

ORIGINAL APPLICATION NO.138/2000

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

O.A.No.138/2000

Dated this , the 14th day of December, 2001.

CORAM: HON'BLE SHRI S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE SHRI S.L.JAIN, MEMBER (J)

Shri G.S. Rathore,
Project Manager,
GM, Old Bldg.
Western Railway,
Churchgate,
Mumbai.

.... Applicant

(Applicant by Shri D.V. Gangal, Advocate)

vs.

1. Union of India through Secretary,
Railway Board,
New Delhi.

2. General Manager,
Western Railway,
Churchgate,
Mumbai.

.... Respondents

(Respondents by Shri V.S. Masurkar, Advocate)

O R D E R

[Per: S.R. Adige, Vice Chairman (A)]

The applicant impugnes the appellate authority's order dated 8.12.1999 (Annexure A.17) rejecting his appeal against the penalty of censure imposed upon him pursuant to disciplinary proceedings.

2. Applicant was proceeded against departmentally vide Memo dated 27.9.1994 (Annexure A.2) for a major penalty under Rule 9 of Railway Servants (Discipline & Appeal) Rules, 1968 on six Articles of Charge relating to failure to attend a meeting fixed by Principal RSC, Vadodara on 1.6.1993 to discuss the progress of work; disobeying specific lawful orders, given by his superior officers, unauthorised absence from duty; and close association

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with a private musical company; and lending his official address in various commercial advertisements of that company.

3. Applicant in his reply dated 12.5.1995 denied the charges and requested for a personal hearing. Thereupon an oral enquiry was ordered and applicant attended the preliminary hearing on 1.9.1995. However, thereupon he asked for certain documents to prepare his defence. Enquiry Officer called upon him to meet him on 16.2.1996 to discuss relevance of these additional documents which had been asked for to decide which of those documents would be supplied to him. Applicant did not attend that meeting nor subsequent meetings despite several ^{letters} ~~times~~ on E.O.'s part to get him to do so. The E.O. thereupon conducted the Enquiry *ex parte* and in his report dated 31.7.1998 held each of the six of the Articles of Charge has proved.

4. A copy of the E.O.'s report was furnished to applicant on 3.7.1996 for representation, if any. Applicant contested some of the procedural aspects of the enquiry, particularly the non provision of the documents and the holding of the Enquiry *ex parte*, but there are no material to establish that he made any specific submission on the E.O.'s findings against him on merits.

5. The applicant asked for a personal meeting with the Disciplinary Authority (GM, Western Railway) which was granted to him on 16.1.1997 who recorded that at the meeting applicant "could not bring out any new point" and at the same time "it was seen that the Officer had been evading attending the enquiry despite several opportunities given to nor had he submitted any defence".

5. Applicant asked for a fresh enquiry which was rejected by the Disciplinary Authority who felt that the E.O. had examined

all aspects connected with the case. As such, the Disciplinary Authority accepted the report with direction that a copy of the same be served on the applicant for final defence/representation. Applicant failed to do this upon which the Disciplinary Authority after applying his mind ^{to the} ~~on~~ materials on record, took a lenient view of the matter and imposed upon the applicant the Minor Penalty of Censure.

6. Thereupon, ^{Applicant} filed an appeal. The appellate authority (President of India) in consultation with the UPSC, who tendered their advice on 26.10.1999, (page 51-56 of the OA) rejected the appeal ^{vide} ~~where~~ impugned order dated 8.12.1999 (Annexure A-17) giving rise to the present O.A.

7. We have heard applicant's counsel Shri D.V. Gangal and respondents' counsel Shri V.S. Masurkar.

8. The first ground taken by Shri Gangal was that copies of certain documents ^{which} ~~who~~ were required for applicant's defence in the Departmental Enquiry and were listed in its letters dated 31.10.1994 (Annexure A.6) and dated 13.12.1996 (Annexure A.7) were notⁿ supplied to him, which severely prejudiced in his defence in the Departmental Enquiry. In this connection, Shri Gangal contended that the Enquiry Officer was not empowered under Rules to call upon the applicant to meet him to determine whether the documents which he sought for his defence were relevant or not and E.O. should himself have first summoned the documents and then taken a view whether they were relevant for applicant's defence.

9. In this connection, Shri V.S. Masurkar has invited our attention to para.7 of the respondent's reply to OA wherein it

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has been clearly and categorically stated that applicant was given opportunity to examine the documents requested by him in his letter dated 31.10.1994, but he refused to examine the same. He was again advised to come to the office and examine the documents by a letter dated 25.11.1994 and finally he agreed to inspect the documents vide his letter dated 6.6.1995 and on 11.1.1996, he examined the documents along with his Defence Assistant.

10. These specific assertions of respondents contained in para 7 of their reply had not been denied by the applicant in any rejoinder.

11. During arguments Shri D.V.Gangal contended that ^{as} ~~the~~ the E.O.'s report ~~it~~ ^{it} contained no mention about the aforesaid assertions contained in para:7 of the respondent's reply, no credence could be attached to the same. We are unable to accept this contention of Shri Gangal. In the grounds taken, applicant had contended that he had not been provided access to certain documents, which he considered relevant for his defence, but when respondent in their reply have specifically ^{repelled} ~~rebutted~~ these assertions with reference to applicant's own correspondence, and applicant had not denied the same in any rejoinder manifestly it must be held that this ground has no merit.

12. Under the circumstances, it is also not necessary for us to go into the question of whether the Enquiry Officer was empowered to call upon the applicant to meet him, to decide whether the documents he sought were relevant for the purpose of enquiry or not, when, as stated above, the applicant examined the documents on 11.9.1996 along with his Defence Assistant as

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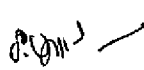
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stated by respondents which has not been denied by applicant in any rejoinder.

13. During the course of hearing Shri Gangal also contested some of the procedural aspects of the enquiry, but which particular provision of the Railway Servants (Discipline and Appeal) Rules 1968 was violated so as to prejudice the applicant gravely in his defence in the Disciplinary Proceedings has not been conclusively established. Indeed, as the penalty which was eventually imposed upon applicant was only one of ^{Censure} ~~essential~~, which is a Minor Penalty and the mildest one ^{at} ~~on~~ that, the Disciplinary Authority was not even required to hold ^{an} enquiry in the manner laid down for imposing a Major Penalty under sub-rule 6 to 25 of Rule 9 of Railway Servants (Discipline and Appeal) Rules, if he was of the opinion that such enquiry was not necessary.

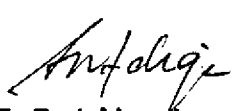
14. The advice letter of UPSC dated 28.10.1999 has discussed the evidence appearing in the Disciplinary Proceedings against applicant threadbare, and we find no reasons to disagree with the same.

15. In the result, the O.A. warrants no interference and is dismissed. No costs.


(S.L.Jain)

Member (J)

sj*


(S.R.Adige)

Vice Chairman (A)