

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.95/1999.

Date of decision : 31.01.03.

B.S.Rath

Applicant.

Shri R.D.Bhat

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S.Masurkar

Advocate for
Respondents.


CORAM :

Hon'ble Shri D.C.Verma, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member (A).

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

(2) Whether it needs to be circulated to
other Benches of the Tribunal? ✓

(3) Library.


(D.C.VERMA)
VICE-CHAIRMAN

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.95/1999.

this the 31st day of January 2003.

Hon'ble Shri D.C.Verma, Vice-Chairman (J),
Hon'ble Shri B.N.Bahadur, Member (A).

B.S.Rath,
4-B, Ganesh Bhavan,
Senapati Bapat Marg,
Mahim,
Mumbai - 400 016.
(By Advocate Shri R.D.Bhat)

...Applicant.

v.

1. Union of India
through the General Manager
Western Railway,
Churchgate,
Mumbai - 400 020.
2. The Divisional Railway Manager,
Bombay Division,
Western Railway,
Bombay Central,
Mumbai - 400 008.
3. Pankaj Malaviya,
Ex. Additional Divisional
Railway Manager, (O),
Bombay Division, Western Railway,
Bombay Central,
Mumbai - 400 008.
4. Smt. Chetana Kumar,
A.D.R.M. (T), Mumbai Central,
Mumbai - 400 008.
5. The Chief Electrical Distribution
Engineer,
Churchgate, 5th floor,
Station Building,
Mumbai - 400 020.

(By Advocate Shri V.S.Masurkar)


...Respondents.

: O R D E R :

D.C.Verma, Vice-Chairman (J).

The applicant has come to this Tribunal against the order of removal imposed after departmental proceedings. The brief facts of the case is that the applicant was initially engaged as an Apprentice Motorman in February, 1965 and was subsequently

...2.



absorbed as Motorman on 16.3.1969. The applicant was served with a charge memo dt. 18.12.1992. There were three Articles of Charges, the first one is that during the period from 1965 to 1980 the applicant committed gross mis-conduct as he failed to intimate to his department about inheriting a landed property, bearing Plot No.650, Shivaji Park, Dadar, Bombay in his own name from his Grand Father which was gifted to him in the year 1947. The second article of charge is that during the period from 1969-1980 committed gross mis-conduct in as much as he without informing or without obtaining prior permission from his Department constructed a building known as "Rath Mansion" on the aforesaid plot, which building consisted 13 flats. The applicant acquired 10 of the said 13 flats in aforesaid building in his own name without the knowledge of his Department. The third article of charge is that during the period from 1971-1980 the applicant, without obtaining prior permission of his department sold/disposed of 10 of the 13 flats to private persons for monetary consideration by signing sale agreements in the capacity of the Builder of the said building. An Enquiry Officer was appointed and after due inquiry an order of removal was passed, An appeal against the same was also dismissed. Hence, this OA.

2. The submission of the Learned Counsel for the applicant is that as per the Enquiry Officer's report all the three Article of Charges were found established. However, the Disciplinary Authority dis-agreed and after consideration of the evidence and the reply of the applicant found that the Article No.1 of the Charge was found not substantiated. However, according to the Disciplinary Authority the other two Article of Charges were

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found established and so the order of removal from service was passed. The reviewing authority, however, was of the view that Article 1 of the charges is also established. The submission is that the basic rule which has been allegedly contravened by the applicant is Rule 18(1)(a) and (2) of the Railway Service (Conduct) Rules, 1966 (in short, Rules of 1966). The applicant, it is submitted, is not covered under Rule 18 (1). On the other hand, relying on the Govt. Publications the Learned Counsel for the respondents submitted that Note - I below Rule 18 (1) is in respect to 'Group - D' and not Class - III.

3. For clarity, Rule 18 of Rules of 1966 as printed by N.E. Railway Press, Gorakhpur in the year 1979, is being reproduced below :-

"18. Movable, Immovable and Valuable Property - 1 (i) Every railway servant shall on his first appointment to the railway service submit a return of his assets and liabilities, in such form as may be prescribed by the Government, giving full particulars regarding -

(a) the immovable property inherited by him, or held by him on lease or mortgage, either in his own name or in the name of any member of his family or in the name of any other person.;

(b) the shares, debentures and cash including bank deposits inherited by him or similarly owned, acquired or held by him;

(c) other movable property inherited by him or similarly owned, acquired or held by him;

(d) debts and other liabilities incurred by him directly or indirectly.

Note - 1. Sub-rule (1) shall not ordinarily apply to Group 'D' railway servants but the Government may, in appropriate cases, direct that it shall apply to any of such railway servants or any group of such railway servants.

Note - 2. In every return, the values of items of

(Emphasis made by us)

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movable property worth less than Rs.2000.00 may be added and shown as a lump sum. The values of articles of daily use such as clothes, utensils, crockery, books and the like, need not be included in such return.

Note - 3. Where a railway servant already belonging to a service or holding a post is appointed to any other Government or Railway service or post, he shall not be required to submit a fresh return under this clause.

(ii) Every railway servant belonging to any service or holding any post included in group 'A' or group B shall submit an annual return in such form as may be prescribed by the Government in this regard giving full particulars regarding the immovable property inherited by him or owned or acquired by him or held by him on lease or mortgage either in his own name or in the name of any member of his family or in the name of any other person.

(2) No railway servant shall, except with the previous knowledge of the Government, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise either in his own name or in the name of any member of his family.

Provided that the previous sanction of the Government, shall be obtained by the railway servant if any such transaction is -

(i) with a person having official dealings with the railway servant; or

(ii) otherwise than through a regular or reputed dealer."

4. Whether the applicant has or has not violated Rule 18(1) of Rules of 1966 is the question for consideration. The Learned Counsel for applicant submitted that Rule 18(1) is not applicable to Class - III Railway Servants. The Learned Counsel produced before us a photo copy of the Railway Services (Conduct) Rules, 1966 which, according to the applicant, was printed in All India Services Manual. In this photocopy Note-1 below Rule 18 (1) exemption is for "Class - III" Railway employees. If the photocopy of the Rule as produced is seen, it will mean that sub-rule 1 which requires Railway Servant on his first appointment to submit a written return of his assets and

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liabilities in respect of immovable property inherited by him would not be applicable in respect of Class - III employee unless it is specifically directed that it shall apply to Class - III Railway Servants also. The Learned Counsel for the Respondents, on the other hand, produced the Indian Railway Establishment Code Volume 1, 5th Edition 1985 printed by the Government of India Press and published by the Controller of Publications, New Delhi in the year 1986. It contains the Railway Service (Conduct) Rules, 1966 as Appendix - 1 wherein the word used in Note - 1 is "Group 'D' and not "Class - III".

5. We have also seen various other books wherein the Rules of 1966 have been printed. In the Railway Establishment Manual published by Bahri Brothers Delhi (2nd Edition 1985) the Rules of 1966 have been printed wherein the word used is "Class - IV" in Note.1 to Rule 18.

6. Another Govt. Publication is the Diglot Edition, 1979, wherein only the Railway Services (Conduct) Rules, 1966 has been printed in bilingual, by the N.E.Railway Press, Gorakhpur incorporating correction slips issued upto 8.2.1977. In Note 1 to Rule 18 the word printed is "Group 'D'." Thus, in both the government publications the word used in Note - 1 to Rule 18(1) is "Group 'D'". In Bahri Brothers publication as has been mentioned above instead of "Group 'D'" the word used is "Class IV" and in the photocopy made available to us by the Learned Counsel for the applicant the word used in Note.1 to Rule 18(1) is "Class-III". We, therefore, during the course of argument desired from the Learned Counsel for the applicant to produce before us the original of the All India Service Manual from which

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the photocopy of the Rules of 1966 has been produced before us, but the same has not been made available for perusal. We are therefore, unable to make out whether at any stage Class-III employees were also exempted from giving a statement under Rule 18(1) of Rules of 1966 or it is only a mis-print in the photocopy which has been provided by the Learned Counsel for the applicant. As the government publications of the year 1985 have been produced by the Learned Counsel for the Respondents, wherein under Note-1 below Rule 18 (1) Group 'D' employees have been exempted, in absence of any specific order, to give returns under Rule 18(1) of Rules of 1966, we take that as correct. Consequently, the plea of the learned counsel for the applicant that the applicant was not required to give statement under Rule 18(1) of Rules of 1966 is found not correct.

7. The other plea of the Learned Counsel for the applicant is that even if Rule 18(1) of Rules of 1966 covers Group 'C' Railway Employees also the requirement was fulfilled by the applicant long back in the year 1986. The Learned Counsel submitted that Memorandum dt. 28/8-19/12/1986 (Copy Annexure 'C' to the OA) was served to the applicant for non-compliance of Rule 18 (1) of Rules of 1966. The applicant replied thereto and thereafter, the DAR proceedings initiated against the applicant was treated as closed.

7. To appreciate the point raised by the Learned Counsel for the applicant, the statement of allegations attached with the Memorandum dt. 19.12.1986 (Annexure 'C') is being reproduced as below :

" As per Rule 18(1) of Rly. Services (Conduct) Rules 1966 an employee is supposed to submit his Property Returns to the Railway Administration. Shri B.S.Rath

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failed to submit his property returns. He was called by SRM/BCT on 18.8.1986 and handed over personally the property return forms to Shri B.S.Rath. It was agreed by Shri Rath that he would fill up the property return forms and hand over the same to MI-CCG on 20.8.1986. Instead of submitting property forms duly filled in, an application has been received through MI-CCG's letter No.MI/CCG/Gen./2A dt. 20.8.1986 that he would submit his declaration as and when the forms are made available.

This is considered to be "Disobeying the instructions of Superiors."

By letter dt. 19.8.1986 (Annexure - 'D') the applicant informed the Department that MI's Office does not have any forms required by the applicant, nor were made available to him. The applicant also informed that "due declaration shall follow as and when the forms are made available". However, the Respondents served the applicant with the aforesaid memorandum dt. 19.12.1986. It was, thereafter that by the order dt. 11.5.1987 the DAR case initiated against the applicant was closed as per the communication "Annexure - 'E'" reproduced below:

" Sub: DAR - N.G.Staff Shri B.S.Rath
M/Man CCG -
Ref: Memo.11 of even No. dt. 19.12.86.
.....

The DAR case initiated against you vide Memo-11 quoted above, is treated as closed.

Please note and acknowledge the receipt of this letter."

What were the developments, if any, between 1986 when the applicant desired the forms and 11.5.1987 when the DAR proceedings was treated as closed, has neither been brought on record nor has been disclosed by any of the two parties. The only inference which can be drawn is that after the letter dt. 19.8.1986 (Annexure 'D') was sent by the applicant, the forms were made available to him, which the applicant submitted and thereafter the Respondents closed the DAR proceedings vide their

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communication dt. 11.5.1987 (Annexure - E). To find out the correct facts, the Learned Counsel for the Respondents submitted that the same is neither available with him nor is disclosed in the reply of the Respondents and so he is unable to give the developments which transpired between 19.8.1986 and 11.5.1987. The Learned Counsel for the Respondents, however, submitted that DAR proceedings may be closed because of various reasons and not only because the applicant had filed the declaration as required under Rule 18(1) of Rules of 1966. In our view, however, the submission of the learned Counsel for Respondents on this point cannot be accepted. Once the DAR proceedings were initiated and thereafter it was closed, this will mean that the compliance for submission of the statement under Rule 18(1) had been made, otherwise there was no reason for the respondents to treat the DAR proceedings closed. In view of this, the first Article of Charge is based on 'no evidence' and hence it is not substantiated.

8. With regard to the second Article of Charges the submission of the learned counsel for the Respondent is that the applicant committed gross misconduct as he without informing or without obtaining prior permission from the competent authority constructed a building known as "Rath Mansion".

9. The third Article of Charges is that without obtaining prior permission or obtaining sanction from the Department, the applicant sold 10 flats in the aforesaid building i.e. "Rath Mansion" to private persons for monetary consideration by signing sale agreement in the capacity of the builder of the said building.



10. The submission of the learned counsel for the applicant is that in the Rules of 1966, prior permission is not at all required. The only requirement as per Rule 18(2) is that the Railway Servant shall only with the previous knowledge of the Government acquire or dispose of any immovable property by sale, purchase etc. It has been submitted that the applicant got share in the property and only as a Kartha the applicant signed the agreements etc. Further submission is that with reference to a criminal case against the applicant, the applicant was arrested and bailed out. While informing about the same, vide communication dt. 22.12.1984 the applicant had enclosed particulars of the case and property. This is, however, not accepted by the respondents and it has been submitted that the particulars of the property as is said to have been enclosed with the communication dt. 22.12.1984, has not been annexed along with the said communication.

11. Counsel for parties have been heard. Rule 18 (2) of Rules 1966 does not require prior sanction for acquisition or sale of property. The submission on behalf of the applicant that the applicant had not purchased any property and he only secured share in the ancestral property will come within the scope of Rule 18(2) of Rule 1966. Even if the applicant claimed to have acquired a share it was the applicant's duty to inform the department about the same. Further, as per Rule 18(2) sale of the property cannot be made, except with the previous knowledge of the Government. There is nothing on record to show that 10 flats were sold with the previous knowledge of the Government as is required under Rule 18(2). The submission on behalf of the

applicant that the applicant was acting only as "Karthi" and as representative on behalf of other brothers will not absolve the applicant with respect to the share which the applicant came to acquire by inheritance. The charges framed under Articles 2 and 3 have been rightly found established against the applicant.

12. It is noticed that though the Enquiry Officer found that all the 3 articles of charges were established the Disciplinary Authority disagreed and found that the charge under Article - I was not established and passed the order of removal after considering the charges levelled under Article - II and Article - III only.

13. The Appellate Authority, however, disagreed with the view of the Disciplinary Authority with regard to non-establishment of Article of Charge - I and in a detailed order held that the Article Charge No.I is also established. Consequently, thereafter, the Appellate Authority upheld the order of removal.


We have discussed with reference to charge under Article - I and have found that the same is not established. With regard to charge under Article - II and Article - III we have held that they have been rightly found established against the applicant. We, therefore, are of the view that so far the finding of the establishment of mis-conduct under Article - II and Article - III is concerned that has been found established and we do not find any ground to interfere in that. However, with regard to the quantum of punishment, in our view, the Appellate Authority has upheld the order of removal after finding that all the three Articles of Charges were established against the applicant,

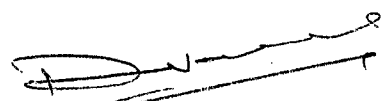


whereas, only two Articles of Charges have been found established. Consequently, the charge of removal may need consideration by the Appellate Authority.

14. We have already considered the Article of Charges established against the applicant which is only because the applicant failed to bring to the knowledge of the Government about the acquisition by inheritance and sale of the property as required under Rule 18(2). Prior sanction is not required under this rule, so the penalty of removal from service is disproportionate.

15. In view of the discussions made above, though we uphold the findings of the Disciplinary Authority and of the Appellate Authority with regard to the establishment of the mis-conduct so far charge under Articles - II and III is concerned, but with regard to the quantum of punishment the matter is to be referred back to the Appellate Authority who may pass appropriate order in this respect. Consequently, though OA is dismissed with respect to the merit, but is allowed in respect of quantum of punishment only as passed by the Appellate Authority and to that extent the order of the Appellate Authority is quashed. The Appellate Authority shall re-consider the matter with regard to the quantum of punishment and thereafter pass an appropriate order in this respect except penalty of removal ^{for dismissal} from service, within a period of 3 months from the date of receipt of copy of this order. The decision so taken by the Appellate Authority shall be communicated to the applicant. The OA stands decided accordingly. Costs easy.


(B.N. BAHADUR)
MEMBER (A)


(D.C. VERMA)
VICE-CHAIRMAN (J)

B.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this Monday the 5th day of July 2004

Coram: Hon'ble Shri A.K.Agarwal - Vice Chairman (A)
Hon'ble Shri S.G.Deshmukh - Member (J)

Review Petition No.18 of 2003

in O-A. 95/99.

B.S.Rath,
4-B, Ganesh Bhavan,
Senapati Bapat Marg, Mahim,
Mumbai - 400 016.
(By Advocate Shri S.D.Dighe)

- Applicant

Versus

1. Union of India
through the General Manager,
Western Railways,
Churchgate, Mumbai 400 020.
2. The Divisional Railway Manager,
Bombay Division, Western Railway,
Bombay Central, Mumbai 400 008.
3. Pankaj Malaviya,
Ex.Additional Divisional
Railway Manager (O),
Bombay Division, Western Railways,
Bombay Central, Mumbai.
4. Smt.Chetana Kumar,
A.D.R.M. (T), Mumbai Central,
Mumbai - 400 008.
5. The Chief Electrical Distribution
Engineer, Churchgate, 5th Floor,
Station Building, Mumbai - 400 020.
(By Advocate Shri V.S.Masurkar)

- Respondents

O R D E R

Per: Hon'ble Shri S.G.Deshmukh, Member (J) -

The present Review Petition is filed by the applicant for review of the Order dated 31.1.2003 in OA 95/99.

2. OA 95 of 1999 was filed for quashing and setting aside the order dated 11.4.1997 and the order of the appellate authority dated 23.3.1999 regarding removal of the applicant and directing the respondents to reinstate the applicant with full back wages and continuity of service.

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3. In the OA the Division Bench of this Tribunal upheld the findings of the disciplinary authority and the appellate authority with regard to the establishment of misconduct so far as Article II and III of the Memorandum of charges is concerned. However, the Tribunal set aside the order of punishment and directed the appellate authority to reconsider the matter with regard to quantum of punishment and thereafter pass an appropriate order in this respect except penalty of removal or dismissal from service with a period of three months from the date of receipt of copy of the order.

4. The applicant has filed this Review Petition contending that the respondents have deliberately suppressed the record to show what transpired between 19.12.1986 and 11.5.1987. It is the contention that he had brought the fact to the notice of the respondents in 1986, that the existing HUF property was developed and the flats constructed were sold to the purchasers by 1978. Hence there was no case for any further action for the respondents to initiate departmental action. There was also no cause of action at all and the initiation of departmental action in the year 1992 is malafide. The Enquiry Officer also had the knowledge about the applicant having submitted his Property Returns including information in the year 1987. The Enquiry Officer malafide did not draw adverse inference on account of non-production of defence submitted by the applicant in respect of Memorandum dated 19.12.1986. Thus it is the contention that

the observation of the Tribunal that there was nothing on record to show that ten flats were sold with the previous knowledge of the Government as is required under Rule 18 (2) is a conflicting observation. It is also the contention that the finding of the disciplinary authority in respect of Articles 2 and 3 which are upheld by the appellate authority are without basis and required to be quashed and set aside. Inordinate delay in initiating disciplinary action itself was sufficient to quash and set aside the entire proceedings.


5. Heard Shri S.G.Dighe, learned counsel for the applicant and Shri V.S.Masurkar, learned counsel for the respondents.


6. In the case of Ajit Kumar Rath Vs. State of Orissa & others (1999 (8) Supreme 321), the Apex Court observed that the "power of review available to Tribunal is same as available to a Court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of a new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an

erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it."

7. It is apparent that review cannot be claimed or asked merely for fresh hearing or arguments. The points which were not argued earlier cannot allowed to be raised for the first time in review petition. The power of review can only be exercised for correction of patent error. A review cannot be granted on the ground that the decision is erroneuous on merits. The decision is erroneuous on merits can be a ground of appeal. The error which is not self-evident and has to be corrected by reasoning can hardly be said to be an error on the face of record justifying to exercise the power of review.

8. We neither find any mistake or error apparent on the face of record nor is there sufficient reason for reviewing the order in question. As mentioned above, power of review can only be exercised for correction of patent error of fact or law. The ground on which review is sought in the present case cannot be said to be a ground for review. The entire case cannot be allowed to be argued for reviewing the order in question. We do not find any merit in the Review Application. It is accordingly dismissed. No costs.


(S.G. Deshmukh)
Member (J)


(A.K. Agarwal)
Vice Chairman