

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, CAMP AT AURANGABAD.

ORIGINAL APPLICATION NO.762/2000.

Wednesday, this the 5th day of December, 2001.

Hon'ble Shri S.R.Adige, Vice-Chairman (A),
Hon'ble Shri S.L.Jain, Member (J).

Nasir Beg Moghul Beg,
Suresh Jain Nagar, Gendalal Mill,
Gadki Chawl, Building No.36, House No.28,
Jalgaon, Dist: Jalgaon.Applicant.

v.

1. Union of India, through the
General Manager,
Central Railway, Headquarters Office,
Mumbai CST,
Mumbai - 400 001.
2. The Divisional Railway Manager,
Central Railway, Bhusaval Division,
Bhusaval.
3. The Divisional Mechanical Engineer (O&C),
Central Railway, Bhusaval Division,
Bhusaval.
4. The Assistant Mechanical Engineer (II),
Central Railway, Bhusaval Division,
Bhusaval.Respondents.

(By Advocate Shri V.D.Vadhavkar)

: O R D E R (ORAL) :

By S.R.Adige, Vice-Chairman (A).

Applicant impugns the Disciplinary Authority's order dt. 30.9.1998 (Annexure - A-1); the Appellate Authority's order dt. 12.1.1999 (Annexure - A-2); the Revisional Authority's order dt. 3.3.1999 (Annexure - A-3) and the order dt. 23.2.2000 (Annexure - A-4) rejecting his representation. Applicant claims reinstatement in duty w.e.f. 1.10.1998 with back wages and other consequential benefits.

2. Applicant was proceeded against departmentally vide charge sheet dt. 15.5.1997, in that on 29.4.1997 at 3 p.m. he

entered the office of Shri Sanjay Shukla TXR on duty in a intoxicated state with a sharpened brake block key in one hand, a shaving blade in the other hand and placed the sharpened Bk. block key on on Shri Shukla's throat and razor blade on left arm and thereby threatened to murder in presence of staff on duty. Again on 13.5.1997 at 4 p.m. when Shri Shukla was passing through sick lines towards SSE C&W MMR's Office he apprehended Shri Shukla and threatened to murder him in presence of Shri D.K.Rajput, SE C & W MMR.

3. The Enquiry Officer in his findings dt. 19.8.1998 (Annexure - 7) held that the charge that applicant had entered the office of Shri Sanjay Shukla TXR on 29.4.1997 and mis-behaved with him was established. However, the charge that applicant had apprehended Shri Shukla and threatened to murder him in the presence of Shri D.K.Rajput SE C&W MMR was not established.

4. The copy of the Enquiry Officer's findings were furnished to applicant on 20.8.1998 for representation, if any. As no representation ^{was} reportedly received from applicant, the Disciplinary Authority after considering the materials on record, by impugned order dt. 30.9.1998 removed applicant from service. Applicant submitted his appeal on 26.10.1998 (Annexure - A-8) in which applicant admitted his guilt and prayed for mercy. Applicant's appeal was rejected by impugned order dt. 12.1.1999 and his subsequent revision petition was also rejected by the impugned order dt. 3.3.1999. Thereafter, applicant filed a further representation which was also rejected on 23.2.2000 giving rise to the present OA.

5. At the outset, we note that this OA was filed on

29.9.2000 and is therefore, hit by limitation under section 21 of the Administrative Tribunals Act, the order on his ~~Review Petition~~ having been passed on ~~23.3.1999~~. In this connection, applicant has filed a Miscellaneous Application No.840/2000, in which he has sought to explain the delay in filing the present OA, by contending that a criminal case ~~and~~ was also instituted against him on the same charge bearing No.86/97 under section 353/504/506/IPC read with section 146 of the Railways Act, 1989, in which he was acquitted by the Judicial Magistrate, Manmad vide Judgment dt. 11.1.2000 (Annexure - A-10).

6. When this case came up for hearing, Respondents Counsel Shri V.D.Vadhavkar, informed us that applicant's counsel had informed him that he had made a request to the Bench that he would not be appearing before this Bench at Aurangabad today, and had submitted a suitable application in this regard, but no such application has been shown to us. Under the circumstance, we are proceeding with this case after perusing the materials on record and hearing Respondents Counsel Shri V.D.Vadhavkar.

7. In our considered opinion, the fact that applicant was acquitted in the aforesaid criminal case by the Judicial Magistrate, Manmad vide his Judgment dt. 11.1.2000, is by itself not sufficient for us to hold that the impugned orders should be quashed and set aside. In this connection, Shri V.D.Vadhavkar has invited our attention to the Bombay High Court Judgment dt. 13.6.2000 in M.S.R.T.C. Bombay Vs. M.A.A.A. Shaikh (2001 (1) Mh.L.J. 625), wherein it has been clearly and categorically held that the decision of a criminal court cannot affect the departmental proceedings and merely because an employee has been

acquitted by a criminal court, that by itself cannot absolve an employee from disciplinary action. Indeed, the Hon'ble Supreme Court in Capt. M.Paul Anthony v. Bharat Gold Mines Ltd. & Anr. (JT 1999 (2) SC 456) have held that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas, and the standard of proof required in both these proceedings is also different. While in a criminal case the guilt of the accused has to be proved beyond all reasonable doubt, it is sufficient in a disciplinary proceedings if the pre-ponderance of probability points to the mis-conduct of the delinquent. In the present case, applicant himself, in his aforesaid appeal dt. 26.10.1998 (Annexure - A-8) has admitted his guilt.

8. No illegality, irregularity, impropriety or infirmity in the conduct of the proceedings has been brought to our notice, which warrants judicial interference. Applicant was given a full opportunity to defend himself, and the impugned orders have been passed by the authorities competent to pass the same.

9. Under the circumstance, the OA is dismissed. No costs.

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

Adige
(S.R.ADIGE)
VICE - CHAIRMAN (A)

B. ~~order/Judgen~~ clt 5112/01
~~to~~ Applicant/ ~~spatched~~ Applicant (s)
~~on~~ 22/11/02

W
22/11/02