

(4)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 912/88.

Transfer Application No:

DATE OF DECISION 11.11.1993.

Shri X.M.James. Petitioner

Shri M.M.Sudame. Advocate for the Petitioners

Versus

The DME, South E. Rly., & Anr. Respondent

Shri P.S.Lambat. Advocate for the Respondent(s)

CORAM:

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

The Hon'ble Shri N.K.Verma, Member(A).

1. ~~Whether Reporters of local papers may be allowed to see the Judgement ?~~
2. To be referred to the Reporter or not ? *no*
3. ~~Whether their Lordships wish to see the fair copy of the Judgement ?~~
4. Whether it needs to be circulated to other Benches of the Tribunal ? *no*

N. G. K.

[Signature]
(M.S.DESHPANDE)
VICE-CHAIRMAN

5

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,

BOMBAY BENCH,

CAMP AT NAGPUR.

Original Application No.912/88.

Shri X.M.James.

..... Applicant.

V/s.

The Divisional Mechanical Engineer,

South Eastern Railway,

Nagpur, and another.

..... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman.

Hon'ble Shri N.K.Verma, Member(A).

Appearances:-

Applicant by Shri M.M.Sudame.

Respondents by Shri P.S.Lambat.

Oral Judgment:-

[Per Shri M.S.Deshpande, Vice-Chairman] Dt. 11.11.1993.

The applicant who was appointed as a Driver was given a charge sheet on 9.2.1987 to the effect that he was found under influence of intoxicated drink/drugs which act amounted to endangering public safety on 11.12.1986, and thus failed to maintain absolute devotion to duty and acted in a manner which was unbecoming of a Railway servant. After recording the evidence of the witnesses the Enquiry Officer gave up his findings on 26.7.1987 in following words:

"The charge framed against Shri X.M.James in Major Charge Sheet No.M 1/17/19/BG dated 9.2.1987. Not proved 100% as the Doctor did not follow the procedure.

Also Doctor stated that it was a doubtful case of smelling alcohol and he was not in a drunkenness. Shri J.G.Srinivasan was also stated in his statement that the Driver X.M.James was smelling alcohol but he was steady in talking.

Driver James stated that he has taking

medicine as prescribed by his family Doctor. The blood sample showed presence of 0.103% MGM.

The conclusion was that the charges framed against Driver Shri X.M. James was 50% proved as smelling alcohol and the applicant admitted his fault in taking literis spicata medicine while on duty which contained Alcohol and he regretted this act and promises to give good results while on duty in future."

2. The Disciplinary Authority in its order dt. 12.8.1987 noted that on a careful consideration of the Enquiry Report he agreed ^{with} that the findings of the Enquiry Officer and held that the articles of charge was proved and found the applicant guilty of the charge. He stated that:

"the undersigned has therefore decided that you are guilty of having committed serious misconduct inasmuch as you failed to maintain absolute devotion duty and acted in a manner which is unbecoming of Rly. Servant in that while you were working as the Driver of Train No.N/BOM on 11.12.1986 was found under the influence of intoxication liquor. Your blood sample was found to contain Alcohol. Your behaviour was also not normal as found by ADMN/BB. Your blood sample contain alcohol 0.103%."

3. The punishment of Compulsory Retirement was imposed on the applicant. The applicant appealed to the appellate authority and the appellate authority after reviewing the record of the applicant, which was full of punishments, imposed for various offences including being under the influence of liquor while on duty. He ^{dismitted the appeal} ~~was~~ also referred to the Doctor's Certificate and observed that it was unreliable as it was contradicted by blood sample and therefore, confirmed the punishment imposed by the Disciplinary Authority.

4. Shri M.M.Sudame, learned counsel for the applicant alleged relying on Narain Misra V/s. State of Orissa (1969 S.L.R. 657) that the applicant should have been given an opportunity to show cause before

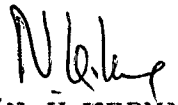
(1)


the Disciplinary Authority disagreed with the finding of the Enquiry Officer. It must be noted here that the position that the applicant had consumed alcohol, though may be through the medium of some medicine according to the Enquiry Officer, had been found ^{to be} under the influence of Alcohol. This was the finding with which the Disciplinary Authority agreed. This was not a case of total dis-agreement with the finding of the Enquiry Officer and it only shows that the perception of the Disciplinary Authority with the evidence differs in degree. The applicant had an opportunity of appealing against the order passed by the Disciplinary Authority and the Appellate Authority by his brief but succinct Judgment agreed with the findings recorded by the Disciplinary Authority. The submission was that the Disciplinary Authority had not passed a speaking order. It must be noted that the order passed by the appellate authority was one of affirmation ^{nice} and no elaborate reasons need ^{ed to} be given ^{about} to the manner in which the appellate authority approached the question and considered the evidence ^{when it} showed that he had applied his mind to the points raised by the applicant in his memo of appeal dt. 30.8.1987. No other question except the appreciation of evidence was raised in the memo of appeal and there was nothing more for the appellate authority to do than to consider ^{evidence} already recorded against the applicant.

5. In the circumstances, we do not think that the proposition laid down in Narain Misra's case applies to the facts of the present case. Our attention is also drawn to the decision of this Bench of the Tribunal in O.A. No.452/89 decided on 19.11.1991, but that decision turn ^{ed} on facts because the decision shows that the Disciplinary Authority did not agree



with the finding of the Enquiry Officer. That decision would not therefore help the applicant. We find that the present case calls for no interference. The Original Application is dismissed. There will be no order as to costs.


(N.K.VERMA)
MEMBER (A)


(M.S.DESHPANDE)
VICE-CHAIRMAN

B.