

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 283 of 1996.

Dated this Friday, the 28th day of July, 2000.

Suresh S. Gaikwad, Applicant.

Shri K. B. Talreja, Advocate for the applicant.

VERSUS

Union of India & Another, Respondents.

Shri R. R. Shetty, Advocate for the respondents.

CORAM : Hon'ble Shri B. S. Jai Parameshwar, Member (J).

Hon'ble Shri Govindan S. Tampi, Member (A).

(i) To be referred to the Reporter or not ?

(ii) Whether it needs to be circulated to other Benches of the Tribunal ?

(iii) Library.


(B.S. JAI PARAMESHWAR)
MEMBER (J).

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Hon'ble Shri Govindan S. Tampi, Member (A).

Suresh S. Gaikwad,
Ex-Khalasi, C. Yard,
T. No. 08063928,
Matunga Workshop,
Central Railway under the
Dy. Chief Mechanical Engineer,
Central Railway, Matunga. Applicants.

(By Advocate Shri K. B. Talreja).

VERSUS

1. Union of India through
The General Manager,
Central Railway,
Bombay V.T.
2. The Dy. Chief Mechanical Engineer,
Central Railway, Matunga Workshop,
Matunga, Bombay - 400 019. Respondents.

(By Advocate Shri R. R. Shetty)

OPEN COURT ORDER

PER : Shri B.S. Jai Parameshwar, Member (J).

Heard Mr. K. B. Talreja, the Learned Counsel for the applicant and Shri R. R. Shetty, the Learned Standing Counsel for the respondents.

2. While the applicant was working as Khalasi in the respondents' Railway Administration, he was issued with a charge memo bearing no. E3/08063928-S(i)/111 dated 01.08.1994. The misconduct alleged against the applicant reads as under :

"Shri Suresh S. Gaikwad working as Khalasi in CWM's office MTN (Y.S) committed following serious misconduct in that :-

Article of Charge (I) :

Before joining Railway Shri Suresh S. Gaikwad, Khalasi, was working as Bus Driver under Maharashtra State Transport, Raigad Division, Karjat from 23.04.1990 and without resigning the job and concealing the fact he applied and got employed in Railway Service w.e.f. 17.09.1992.

Article of Charge (II) :

Even after joining the Rly. Service, he continued to draw salary from the State Transport, Raigad. He was subsequently dismissed from service from the Maharashtra State Transport which is a disqualification for getting employment in Govt. service. He concealed this fact and continued to work in Rlys.

By the abovesaid act, Shri Suresh S. Gaikwad, Khalasi failed to maintain absolute integrity and behaved in a manner of unbecoming of Railway Servant and thereby contravened rule No. 3.b (i) & (iii) and also violated rule 15 of Rly. Service Conduct Rules, 1966."

An enquiry was conducted and the applicant participated in the enquiry proceedings.

3. The Disciplinary Authority by its proceedings No. E3/08063928-S(i)/III dated 15.2.1995, Annexure-1, page 10, imposed a penalty of removal from service on the applicant.

4. Against the said penalty order, the applicant submitted an appeal to the Appellate Authority by his appeal dated 22.3.1995. The Appellate Authority by his proceedings No. E-3/08063-S(i)/III dated 07.10.1995 has observed as under :-

"Your above appeal against the penalty of 'Removal from Service' imposed upon you vide this office letter of even no. dated 15.2.1995 has been carefully considered by the undersigned i.e. Appellate Authority and satisfied that the procedure prescribed under D & A Rules has been followed correctly and agree with the E.O.'s findings.

Therefore, the penalty imposed on you is confirmed."

It is stated that the applicant has submitted a review petition against the order passed by the Appellate Authority and that the same has not been considered.

5. The applicant has filed ^{the} ~~an~~ application challenging the order dated 15.02.1995 passed by the Disciplinary Authority and the order dated 30.09.1995/07.10.1995 passed by the Appellate Authority.

6. The applicant has challenged the said orders principally on the grounds that documents were not supplied to him during the enquiry. That the report of the Inquiry Officer was not supplied in full. The Inquiry Officer relied upon certain documents without furnishing the same to him and he was not given an opportunity of personal hearing. Further, he submits that the Appellate Authority has not considered his grounds in the appeal and the order of the Appellate Authority is not a speaking order.

7. The respondents have filed ^{the} a reply. They submit that proceedings were conducted in accordance with the rules and the authorities passed the impugned orders after following the rules and there are no grounds to interfere with the same. As regards the submission of incomplete report of the Enquiry Officer, they rely upon the letter addressed by the applicant, which is at exhibit R-6 to the written statement. During the course of argument, the Learned Counsel for the applicant strongly contended that the enquiry was not conducted in accordance with the procedure. That the Inquiry Officer has not properly appreciated the facts and also not followed the principles of natural justice and that, even the Appellate Authority had not given him an opportunity of personal hearing.

8. On perusal of the order passed by the Appellate Authority, we feel that the Appellate Authority has not applied his mind and his order cannot be ~~called~~ ^{regarded} as a speaking order. The Appellate Authority is expected to follow the procedure contained in Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968. The Appellate Authority is expected to record his findings on certain points, even though these points were not urged by the applicant in the appeal.

9. In that view of the matter, we feel it appropriate to set aside the order of the Appellate Authority and to direct the Appellate Authority to consider the appeal dated 22.03.1995 in accordance with the rules.

10. The Learned Counsel for the applicant prayed for further chance to the applicant to submit ^{the} additional grounds in support of the appeal dated 22.03.1995. We permit him to do so. He shall submit the additional grounds within one month from today.

11. Hence, the following directions are given :

(i) The order dated 30.09.1995/07.10.1995 passed by the Appellate Authority is hereby set aside.

(ii) The applicant may, if so advised, submit a detailed grounds for his appeal against the penalty order dated 21.2.1995. He shall submit such ~~an~~ additional grounds within one month from the date of receipt of a copy of this order.

(iii) After receipt of the additional ground or otherwise, the Appellate Authority shall provide an opportunity of personal hearing to the applicant.

(iv) The Appellate Authority shall decide the appeal as per rules and as expeditiously as possible, by a speaking order.

(v) No order as to costs.

(GOVINDAN S. TAMPI)
MEMBER (A)

OS*

(B.S. JAI PARAMESHWAR)
MEMBER (J).
28.7.05

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

C.P. 78/2001 in
ORIGINAL APPLICATION NO:283/96

TRIBUNAL'S ORDER

DATED:5.10.2001

Shri K.B. Talreja counsel for the applicant. Shri R.R. Shetty counsel for the alleged contemner.

2. We have heard both counsel. Written statement have been filed by Shri Rahul Mittal, Deputy Mechanical Engineer alleged contemner No.2. The order made in the OA was to the effect that the applicant was given liberty to file fresh grounds in his appeal against the penalty order dated 21.2.1995. Directions were issued to the Appellate Authority to decide the matter on merits after giving personal hearing to the applicant. The learned counsel for the applicant submitted that certain documents were not provided.

3. Upon considering argument of both sides and on persuing the papers we find that the directions made in the OA have been implemented. The ground of non-supply of the documents was taken up by the original applicant in the representation which in fact is comprehensive representation. A second representation in additon is also made. The arguments made regarding non supply of documents amounts to re-opening of the OA on merits, which we cannot do in a C.P.

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5. While we express our unhappyness at the time taken for implementation of orders in OA, we accept the apology in this regard. Hence no wilful disobedience has occurred.

6. We discharge the notice on C.P. The C.P. is rejected.

~~for you~~
(S.L.Jain)
Member(J)
NS

B Bahadur
(B.N.Bahadur)
Member(A)

MS/10/01
order ~~is~~ matched
to App. ~~is~~ Agent (s)
⑥ on 8/11/01
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