

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 1247/96

DATE OF DECISION: 04/06/2001

Shri B.G.Sane

Applicant

Shri G.S.Walia

-----Advocate for
Applicant.

Versus

Union of India & 2 Ors.

-----Respondents.

Shri S.C.Dhawan

-----Advocate for
Respondents.

Coram:

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

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

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *No*
3. Library. *yes*

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

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:1247/1996
DATED THE 4th DAY OF JUNE, 2001

CORAM:HON'BLE SHRI S.L.JAIN, MEMBER(J)
HON'BLE SHRI GOVINDAN.S.TAMPI, MEMBER(A)

B.G.Sane,
formerly working as
Head Ticket Collector,
Sholapur

... Applicant

By Advocate Shri G.S.Walia

V/s

1. Union of India, through
General Manager,
Central Railway,
Head Quarters Office,
Mumbai C.S.T.,
Mumbai - 400 001.
2. Divisional Railway Manager,
Sholapur Division,
Central Railway,
D.R.M.'s office,
Sholapur.
3. Divisional Commercial Manager,
Sholapur Division,
Central Railway,
D.R.M.'s office,
Sholapur.

... Respondents

By Advocate Shri S.C.Dhawan

(ORAL)(ORDER)

Per Shri S.L.Jain, Member(J)

This is an application filed under section 19 of the Administrative Tribunal Act 1985 praying to quash and set aside the impugned order dated 12/12/1995 and 3/7/1996 with a declaration that applicant continues to be in service with full back wages, arrears, increments, seniority, promotion, etc.

2. The Revisionary Authority has passed the following order on 14/2/95.

By Shri S.C.Dhawan

...2.

:2:

i) To set aside the penalty of 'Removal from service' imposed by DCM SUR vide order No.V/C/968/BGS/COR/92 dt. 11/5/94 and further confirmed by ADRM SUR on appeal vide order No.U/C/568/BGS/COR/92 dt. 15/9/94.

ii) To remit the case back to the proper disciplinary authority viz. DRM SUR for taking de-novo action from the stage procedural flaw crept in.

iii) You may report to DRM(P) SUR.

3. After reading the same, we are of the view that the penalty of removal of the applicant has been set aside by the Chief Commercial Manager.

4. The learned counsel for the applicant has drawn our attention to para-4.5 of the OA, wherein it is stated that applicant was dismissed from service by order dated 12/5/95 passed by Divisional Railway Manager (DRM), Sholapur who did not afford an opportunity to the applicant to make a representation against the enquiry report and passed dismissal order. A copy of the enquiry report was not sent/delivered to the applicant and has arrived at the conclusion of the guilt of the applicant and passed the penalty order. The learned counsel for the respondents stated that on 23/6/93, copy of the enquiry report was supplied to the applicant and he has represented against the enquiry officer's report on 8/7/93. According to him a fresh copy of the enquiry report is not necessary.

5. Regarding supply of the copy of the Enquiry Officer's report the learned counsel for the applicant argued that it is the disciplinary authority who has to decide the disciplinary

...3.

M. D. D.

proceedings after he examines the report of the enquiry officer and ask the applicant to submit a representation against the same. Apparently, the supply of the copy of the Enquiry officer's report on 23/6/93 and representation against the same on 8/7/93 has already been done by the then disciplinary authority. Hence, there is no need to supply the copy of the Enquiry Report, as contended by the learned counsel for the respondent.

6. But in the present case, when the disciplinary authority is different one, than who has decided the matter earlier, it becomes necessary that the disciplinary authority to issue fresh copy of the Enquiry Officer's report after applying its mind whether to accept the enquiry officer's report or not.

7. In para 4.7 the applicant has stated that he was forced to admit the charges on the ground that if the applicant accepts the charges leniency would be shown to him. The applicant therefore under duress and compulsion was forced to admit the charges. Whatever was said in the Departmental Enquiry was not voluntary. The said fact is denied by the respondents and also contrary to his representation dated 8/7/93 and appeal dated 24/5/94. Thus, it is clearly made out that the applicant is trying to make a new case contrary to his stand earlier taken, which cannot be permitted by any provision of law.

8. The learned counsel for the applicant has also drawn our attention to para-3 page-12 of the OA which reads as below:-

You were also heard in person by my predecessor on 1/11/95 during the course of which you admitted your mistake stating that the mistake was committed unintentionally,

J. B. D. S. ...4.

9. Perusal of the same makes it clear that the appeal was heard by the Predecessor of Shri R.K.Thoopal and the appeal was decided by Shri R.K.Thoopal, Chief Commercial Manager. It is suffice to state that the successor cannot decide an appeal heard by his predecessor.

10. In the circumstances, and the position of law as discussed by us above, we quash the order dated 3/7/96, Exhibit-A (page-12 of the OA) and order dated 12/5/95 and remit the case back to the disciplinary authority, the DRM Sholapur a direction to issue copy of the enquiry report to the applicant after application of mind if necessary and then proceed further in accordance with law.

11. This exercise if necessary should be done within two months from the date of receipt of copy of the order. No order as to costs.


(GOVINDAN S TAMPI)
MEMBER(A)

abp


(S.L.JAIN)
MEMBER(J)