekar for the applicant stated that he is willing to go on with the enquiry from the stage from which the applicant stopped participating in the enquiry and that will be from the stage of cross-examining witness No. 7 for the department.

3. We, therefore, set aside the orders passed by the disciplinary authority and the appellate authority and direct the respondents to appoint a fresh enquiry officer to continue the enquiry from the stage of cross-examining witness No. 7. Whether any copies of the additional documents should be given to the applicant or not is left to the enquiry officer because it will be for him to decide the question on the basis of the material before him, since

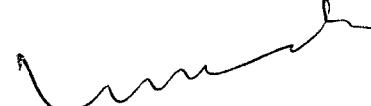
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it would not be open to us to consider its relevance when the matter is being remitted to the enquiry officer. The enquiry officer shall complete the enquiry, after giving an opportunity to the applicant to make his defence in accordance with rules within six months from the date of communication of this order to the respondents. The suspension of the applicant which was effective from 25.12.1985 shall stand revived. The competent authority will examine the question of payment of subsistence allowance to the applicant in accordance with rules within two months from the date of communication of this order and make such payments as are admissible to the applicant. An amount of Rs.5,000/- shall be paid to the applicant within four weeks from the date of communication of this order so that he should be in a position to defend his case and this amount shall be adjusted towards payment of subsistence allowance. With these directions the OA. is disposed of.



(P.P. SRIVASTAVA)

MEMBER (A)



(M.S. DESHPANDE)

VICE CHAIRMAN

mrj.