

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 517/96

Date of Decision : 30<sup>th</sup> May 2002

A.M.Khan Applicant

Shri L.M.Nerlekar Advocate for the  
Applicant.

VERSUS

Union of India & Ors. Respondents

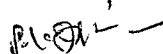
Shri S.C.Dhawan Advocate for the  
Respondents

CORAM :

The Hon'ble Shri B.N.Bahadur, Member (A)

The Hon'ble Shri S.L.Jain, Member (J)

- (i) To be referred to the reporter or not ? YES
- (ii) Whether it needs to be circulated to other ~~no~~  
Benches of the Tribunal ?
- (iii) Library YES

  
(S.L.JAIN)  
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

OA.NO. 517/96

Dated this the 3<sup>rd</sup> day of May 2002.

CORAM : Hon'ble Shri B.N.Bahadur, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

Anwar Mohd Khan,  
Asstt. Driver (Goods Engine),  
Kalyan.

...Applicant

By Advocate Shri L.M.Nerlekar

V/S.

1. The Union of India  
through Additional Divisional  
Railway Manager, Central Railway,  
Bombay V.T.

2. Sr.Divisional Electrical Engineer,  
TRS'O' Central Railway,  
Bombay V.T.

...Respondents

By Advocate Shri S.C.Dhawan

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 to quash and set aside the order dated 25.7.1995 passed by the appellate authority confirming the order dated 28.2.1994 passed by the disciplinary authority with the direction to the respondents to reinstate the applicant in service with full back wages and continuity of service with all consequential benefits.

*per*

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2. The applicant was working as Assistant Driver to Shri J.S.Kharat who was Driver of the Goods Train at Kalyan. He was served with the charge sheet dated 7.1.1986 for major penalty by the Senior Divisional Electrical Engineer in respect of side collision on 24.12.1984 at about 1.05 Hrs. while Panvel Kalyan Goods train was negotiating on ghat line to down through line on Dombivli, another Trombay Miraj goods train which was coming from Trombay, disregarded Red aspect of Signal No. S-13 of Dombivli Central Cabin, passed it as (ON), came and dashed on to Panvel Kalyan goods train. The applicant replied to the said charge sheet. After appointment of Enquiry Officer and Presenting Officer, the enquiry proceeded. After conclusion of the enquiry, the disciplinary authority passed the order dated 11.6.1986 imposing the punishment of removal from service with no pensionary benefits to which the applicant has filed an appeal which was rejected vide appellate authority's order dated 4.5.1987. The applicant filed an OA. before this Bench OA.NO.500/89 challenging the order of punishment which was decided vide order dated 9.10.1991. The respondents filed S.L.P. before the Hon'ble Supreme Court against the said decision, the Hon'ble Supreme Court vide order dated 21.9.1992 (Ex.'B') stayed that part of the order where the applicant was entitled for the monetary benefits and directed the respondents to proceed further in the enquiry. Pursuant to the said direction, the applicant made a fresh representation against enquiry officer's report which was considered by the disciplinary authority, afforded

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to

..3/-

personal hearing on 11.2.1992, 14.2.1994 and passed the order dated 22.2.1994. Against the said order of the disciplinary authority by which the penalty of removal from service with no pension w.e.f. 1.3.1994 or from the date of receipt of the order whichever is earlier was imposed. The applicant filed an appeal dated 5.4.1994 against the same. Meanwhile, the Hon'ble Supreme Court vide its final order dated 13.4.1994 disposed of the SLP remanding the matter to consider the other points raised in the application in accordance with the observations made in their judgement. Accordingly, the Tribunal vide order dated 31.8.1994 considered the facts afresh, remanded the matter afresh to consider his appeal filed on 12.5.1994 and to pass a speaking order after hearing the applicant. The appellate authority after affording personal hearing to the applicant and allowed to bring his A.R.E. passed the impugned order dated 25.7.1995 upholding the order of the disciplinary authority.

3. The learned counsel for the applicant relied on 1994 SCC (L&S) 1131 - Union of India & Ors. Vs. I.S.Singh for the proposition that request for adjournment on medical grounds allegedly accompanied by medical certificate, enquiry officer ignor equest and proceeding ex parte, held Rule 14 (2) as well as principles of natural justice violated, where medical certificate is not accompanied with a request for adjournment, the enquiry officer in such case ought to demand the medical certificate or direct the delinquent to be examined by a specified medical officer but not to proceed ex parte enquiry.

*Don't* -

4. The learned counsel for the applicant relied on an order passed by this Bench in OA.NO.662/89 filed by Shri J.S.Kharat in respect of the same incident. Shri Koparkar who was ARE for the applicant was held to be sick w.e.f. 12.5.1986 to 20.5.1986. The authenticity of the medical certificate which was issued by the Medical Officer of the Central Railway Hospital was not in question. The Tribunal held that the enquiry officer should have given time to the applicant to produce 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. Further held that 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. A joint enquiry was held against Shri J.S.Kharat and the applicant. The finding recorded by the Tribunal in the said OA. holds good particularly when in the said enquiry for the same date for the same person, i.e. Shri Koparkar, the grievance is made by the applicant. The case is covered by the decision cited by the learned counsel for the applicant (1994 SCC L&S) 1131 - Union of India & Ors. vs. I.S.Singh) referred above.

5. We are not expressing any opinion regarding grievances of the applicant in respect of non supply of the documents, appointment of Defence Assistant of his choice, Gazette publication and non compliance of Rule 9 (19),(20),(21) & (22) as the matter is being remitted to the Enquiry Officer for cross examination of Witness No.7 and to proceed further in accordance

*Sign*

..5/-

with Rules. In defence brief, the Enquiry Officer and after the Enquiry Officer's report, the Disciplinary Authority has every occasion to consider and arrive to a conclusion that principles of natural justice is being followed or not. As such, expressing of any opinion may affect the decision of the Departmental Authorities.

6. In the result, OA. is allowed. The order of the disciplinary authority and the appellate authority dated 22.2.1994 and 25.7.1995 are quashed and set aside. The matter shall go to the enquiry officer who will afford the applicant an opportunity of cross examining witness No.7 and thereafter to proceed with the enquiry as per law. To be very specific, affording opportunity of cross examination and thereafter to proceed as mentioned in Rule 9 (19) (20) (21) (22) of the Railway Servants (Discipline & Appeal) Rules, 1968. It is true that the matter is too old one as the incident has occurred in the year 1985 but the gravity of incidence demands that the respondents should continue with the enquiry and conclude the same, i.e. by the disciplinary authority within a period of three months from the date of receipt of the copy of the order. No order as to costs.

*S.L. Jain*  
(S.L.JAIN)  
MEMBER (J)

*B.N. Bahadur*  
(B.N.BAHADUR)  
MEMBER (A)

mrj.

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despatched  
appellant respondent (s)  
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*W*