

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 509/2000

DATE OF DECISION: 5/01/2001

Shri Madhukar Shyam Upadhyay

Applicant.

Shri P.A.Prabhakaran

-----Advocate for
Applicant.

Versus

Union of India & 4 Ors.

-----Respondents.

Shri V.S.Masurkar

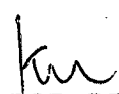
-----Advocate for
Respondents.

CORAM:

Hon'ble Shri Kuldip Singh Member(J)

Hon'ble Smt. Shanta Shastri 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.


(KULDIP SINGH)
MEMBER(J)

abp

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:509/2000
DATED THE 5th OF JAN. 2001**

**CORAM: HON'BLE SHRI KULDIP SINGH, MEMBER (J)
HON'BLE SMT. SHANTA SHASTRY, MEMBER (A)**

Shri Madhukar Shyam Upadhyay
Res. of C/3, Wireless Monitoring Organisation
Staff Quarters,
Department of Telecommunications,
Gorai Road, Borivli (West),
Mumbai - 400 091.

By Advocate Shri P.A. Prabhakaran.

V/s.

1. Union of India through
Secretary, Ministry of Communications,
Department of Telecommunications,
Sanchar Bhavan, 20, Ashoka Road,
New Delhi - 110 001.
2. Deputy Secretary (Admn),
Department of Telecommunications,
Sanchar Bhavan, 20, Ashoka Road,
New Delhi - 110 001.
3. Director,
Wireless Monitoring Organisation (HQ),
E-Wing, 3rd Floor, Pushpa Bhavan,
Madar Geer Marg,
New Delhi - 110 062.
4. Engineer-in-charge,
Regional HQ (Western Region),
I.M.S. Complex, D.O.T.,
Gorai Road, Mumbai - 400 091.
5. Shri L.F. Humney,
Officer-in-Charge, Monitoring Station,
I.M.S. Complex, D.O.T.,
Gorai Road, Mumbai - 400 001. ... Respondents

By Advocate Shri V.S. Masurkar.

(ORAL) (ORDER)

Per Shri Kuldip Singh, Member (J)

The applicant in this OA has come up with this application as he is aggrieved by the allegation that while working as Technical Assistant Grade-II, he made a false claim of

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LTC amounting to Rs.4395/-. An inquiry was held and the inquiry² officer held the applicant to be guilty and the respondents have passed the impugned order dated 31/12/99 imposing major penalty of withholding of two increments for a period of two years from the date of next increment with cumulative effect. The applicant preferred an appeal on 6/3/2000. The appeal was rejected and the impugned orders confirmed. To challenge the same applicant also submitted that the inquiry officer has relied upon one letter dated 19/8/96 written by Railway Officials which is in connection with the claim of applicant and on the basis of the said letter, the inquiry officer had come to the conclusion that the allegation against the applicant stands proved and since the applicant had made a false claim for LTC and had cancelled his tickets as per letter dated 19/8/96.

2. The learned counsel appearing for the applicant submitted that the department should not have relied upon letter of 1996 and an opportunity should have been given to the applicant to cross examine the said official. Since that has not been done, the non-production of documents in original along with interest and reliance on the sole evidence, the letter dated 19/8/1996 of Railway is irregular, illegal and against the principles of natural justice in the absence of primary supporting evidence like PNR and application for cancellation and as such the inquiry proceedings initiated against the applicant and the documents relied by inquiry officer are biased and hence the departmental proceedings should be set aside. In support of this the applicant has relied on (1990)14 ATC 99 V.D.Joseph V/s. Union of India and 2 Ors. have held as under:-

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"Departmental Enquiry - Cross-examination of prosecution witness- Denial of opportunity for - Effect - Ticket numbers given by the delinquent in support of LTC claim found fictitious on the basis of a letter from a railway official - Non-production of the railway official for cross-examination, held, amounted to denial of reasonable opportunity to defend - Natural justice - Hearing."

3. At the end of the judgement, in that case also ^{it was} held that even if the applicant admitted that he has not been able to prove his LTC claim of railway tickets, the violation of principles of natural justice is sufficient to vitiate the disciplinary proceedings.

4. However, the learned counsel appearing for the respondents submitted that it is not the case that the applicant had not travelled, it is only that he did not travel by First Class. They have infact summoned the records of the department and the correspondence, but railway authorities had declined to send the person concerned. Thus, the counsel for respondents submits that the respondents have stated that it was not possible for Respondents to produce the railway official to be cross-examined by the applicant. In these circumstances, the inquiry officer had rightly relied upon the letter dated 19/8/96. The counsel for the respondents submitted that in case of disciplinary inquiries, it is not essential that the charged official is to be held guilty as it is done in the criminal trials. It is sufficient if the preponderance of probabilities indicate that charge stands proved. In this case there was an evidence in the shape of letter received from the Railway authorities that the relevant tickets with the given ticket numbers on the basis of which LTC claim was submitted by the

applicant had been got cancelled which go to show that applicant had not travelled on those tickets. It was for applicants to show that in fact he had travelled on that ticket. Since applicant failed to discharge onus on his part thus, Enquiry Officer could rightly rely on letter dated 19/8/96 received from Railway Department.

5. We have gone through the judgement relied upon by the applicant and we find that this does not help the applicant and it is on a different issue. In that case, the copy of the inquiry report was not given to the applicant and since the applicant had asked for extra time, the same was not granted, whereas in this case the procedure followed by the disciplinary authority is in line with the rules laid down for the same and hence we do not find any illegality on the part of the inquiry officer for relying on letter dated 19/8/96.

6. We however find that it is not for us to re-appreciate the evidence while ~~of~~ exercising power of judicial review. We are only to see whether the process in arriving at a conclusion has been properly followed or not and in this case, the inquiry officer had followed all the Principles of Natural Justice and hence we do not find any fault with the inquiry held. The learned counsel for applicant also submitted that it was at the instance of Respondent No.5, who was instrumental in initiating this inquiry that when applicant had submitted his claim and produced his ticket, it was for him to show that he had in fact travelled. We do not find any malice on the part of Respondent No.5.

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7..... Therefore, in our opinion, there is no fault in the process and the inquiry has been held as per proper procedure and has arrived at the conclusion that the applicant is guilty, we also find that no interference is called for from this Tribunal, hence the OA is dismissed. No costs.

Shanta F.

(SHANTA SHASTRY)
MEMBER(A)

abp

Kuldip Singh

(KULDIP SINGH)
MEMBER(J)