

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 1191/96

Date of Decision : 30th January 2001.

N. Begam & Ors. Applicant.

Shri S.M. Shetty Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents.

Shri V.S. Masurkar Advocate for the
Respondents.

CORAM :

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

The Hon'ble Smt. Shanta Shastri, Member (A)

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

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

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1191/96

Dated this the 30th day of January 2001.

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

Hon'ble Smt.Shanta Shastri, Member (A)

1. Naqmunisa Begam
2. Zarina Begam
3. Firoz Ahmed
4. Razia Begam
5. Asif Ahmed
6. Arif Ahmed

All are residing at Room No.980
Above Hussaini Chowk,
Squatters Colony, Chincholi Gate,
Malad (East), Mumbai.
and Legal Heirs of deceased
Shri Mohammed Ishaque.

...Applicants

By Advocate Shri S.M.Shetty

V/S.

1. Sr.Divisional Operating Supdt.,
Western Railway, Bombay Central,
Bombay.
2. Addl.Divisional Railway Manager(G),
Western Railway, Bombay Central,
Bombay.
3. Union of India through
Chief Operating Superintendent,
Western Railway, Churchgate,
Bombay.

... Respondents

By Advocate Shri V.S.Masurkar

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Recd. -

3. The applicant during the pendency of the OA. expired on 12.2.1997 and his legal representatives were brought on record.

4. The learned counsel for the applicant argued the case based on the proposition that there is no evidence against the deceased Mohd. Ishaque and the deceased Mohd. Ishaque was not supplied with the copy of the medical examination report which was relied on by the authorities and the witnesses not mentioned, in the chargesheet was examined during the course of enquiry. Hence, disciplinary proceedings are vitiated.

E 5. We have carefully perused the chargesheet in original as the respondents have submitted the file of disciplinary proceedings and we find that the medical examination report was not listed as one of the documents in the chargesheet and Jokhan Ram whose statement has been recorded during the course of enquiry on 11.10.1989 was also not listed as witness. The authorities relied on the Medical Examination report without examining even the concerned Medical Examiner, thus the authorities relied on extraneous matters during the course of enquiry.

6. If we peruse the statement of the deceased Mohd. Ishaque, on perusal of the Question and Answer to Question No. 17 that "Do you agree that you were not in complete uniforms and without name badge and plate which breaches the conduct of

Signature / ..4/-

Railway Servant and dress regulation?" : The answer was "Yes. I agree." Not only this, Shri Madhukar in answer to Question No. 1 stated that "As regards uniform he did not change his uniform since he was not feeling well". In answer to Question No. 9, he specifically states that "He was not in proper uniform". Lalitha in answer to Question No. 3 stated that "He was not in proper uniform" and Mirza Baig in answer to question No. 13 also confirms the said fact.

7. Mirza Baig in answer to Question No. 14 states that "While going with the GRP he said that I will see him later". During cross-examination, he further stated that "I cannot say, what does he mean by saying this". In answer to question No. 15, he states that "He was just murmuring".

8. Keeping in view the above evidence on record, coupled with the statement of the applicant in answer to Question No. 22 "I may have murmured 'I will see him later' which is being qualified that intention was to put up my grievance in detail. Such explanation is an after thought one. The act of the applicant is against the conduct of an employee with senior officer who was dealing with him and asked the officials to take him to the hospital for medical checkup.

9. It is true that Shri Madhukar in answer to Question No. 1 stated that he has not threatened Sr.DOS BCT, Jaiprakash does not notice anything in this respect, Lalitha in answer to Question

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No. 7 states that she has not noticed any unusual incidence. Similarly, Jokhanram in answer to Question No. 11 also does not notice any unusual incidence between Sr.DOS and S.M. but in answer to Question No.13 admits that he does not know what was written in the note and he did not enquire about the contents. Jokhanram states that he is not able to state that deceased Mohd.Ishaque was interogated but admits that he was taken by CRP men.

10. Keeping in view the fact that the medical examination report was not supplied to the deceased applicant Mohd. Ishaque nor the medical officer who examined during the course of enquiry and the evidence stated above, we are unable to come to the conclusion rendered by the departmental authorities that the applicant Mohd. Ishaque was drunk on duty. It is the fact that he was not able to stand but it is on account of the fact that after joining the duty he realised that he is suffering and in this respect he also intimated the witnesses about his ill health to take care of him. Hence in our considered opinion part of Article 1 of the charge is not established, as it is based on no evidence.

11. Out of 3 charges, only part of Article 1 is not established but Articles 2 & 3 are duly established. Though the penalty which is awarded by the authorities is in respect of all the 3 charges but as stated above, charges stand proved, this Tribunal cannot go into the question of proportionate punishment or varied punishment.

AC-SM' /

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12. The learned counsel for the respondents argued that the applicant has not raised the grounds which he has argued, hence in absence of the pleadings, the grounds cannot be considered. If we peruse para 8 (d),(e),(f),(g), we find that the applicant has raised the ground that documents were not annexed to the chargesheet and the appellate authority arrived to an erroneous conclusion grossly and in holding the applicant guilty.

13. It is true that the applicant was acquitted by the Court of Metropolitan Magistrate but on perusal of the judgement, we find that the charges which are subject matter of this OA. except\$ drunken state were not the charges before the Court.

14. 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.

Shanta Shastri

(SMT.SHANTA SHASTRY)

MEMBER (A)

S.L. Jain
(S.L.JAIN)

MEMBER (J)

mrj.