

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 284/96

Date of Decision : 8th October 2002

P.M.Kulkarni

Applicant

Shri D.V.Gangal

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 *yes*
Benches of the Tribunal ?
- (iii) Library *yes*

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

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.284/96

Dated this the 8th day of October 2002

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

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

Prakash Manohar Kulkarni
House No.300, Vithal Mandir Ward,
Bhusaval.

...Applicant

By Advocate Shri D.V.Gangal

vs.

1. Union of India
through the Chairman,
Railway Board,
Rail Bhavan, New Delhi.
2. The General Manager,
Central Railway,
Bombay V.T.
3. Divisional Railway Manager,
Central Railway, Bhusaval.
4. The Senior Divisional
Electrical Engineer (TRC),
Central Railway,
Bhusawal.
5. Assistant Electrical Engineer
(TRO), Central Railway,
Bhusawal.

...Respondents

By Advocate Shri V.S.Masurkar

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Shri V.S. Masurkar

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 passed by the disciplinary authority and Appellate Authority dated 26.6.1995 and 11.10.1995 respectively removing the applicant from service with the declaration that the applicant is entitled to be treated as being on duty since 6.9.1991 and to full salary till reinstatement in service.

2. The applicant claims that while working in the Locoshed at Bhusaval was transferred to Badnera to work as Running Room Masalchi vide letter No.BSL/P/LG/30 dated 30.8.1991, joined the duty as such at Badnera on 1.9.1991 and proceeded on sanctioned leave from 2.9.1991 to 5.9.1991. He further claims that he reported for duty before Loco Foreman Badnera on 6.9.1991 but was not allowed to resume duty by the Loco Foreman on the said date without any reasons. Vide communication dated 28.10.1991, the D.R.M. Bhusaval informed the Loco Foreman Badnera that a chargesheet S.F.5 under Discipline & Appeal Rules is being issued and the applicant should not be taken on duty till the finalisation of DAR enquiry (Annexure-'A-2'). The DRM, Bhusawal on 12.1.1993 wrote to Loco Foreman, Badnera intimating that the

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applicant is directed to report for duty and the date of applicant's arrival should be intimated to him. But the Loco Foreman did not take any action in this regard either in permitting the applicant to resume duty or otherwise. On receipt of the communication dated 12.1.1993, the applicant wrote to the Assistant Mechanical Engineer on the same day regarding the inaction of the Loco Foreman pointing out the hardship also with a request to take the applicant on duty immediately vide his representation dated 28.3.1994 (Annexure-'A-7'). The applicant submitted the request to the Additional DRM, Bhusawal on 16.6.1994 that his salary from 6.9.1991 may be arranged to be paid so that he can manage to attend the enquiry on 17.6.1994 along with his A.R.E. Having failed to receive any response from the A.D.R.M. Bhusawal in respect of his representation dated 21.4.1994 & 16.6.1994 and on receipt of communication dated 19.6.1994 from Senior Loco Inspector Bhusawal, the applicant immediately wrote to ADRM on 29.6.1994 followed up by reminder asking for early payment of his dues so that he can attend the enquiry without any difficulty. The applicant received from the DRM's office the communication dated 6.7.1994 indicating that the ADRM has merely passed order "to continue and expedite enquiry proceedings". In response to his detailed representation dated 24.11.1994, the applicant was informed through a communication dated 28.11.1994 received on 1.12.1994 that as the applicant has not joined duty, he is not entitled to any payment.

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3. The applicant while working as R.R.Masalchi at Badnera was served with the chargesheet dated 5.12.1991 in S.F.5 under D.A.R., 1968. The statement in Annexure-II to the chargesheet meant to indicate the misconduct or misbehaviour in support of the charge indicated that the applicant was absent from duty from 3.9.1991 onwards and had made unauthorised corrections in the relieving order to indicate Status as Diesel Assistant whereas he was actually holding the charge as "Y.K.C.". The applicant claims that the chargesheet in S.F.5 was never served on him either on 5.12.1991 or any other date thereafter. No intimation regarding appointment of enquiry officer was sent to him and no steps were taken to appoint the presenting officer. The enquiry proceeded ex-parte. The enquiry officer submitted the report the copy of which was sent to the applicant vide order dated 12.1.1993 (Annexure-'A-5').

4. On 12.1.1993 the DRM Bhusawal issued the fresh chargesheet. There was no response whatsoever from the disciplinary authority in respect of the representation of the applicant for furnishing the copies of the documents. The applicant received on 13.6.1994 a communication dated 8.6.1994 from Shri A.K.Ahluwalia, Sr.Loco Inspector (RR) Bhusawal claiming to be the enquiry officer and intimating that the enquiry scheduled for 13.6.1994 had been postponed to 17.6.1994. Soon after the receipt of the communication dated 8.6.1994, the

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applicant received the communication dated 19.6.1994 on 23.6.1994 from the said enquiry officer intimating the next date of enquiry 8.7.1994, also mentioning the fact that enquiry will be held ex-parte in case the applicant does not attend the enquiry on the said date. In view of communication dated 6.7.1994 by DRM's office regarding "continue and expedite enquiry proceedings", the enquiry officer on 8.7.1994 proceeded ex-parte and during the course of the enquiry one witness was examined out of two, submitted the report dated 13.7.1994 which was received by the applicant on 18.7.1994. The applicant represented against the said report on 1.8.1994 making the grievance that out of two witnesses, only one witnesses was examined, the enquiry officer has undertaken the job of proving the charges, was bias, the applicant did not receive the notice of hearing, salary was not paid promptly, as such, he could not attend the enquiry, and appointment of enquiry officer was not informed to him. The applicant could not get defence assistant, during the course of enquiry, evidence of one witness was shown to the other witness and no expert was examined.

5. After considering the detailed representation, the disciplinary authority informed the applicant vide his letter dated 18.10.1994 that it has been decided to give the applicant a chance to defend the case and hence the S.F.7 dated 3.2.1993, appointment of Shri Ahluwalia as the enquiry officer was being sent to the applicant's earlier address, representation dated

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29.6.1994 was also made available to the applicant. On receipt of the communication dated 18.10.1994, the applicant submitted the representation dated 24.11.1994 inviting a reference to his earlier representation dated 1.7.1994 bringing out the bias of the enquiry officer and requesting for a change on the ground that who has also held the applicant guilty cannot be expected to have any impartial outlook in conducting the enquiry and also requested for payment of his dues (Annexure-'A-17'). The applicant was also informed through a communication dated 28.11.1994 (Annexure-'A-18') that as the applicant not joined duty, he is not entitled to any payment, he has not nominated any ARE within 20 days from the date of appointment of enquiry officer, the disciplinary authority has not accepted any ARE. The applicant was also informed that if he did not attend the enquiry on 8.12.1994, ex-parte decision will be taken. The enquiry officer intimated the applicant about change of date of enquiry vide his letter dated 5.12.1994 to 9.12.1994. On 8.12.1994, the applicant intimated that his ARE would be Shri Ramavatar, Retired OA-II, also stated that he was not allowed to join duty, his father-in-law expired on 7.12.1994. Hence, he could not reply earlier. Before the DRM Bhusawal could consider and take a decision on the applicant's letter dated 8.12.1994, the enquiry officer again resorted to ex-parte enquiry and examined both the witnesses simultaneously in utter violation of the principles of natural justice, the copy of report which was received on 15.12.1994 along with letter dated 21.2.1995 (Annexure-'A-20'). The applicant represented against the said

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finding vide his representation dated 9.3.1995. The disciplinary authority passed the impugned order 26.6.1995 imposing the penalty of removal from service.

6. The applicant preferred the appeal against the said order on 3.8.1995 which was decided by the appellate authority on 11.10.1995 after affording the opportunity of being heard to the applicant. The grievance of the applicant in respect of the Appellate Authority is that ARE was not permitted to be heard by the Appellate Authority and the order is non-speaking one without application of mind. Hence, this OA. for the above said reliefs.

7. On the basis of the pleadings of the applicant, we arrive to a finding that in view of issue of fresh charge-sheet dated 12.1.1993, any grievance of the applicant regarding enquiry proceedings comes to an end as fresh charge-sheet is issued and enquiry is held afresh. Similarly, charge-sheet dated 12.1.1993 which was served on the applicant on 3.2.1993 also loses its importance or grievance of the applicant in this respect comes to an end in view of fresh charge-sheet/inquiry order dated 18.10.1994.

8. Thereafter, the grievance of the applicant is that the enquiry officer was biased as he has arrived to the conclusion of guilt in respect of the charges in earlier enquiry proceedings, the enquiry officer was not changed and dues not paid. His further grievance is that appointment of Defence Assistant was not accepted by the Enquiry Officer on the ground that he was not appointed within 20 days and intimation regarding death of his father-in-law on 9.12.1994 was not considered by the Disciplinary Authority and the Enquiry Officer proceeded to decide the case without awaiting for the same and witnesses were simultaneously examined.

9. If once the Enquiry Officer has arrived to a finding, if fresh enquiry or enquiry from a later stage is ordered to be conducted again, it does not automatically mean that the Enquiry Officer is prejudiced or biased and he ought to have been changed. Timely appointment of Defence Assistant is the duty of the applicant, failure to appoint Defence Assistant time in an enquiry pending since years, defence Assistant not present on the date of hearing also, not accepted by the Enquiry Officer has in no way caused prejudice to the applicant. Hence, the said grievance is of no assistance to the applicant. The applicant was held not entitled to dues. As such, the said grievance is also of no assistance to the applicant. Simultaneous examination of the witness during enquiry proceedings is the method prescribed by law. As such, no grievance can be made in this respect also.

10. The learned counsel for the applicant relied on 1983 (2) All India Services Law Journal 227 - State of Maharashtra vs. Chandrabhan in which Rule 151 (1)(ii)(b) second proviso of Bombay Civil Service Rules, 1959 is held to be unreasonable and void which deals with reduction of subsistence allowance to Rs.1/-p.m. after conviction during the pendency of appeals. On the basis of the said authority, it is argued that the applicant is not paid salary commencing from September, 1991. As such, the enquiry proceedings is vitiated. It is worth mentioning that vide letter dated 28.11.1994 received by the applicant on 1.12.1994 the right of the applicant to receive salary has been decided and denied rightly on the basis of the fact that he has not joined the duty.

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11. The learned counsel for the applicant relied on 1999 (1) S.C.SLJ 429 - Cap.M.Paul Anthony vs. Bharat Gold Mines Ltd. & Anr. and argued that if Subsistence Allowance is not paid during suspension period, adjournment prayed on account of illness duly certified by medical authorities refused resulting in ex-parte enquiry, ex-parte proceeding held by the Enquiry Officer stands vitiated. The applicant was never under suspension and as such, he was not entitled to any subsistence allowance. In the above circumstances, the said authority does not apply to the present case. Regarding adjournment prayed, we are dealing with the matter in subsequent paras in detail.

12. The learned counsel for the applicant relied on 2000 SCC (L&S) 825 - Jagdamba Prasad Shukla vs. State of U.P. & Ors. and argued that non payment of subsistence allowance to delinquent suspended employee amounts to denial of reasonable opportunity as subsistence allowance is a right and not a bounty.

13. The applicant did not sought adjournment with respect to the enquiry dated 9.12.1994 by sending an application to the Enquiry Officer but choose to send the same to the Disciplinary Authority, DRM, Bhusawal.

14. Regarding death of father-in-law, the respondents have clarified the matter in para 32 of Written Statement which is extracted below :-

"It is pertinent to mention that the enquiry was ordered on 9.12.1994 and applicant gave intimation vide letter dated 7.12.1994 received by the respondents on 8.12.1994 for the reason of demisal of his father-in-law on 7.12.1994. The statement made by the applicant regarding demisal of his father-in-law is totally incorrect, false and mis-leading. The applicant while replying to question No.5 in enquiry of chargesheet dated 8.11.1990 ordered on 18.12.1990, in which he stated that his father-in-law expired on 14.6.1990. The applicant while replying to inquiry report reiterated the same contentions. Copy of his representation dated 19.8.1991 is annexed hereto and marked as Exhibit-R-IV."

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15. 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 J

(SMT. SHANTA SHASTRY)

MRMBRR (A)

S.L. Jain

(S.L. JAIN)

MEMBER (J)

mrj.