

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:980/96

DATE OF DECISION: 19.10.2001

Shri Chandrasen Kondiba Bansode Applicant.

Shri R.D. Deheria Advocate for
Applicant.

Verses

Union of India and others Respondents.

Shri S.C. Dhawan Advocate for
Respondents

CORAM

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

Hon'ble Shri V.K. Majotra, Member(A)

(1) To be referred to the Reporter or not? yes

(2) Whether it needs to be circulated to ~~no~~ other Benches of the Tribunal?

(3) Library. yes

S.L.Jain
(S.L.Jain)
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 980/96

FRIDAY the 19th day of OCTOBER 2001

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

Hon'ble Shri V.K.Majotra, Member (A)

Chandrasen Kondiba Bansode
R/o Railway Quarter No.12/2 Near
D.R.M. Office , Central Railway,
Solapur.

...Applicant.

By Advocate Shri R.D. Deheria

V/s

1. Union of India through
The General Manager,
Central Railway, Mumbai.
2. The Chief Commercial Manager
Head Quarters Office,
Central Railway, Mumbai CST.
3. The Additional Divisional Railway
Manager, Divisional Office,
Central Railway, Solapur.
4. The Divisional Commercial
Manager, Divisional Office,
Central Railway, Solapur. ...Respondents.

By Advocate Shri S.C. Dhawan.

ORDER (ORAL)

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

This is an application under Section 19 of the Administrative Tribunals Act 1985 for the declaration that the charge sheet dated 27.10.1989 is null and void, all the proceedings and the orders of the respondents imposing any penalty on the applicant be quashed, Enquiry conducted by the respondents i.e. the Disciplinary Proceedings, appellate order and the impugned order of Reduction by two stages in the same

S.C.J. - ...2...

time scale for a period of 37 months non cumulatively dated 12.2.1996 passed by the Revisional Authority is illegal and unjustified with consequential benefits.

2. The applicant who was at the relevant time Divisional Secretary, National Railway Mazdoor Union submitted requisition for Bogie for the Union activity. On the basis of the said requisition the applicant alongwith Members of the said Union availed the facility. In respect of the same charge sheet was issued after a period of more than three years or more when the applicant was not holding the post in the said Union and joined another Union.

3. The grievance of the applicant is that charge sheet is delayed by more than 3 years. In our considered opinion though there has been a delay in issuing the charge sheet, but the delay is not fatal ~~in~~ every case, only in such cases where the applicant is deprived of an opportunity by lapse of time to defend his case, it is fatal.

4. After the enquiry the Disciplinary Authority has passed the order. The ^{appeal} application preferred by the applicant is decided, thereafter the respondents have exercised the power of revision, the applicant has also responded to the same. In such circumstances we are of the considered opinion that by the delay the applicant is in no way prejudiced and he cannot raise such a plea at this stage.

5. The applicant further raised the plea that one of the witness, cited by the department was not examined. It is suffice to mention that all witness are not necessary to be examined. The Enquiry Officer has dropped the same and we do find any fault

with it. It was within the power of the applicant to ask for his cross examination and he failed to exercise the said opportunity, as such now he is not competent to raise such a plea.

6. Regarding non examination of the defence witnesses it is suffice to mention that the applicant himself has stated that he does not want to examine the witnesses.

7. The applicant has given the details of the delay in para 5.9 of the OA which suggests that the delay to conclude the proceedings is worth noting. No doubt there has been delay in concluding the proceedings, the delay by the Revisional authority in deciding the revision after a lapse of more than 3 1/2 years, is worth noting and we express our displeasure over the same.

8. The applicant has raised the grievance that the present act of the applicant was neither within his duty hour nor relates to his duty, hence action is unwarranted. We do not agree with the applicant's counsel for the reason that being an employee of the Railway, he was Secretary of the said Union and in exercise of the said power the said incident has taken place.

9. The learned counsel for the applicant has relied on 1998(3) ATJ 457 (Rameshkumar Mansukhalal Bhatt V/s Union of India and others) and argued that Applicants request for certain persons to be called as defence witnesses denied without any strong reasons. The applicant in the present case has himself dropped the witnessess, hence the principle laid down in the said case does not apply.

10. The learned counsel for the applicant relied on 1989 10 ATC 555 Muthuswamy V/s Postmaster General Karnataka Circle, Bangalore and 1989 10 ATC 146 Dilbagh Singh V/s Union of India

and another and argued that the Revisional Authority ought to have decided the revision within a period of six months. On perusal of the the said authorities we find that the said proposition of law is laid down in CCS(CCA) Rules 1965, Rule 29(1) (v). We are not dealing the case under CCS(CCA) Rules. In the present case Railway Servant Discipline and Appeal Rules apply. In view of Rule only initiation of proceedings ought to have been within six months.

11. The learned counsel for the applicant relied on 2001(1) AISLJ 266 U.P. State Road Transport Corporation & ors. v/s Mahesh Kumar Mishra & Ors. in which the proposition laid down is that there is no absolute restriction on Court interference regarding awarding of penalty which shock the conscience of the Court. We agree to the said proposition of law. On consideration the facts of the present case, which are to the effect that the applicant submitted the requisition on 20.10.1986 (Page 58) for providing one III tier Bogie by 324 Up Ex- SUR to BB and back by 323 Dn on 31.10.1986 Ex-BB to SUR while in fact the Bogie was utilised on 31.10.1986. The applicant being a Railway and the Secretary of NRVM appears to have exceeding his powers by exercising his influence. We are of the considered opinion that the penalty awarded by the respondents is justifiable.

12. In the result we do not find any merit in the OA. It is liable to be dismissed and is dismissed accordingly with no order as to costs.

V.K. Majotra

(V.K. Majotra)
Member(A)

S.L.Jain

(S.L.Jain)
Member(J)