

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 653 of 2000.

Dated this Monday, the 16th day of April, 2001.

Shri M. N. Nair, Applicant.

Shri K. B. Talreja, Advocate for the  
Applicant.

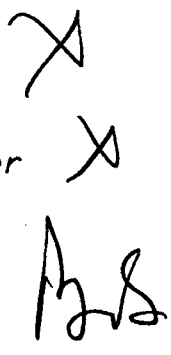
VERSUS

Union Of India & Another, Respondents.

Shri S. C. Dhavan, Advocate for the  
Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).  
Hon'ble Shri S. L. Jain, Member (J).

- (i) To be referred to the Reporter or not ? X
- (ii) Whether it needs to be circulated to other X  
Benches of the Tribunal ?
- (iii) Library. X

  
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(B. N. BAHADUR)  
MEMBER (A).

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CORAM : Hon'ble Shri B.N. Bahadur, Member (A).  
Hon'ble Shri S. L. Jain, Member (J).

Shri M.N. Nair,  
Ex-Foreman 'B' under  
Divisional Railway Manager,  
(Elec.)/Mumbai C.S.T.

... Applicant.

(By Advocate Shri K. B. Talreja)

VERSUS

1. Union of India through  
The General Manager,  
Central Railway,  
Mumbai C.S.T.

2. The Divisional Railway Manager,  
Central Railway,  
Mumbai C.S.T.

... Respondents.

(By Advocate Shri S.C. Dhavan)

OPEN COURT ORDER

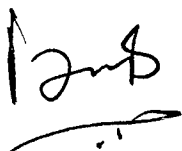
PER : Shri B. N. Bahadur, Member (A).

The Applicant in this case, Shri M.N. Nair, comes up to  
this Tribunal seeking the relief as follows :

"VIII. RELIEF SOUGHT :

The applicant most respectfully and humbly prays  
for the following reliefs :

(i) The Respondents may kindly be directed to cancel  
the Charge Sheet, which is vague and inconsistent to the  
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Rules as laid down in the Railway Servants' Conduct Rules, 1968.

(ii) The Respondents may kindly be directed to quash and set aside the enquiry proceedings, which have not been conducted according to the rules and flouted the rules of natural justice and also the rules laid down in RS (DA) Rules, 1968.

(iii) Any other relief/reliefs as this Hon'ble Tribunal may deem it appropriate looking to the facts and circumstances of the case.

(iv) The cost of this petition may kindly be awarded to the applicant."

2. The case made out by the Applicant in this O.A. is as follows :

The Applicant states that he was served with a charge-sheet for minor penalty on 29.04.1994, where certain charges were made against him in respect of the period during which he was under suspension. These charges are available and detailed in the annexures filed by him. The point made by the Applicant and his Counsel in the argument is that the Applicant had submitted, from time to time, the statement about his non-employment and it was only after the verification of this statement that the subsistence allowance came to be paid/increased. Only much later the Respondents have come up with the charges that the Applicant was doing business. The first point made out by the Applicant is that the charge-sheet is vague in as much as the charge-sheet states, in Article-I of the charge, that the total amount of payment received by the Applicant

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Bnb

was approximately Rs. Four Lakhs. The accent is on the word 'approximate' and this is depended upon to make the point that the charge sheet is vague. The Applicant also states that the charge-sheet is false and goes into various details about his employment or otherwise in this regard.

3. The Applicant has cited Rule 15 of the Indian Railway (Conduct) Rules and also F.R. 53 in his support. The Learned Counsel also made a reference to I.R.E.C. 2044 in support of his case.

4. It is stated in argument on behalf of the Applicant that the Applicant was only constructing his house, and selling some flats thereon, and was not indulging in business. This was being done on behalf of his family members. The Learned Counsel for the Applicant has cited the aforesaid rules in his support. The defence of the Respondents is that the application cannot be considered in the background of the law settled by the Hon'ble Supreme Court and that it is premature. The Learned Counsel for the Respondents, who argued the case, urged the Tribunal to consider the law settled by the Supreme Court in the following two cases.

- (i) Transport Commissioner, Madras V/s. A. Radha Krishna Moorthy reported at 1995 (1) ATJ 299.
- (ii) Government of Tamil Nadu V/s. N Ramamurthy, reported at 1997 A.I.R. SC 3571.

*Bent*

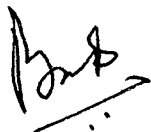
He made the point that the Applicant had taken part in enquiry proceedings. He specifically brought to our notice the file containing the report of the Inquiry Officer which was served on him. In fact, in this connection, the Learned Counsel for the Respondents made the point that the Applicant had made a false statement in para one of his O.A.s. The main point made and repeated by the Learned Counsel was that, since the enquiry proceedings had been completed, and only the decision had to be arrived at by the disciplinary authority, the applicant had come up prematurely to the Tribunal and on this count alone the O.A. was liable for dismissal. The Learned Counsel then went into some of the details of the stand taken by the Applicant to the effect that he was only constructing his house and stated that this was not the correct position and in fact, it was a business.

5. ~~\_\_\_\_\_~~ <sup>As</sup> We have gone into the facts of the case, as brought out in the pleadings, and have also considered the arguments made before us in detail by both Learned Counsel. As we go into this case, we remind ourselves <sup>of</sup> the law settled by the Supreme Court in regard to dealing with cases at the initial stage which come up with reference to disciplinary enquiry. The first point which we would consider is regarding the vagueness of the charge, as alleged. We have considered the papers and gone into the overall context and meaning with reference to the word 'approximate' used. It cannot be stated that the word 'approximate' in the

present context enables us to conclude that the charges are vague. The main charge, as pointed out by the Learned Counsel was on the allegation that business was being done during the course of suspension and this figure is cited only to show the extent of financial transaction involved. We agree that it cannot be stated that the charges are vague.

6. In regard to the other points regarding the merit of the charges made, we are in agreement with the Respondents' point of view. Based on the law settled by the Hon'ble Supreme Court, we would not like to go into this aspect at this stage when the Applicant has participated in the enquiry. A copy of enquiry report has been furnished to him and he has made a representation. It will now be first for the Disciplinary Authority to take a decision in the matter. Needless to say, if the Applicant is aggrieved by a decision of the competent authority, he will be at liberty to come up to the Tribunal as per law.

7. We must at this stage note the point made out that though the enquiry was completed in 1998, the Disciplinary Authority has still not decided on the matter. The Learned Counsel made the point that since the Applicant has retired, the matter is to go to the Railway Board. True and well enough <sup>156</sup> ~~that~~ over three years have lapsed. In fact, we are constrained to observe that had a decision been taken within a reasonable time, the Applicant



... (6)

could perhaps have moved in <sup>an appropriate</sup> ~~that~~ direction on that decision. We also learn on information provided by the Learned Counsel across the bar that the matter has been going on in correspondence between the Railway Board and local office of the Central Railway. At present, the matter is pending, we are informed, on back reference before the Mumbai office. This is something we deprecate and <sup>but</sup> ~~at best~~ would like to give a direction with regard to the time frame in the completion of the enquiry.

*but* 8. Accordingly, while we dismiss this application, ~~but~~ we ~~also~~ direct that the Railway Board shall complete the process of disciplinary enquiry and pass final orders within six months from today at the latest. There will be no order as to costs.

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

*B.N. Bahadur*  
(B.N. BAHADUR)  
MEMBER (A).