

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 185/96.

Transfer Application No.

Date of Decision 1-5-96

B.N.Yadav

Petitioner/s

Shri M.S.Ramamurthy.

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri V.S.Masurkar.

Advocate for
the Respondents

CORAM :

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

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 ?

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, BOMBAY.

ORIGINAL APPLICATION NO. 185 / 1996.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri M.R.Kolhatkar, Member(A).

Pronounced this 1st day of May 1996.

B.N.Yadav. ... Applicant.
(By Advocate Shri M.S.Ramamurthy).
V/s.

Union of India &-Ors. ... Respondents.
(By Advocate Shri V.S.Masurkar).

O R D E R

(Per Shri M.R.Kolhatkar, Member(A))

Heard Shri M.S.Ramamurthy, counsel for the applicant and Shri V.S.Masurkar, counsel for the Respondents. The detailed facts of this case have been recited in the Tribunal's Order dt. 23.2.1996 and are not being repeated. The applicant has challenged the appellate order dt. 8.5.1995 in which the Chief Engineer/Appellate Authority observed that the orders of imposition of penalty dt. 11.5.1994 are not in conformity with the extant procedure under RS (D&A) Rules, 1968 and remitted the matter back to the Disciplinary Authority to pass fresh orders of imposition of penalty. He has next challenged the penalty order dt. 1.1.1996 which was passed following the appellate order. He has also challenged the orders conveyed under letter dt. 6.2.1996 which is a reply to his representation dt. 29.1.1996, from C.P.O. informing him that it is not necessary for the appellate authority to pass a speaking order. He has further requested to direct the respondents to allot the applicant the scale of Rs.2000-3200 w.e.f. 1.3.1993 and payment of consequential arrears.

...2.

2. The applicant concedes that he had not gone in appeal against the order of the Disciplinary Authority dt. 1.1.1996 because he does not know why the matter was remitted to the Disciplinary Authority and therefore, he considered the penalty order dt. 1.1.1996 to be without jurisdiction and therefore, he is not required to go in appeal. He has relied on the Judgment of the Supreme Court in Ramchander V/s. Union of India (A.I.R. 1986 S.C. 1173) which lays down that the appellate authority must not only give a hearing to the government servant but also pass a reasoned order.

3. The Respondents have filed their written statement and they have opposed the O.A. According to counsel for the respondents the order dt. 1.1.1996 imposing penalty is an order under Rule 18 of Railway Servants (Discipline & Appeal) Rules against which an appeal lies. This is a statutory remedy open to the applicant and instead of exhausting the same he has approached the Tribunal. According to the respondents this action of the applicant is therefore in violation of section 20 of the Administrative Tribunals Act, According to which the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all remedies available to him under the relevant service rules as to redressal of grievance.

4. According to ^{us} the applicant ought to have exhausted the statutory remedy of appeal which is open to him against the order of the Disciplinary Authority dt. 1.1.1996. The main grievance of the applicant is that he is handicapped in filing an appeal because he does not know as to what were the procedural irregularity^{ies} in the order dt. 11.5.1994 (Original penalty order), that order has been substituted

by the order dt. 1.1.1996 and is no longer in existence. At the same time it cannot be gainsaid that the applicant is entitled to adduce grounds in his appeal which might show that the procedural infirmities ^{which the} from ~~his~~ order dt. 11.5.1994 suffered have also crept in the order of the Disciplinary Authority dt. 1.1.1996. We do not want to go into the question of the validity of the appellate Order dt. 8.5.1995 based on the ground of it ~~is~~ not being a speaking one. However, we are of the view that the applicant is entitled to know the grounds which existed on the file for the appellate authority to come to the conclusion that there were procedural irregularities in the order of the Disciplinary Authority dt. 11.5.1994.

5. We, therefore, dispose of this O.A. at the admission stage by passing the following order:

O R D E R

The O.A. is admitted and dismissed at the admission stage as being pre-mature. However, Respondent No.4 is directed to convey to the applicant the grounds which existed on the file for the appellate authority to arrive at the conclusion that the original order of the Disciplinary Authority dt. 11.5.1994 were not in conformity with the extant procedure under R.S. (D&A) Rules, 1968. These grounds should be conveyed to the applicant within two weeks from the date of receipt of this order. The applicant will be at liberty to file an appeal against the order of the Disciplinary Authority dt. 1.1.1996 within two weeks thereafter and the Appellate Authority is directed to entertain the appeal on merits and not dismiss the same as being time-barred. The applicant

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P.NO.95/96 in OA.NO.185/96

Monday this the 30th day of March, 1998

CORAM : Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri P.P.Srivastava, Member (A)

Baijnath Yadav

By Advocate Shri M.S.Ramamurthy ... Applicant
V/S.

Union of India & Ors.

By Advocate Shri V.S.Masurkar ... Respondents

Tribunal's Order

This is a petition filed by the original applicant alleging that the respondents have committed contempt of the order passed by this Tribunal dated 1.5.1996 in OA.NO. 185/96. The respondents have filed reply stating that no contempt is committed and the order of this Tribunal is complied with. We have heard the learned counsel appearing on both sides and perused the record made available to us by the learned counsel for the respondents.

2. This Tribunal while dismissing the OA.No. 185/96 as pre-mature made observation that the respondents should convey to the applicant the grounds on which the appellate authority remitted the matter to the disciplinary authority. In pursuance of the order by this Tribunal, the respondents have communicated the grounds on which the appellate authority remitted the matter to the disciplinary authority.

But according to the petitioner the respondents have not faithfully complied with the order passed by this Tribunal and therefore they have committed contempt.

3. After hearing both the counsels and perusing the material on record, we are satisfied that the respondents have substantially complied with the order passed by this Tribunal in conveying the grounds which were before the appellate authority for setting aside the order of penalty imposed by the disciplinary authority and remitting the matter to disciplinary authority to pass fresh order from the stage of imposition of penalty.

We, therefore, find that no case is made out for contempt since the communication is given which is in the original order. At this stage, the learned counsel for the applicant states that the order which is in the original file may be communicated to the applicant. We are unable to see that there is any contempt. We cannot give any direction in the contempt petition. We are satisfied that the order is passed by the respondents in compliance with the order passed by the Tribunal. The C.P. is to fail.

4. In the result, the contempt petition is rejected. No costs.

This order is without prejudice to the right of the applicant to file an appeal before the appellate authority against the order of disciplinary authority and we hereby grant 15 days to the applicant from today to prefer an appeal, if so advised, and in such case the appellate authority shall dispose of the appeal according to law.

(P.P.SRIVASTAVA)

MEMBER (A)

(R.G.VAIDYANATHA)
VICE CHAIRMAN