

**CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH: AT MUMBAI.
O.A.NO.769/2004**

Dated this, *Thursday*, the *2nd* day of June 2005.

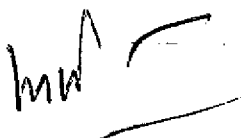
Shri A.D. Watwe, Applicant
(Applicant by Shri K.B. Talreja, Advocate)

vs.

U.O.I. & Ors. Respondents
(Respondents by Shri S.C. Dhawan, Advocate)

**CORAM: HON'BLE SHRI A.K. AGARWAL, VICE CHAIRMAN
HON'BLE SHRI S.G. DESHMUKH, MEMBER (J)**

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal? ✓
- (3) Library. ✓


(S.G.Deshmukh)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
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CORAM: HON'BLE SHRI A.K. AGARWAL, VICE CHAIRMAN
HON'BLE SHRI S.G. DESHMUKH, MEMBER (J)

Shri A.D. Watwe,
Retd. Chief Material Manager (Sales)
Central Railway, Mumbai CST.
R/o D-23, Kasturba, Co-Op. Hsg. Society,
Viishrantiwadi, Pune, 411015. .. Applicant.

(Applicant by Shri K.B. Talreja, Advocate)

vs.

1. The Union of India,
Secretary Railway Board,
Railway, Bhawan, New Delhi.
2. The General Manager,
Central Railway, Mumbai CST. .. Respondents.

(Respondents by Shri S.C.Dhawan, Advocate)

O R D E R

Per: S.G. Deshmukh, Member (J):

The O.A. is filed for seeking a direction to the respondents that the enquiry conducted in the matter is not consistent to the procedure laid down in the RS (D&A) Rules, 1968 and for quashing and setting aside the order of the disciplinary authority imposing the penalty of reduction by two stages in the time scale of pay till retirement with cumulative effect.

2. The applicant's case is that the charge-sheet dated 11//12.03.1997 was issued to the applicant for the alleged misconduct during the course of his working as CMM © during

the period from 1992 to 1994 by the Jt. Secretary (E). After receipt of charge-sheet the applicant prayed for the relied upon documents vide its letter dated 19/20.3.1997 , reminder letters 4.4.1997, 16.4.1997, 12.5.1997, 29.5.1997 which were supplied to the applicant, vide letter dated 20.6.1997. The applicant had demanded some additional documents which were essential to file the written statements. It is further contended that the respondents had nominated Enquiry Officer and Presenting Officer without giving him personal hearing on the Defence Statement. It is also contended that preliminary enquiry was held in the absence of the applicant. It is contended that there were two technical officers in addition to him who were parties to the Tender Committee. The role played by them was primarily of recommendatory body. The applicants role was convenor and the pivotal role played was of Member Finance and Technical Member. The applicant has been singled out as A Tender Committee consists of three Members. The applicant was only concerned with the procedure the Stores should adopt for purchasing items. It is contended that when ^{several}~~seven~~ persons are involved in alleged misconduct action taken only against the applicant is discriminatory. The entire episode is regarding financial implications and for this the sole responsibility lies on the Financial Member and not on the applicant. It is further contended that the enquiry officer has committed violations of statutory provision of Sub-Rule 25 (i) (b) (c) of Rule-9 of the RS (C&A) Rules 1968. The enquiry

officer has failed to apply the mind. It is clear case of non application of mind. The disciplinary authority has imposed the penalty of reduction of two stages in time scale of pay till his retirement with cumulative effect. The applicant had preferred an appeal. It is contended that there is a non application of mind even by Appellate Authority as the penalty of Censure is converted to reduction of two stages in time scale of pay till his retirement with cumulative effect.

Hence this O.A.

3. The respondents resisted the claim by filing the counter affidavit. It is contended that the enquiry has been held following all the rules and regulations and giving the applicant full and adequate opportunity to defend himself by following the principles of natural justice. It is contended that there is no provision for giving additional documents before the reply is given by the charged employee. It is further contended that 18 defence documents were given to the applicants. The enquiry was conducted as per rules. Additional documents which are held to be not relevant by the Enquiry Officer are not given to the applicant and the EO has a right to refuse them. It is also contended that it is for the disciplinary authority to decide whether an enquiry should be conducted into the matter and if so to nominate a Enquiry Officer at that stage.

4. The enquiry officer has considered the whole
evidence and the submissions made by the applicant before

giving his findings. It is contended that in judicial review the Tribunal is to see whether enquiry has been conducted as per rules and after following principles of natural justice. It is not for the Tribunal to decide the truth or correctness of the charges. The Enquiry Officer has considered all the evidence led in the enquiry ~~in~~ applicant and has come to the conclusion regarding the guilt of applicant. The applicant has not made out any case that Enquiry Officer was bias or had any malice against him. It is further contended that Shri V.V. Kathavate was the co-accused in the case and was issued charge sheet separately for his role as a TC Member. It is also contended that necessary corrigendum was issued by the IO Enquiry Officer stating that the name of Kathavate was wrongly indicated and it should be read as Shri A.D. Watve.

5. It is further contended that the disciplinary authority has imposed the penalty of reduction of two stages in the time scale till his retirement with cumulative effect. However, while conveying the appellate authority's order dated 19.04.2001, penalty of "Censure" was mentioned mistakenly. Corrigendum was accordingly issued on 11.06.2001. It is not a case of enhancement of penalty. The appellate authority after going through the record of the case and in consultation with the UPSC rejected te appeal preferred by the applicant.

6. The applicant filed the rejoinder and reiterated the contentions. The respondents also filed sur rejoinder and ~~in~~ denied the contentions made in the rejoinder.

7. Heard Shri K.B.Talreja for the applicant and Shri S.C. Dhawan for the respondents.

8. The learned counsel Shri Talreja submitted that the enquiry conducted by the enquiry officer is not consistent with the rules and principles of natural justice. The learned counsel submitted that the enquiry officer did not supply the additional documents demanded by the applicant, thus the enquiry is not valid due to non supply of vital essential material documents to the applicant. The learned counsel submitted that the enquiry officer failed to analyse the evidence given in the form of defence statement and committed violation of statutory provisions of sub rule 25 (i) (b) (c) of Rule -9 of RS (D&A) Rules 1968 in arriving at a correct conclusion. He also submitted that the order of the disciplinary authority is not a speaking order. The disciplinary authority has dealt with the case in a mechanical manner without applying the mind. According to learned counsel, though the enquiry report pertains to the applicant, the enquiry officer in concluding para has shown one Kathavate as guilty person. The corrigendum in that respect is issued after seven months. He submitted that it is a case of non application of mind on the part of the enquiry officer. The learned counsel submitted that the findings arrived by the enquiry officer agreed by the disciplinary authority are not based on the evidence. It is a case of no evidence. The learned counsel further submitted that it is a case of discrimination. There were three Members of Tender

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Committee. The two important Members Technical and Finance Members have not been taken up but the applicant has been issued with charge sheet. The learned counsel submitted that the enquiry officer conducted the enquiry with a closed mind. The learned counsel further submitted that the penalty of censure is enhanced into reduction of pay of two stages in time scale of pay till the retirement with cumulative effect without giving show cause notice. The learned counsel submitted that show cause notice ought to have been issued. The learned counsel further submitted that a penalty imposed is not proportionate to the charges proved against the applicant.

3. On the other hand, the learned counsel Shri S.C. Dhawan for the respondents submitted that the applicant had preferred an appeal against the penalty imposed by the disciplinary authority before the appellate authority and the appellate authority has dismissed the appeal in question and thus the order of the disciplinary authority has been merged in the order of the appellate authority. The applicant did not challenge the order of the appellate authority in which the order of the disciplinary authority has been merged. On this count, the learned counsel stated that the O.A. is not maintainable and deserves to be dismissed. The learned counsel further submitted that the enquiry was conducted as per rules and there is no violation of rules of natural justice. He submitted that 18 additional documents which were shown to be related to
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learned counsel submitted that orders passed by the disciplinary authority and the appellate authority are speaking orders. The learned counsel further submitted that no personal hearing is required before appointing the Enquiry Officer or Presenting Officer. The learned counsel further submitted that the correctness of the findings of the Enquiry Officer is not within the jurisdiction of the Tribunal. The enquiry officer has considered the whole evidence and the submission made by the charged officer. The learned counsel submitted that the name of Kathavate was wrongly indicated which has been corrected by issuing a corrigendum. The learned counsel further submitted that the disciplinary authority has imposed the penalty of reduction by two stages in the time scale of pay till his retirement with cumulative effect. While conveying the appellate authority's order "the censure" was mentioned by mistake. Accordingly, the corrigendum was issued. He submitted that it was not a case of enhancement of penalty or issue of a show cause notice.

10. The learned counsel submitted that there is evidence against the applicant and the findings of the Enquiry officer is based on the evidence only. The Tribunal cannot interfere with the findings arrived at by the Enquiry Officer based on the evidence. He also submitted that the chargesheet was issued against the Technical Member and he was also imposed the penalty of reduction of pay so it cannot be case of discrimination. He further submitted that

W The penalty imposed is commensurate with the gravity of the

charges proved.

11. Shri S.C. Dhawan for the respondents relied on the judgement in the case of *J.A. Naikstam vs. Prothonotary & Senior Master, High Court of Bombay & Ors.* 2005 (2) AISLJ 26. He also relied on the judgement in O.A. 171/03 to 176/03 etc etc. in the case of *Madhukar Nivruti Mane & Ors. vs. UOI & Ors* of this Tribunal.

12. We have considered the rival submissions and the case laws cited by the counsel for the respondents.

13. The applicant was issued with the following article of charges:

Article I

Against a tender No.37.91.3280 opened on 12.11.1991, he along with two other members of tender Committee had recommended the purchase of Double Tapper Roller Bearing for WAG-2 Electric Locomotive in favour of M/s. Omrolon Bearings, Bombay (authorised importer of M/s FAG Precision Bearing Ltd., Vadodara), ignoring the lowest acceptable offer of M/s. SKEFKO India Bearing Co. Ltd. Bombay without any valid explanation.

Article II:

Against aforesaid tender, he considered the offers based on revaluation done, only on account of exchange rate variations without taking into account custom duty variations resulting in

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incorrect valuation of different offers.

Article IV

While certifying the reasonableness of the rates in the aforesaid tender, he allowed an escalation of approximately 56% over the last accepted rate of last order placed during 1990 without adequate justification.

Article V:

Against aforesaid tender, overlooking the offer of M/s Skefko India Bearing Co.Ltd. Bombay in favour of M/s Fag Precision Bearing Ltd. (authorised importer M/s. Omrolon Bearings, Bombay), resulted in additional liability of Rs. 17.21 lakh in purchase of 44 nos. Of bearings.

14. It is apparent that the applicant was held guilty for the charges 1 to 3 and 5 and he has been exonerated for Article No.IV. 9. The applicant was imposed the penalty of reduction by two stages in the time scale of pay till his retirement with cumulative effect by the disciplinary authority by its order dated 7.12.1999. It has also come on record that the applicant had preferred the appeal dated 4.8.2000 against the order in question and the appellate authority rejected the appeal as holding that there is no merit. The applicant has challenged the order of disciplinary authority dated 7.5.1999 in the present O.A.

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The disciplinary authority's orders has been merged in the order of the appellate authority. The applicant ought to have challenged the appellate authority's order. But in the instant case, the applicant did not challenge the appellate authority's order. We have mentioned that the orders has been merged in the order of the appellate authority. The applicant ought to have challenged the appellate authority's order. But in the instant case, the applicant did not challenge the appellate authority's order. We have mentioned that the order of the disciplinary authority has been merged in the order of appellate authority. As the applicant did not challenge the order of appellate authority the O.A. is not maintainable and must fail on this count itself.

15. It is the contention of the applicant that it is a case of discrimination as the applicant has been singled out from the Tender Committee. There is no dispute that the Tender Committee was consisting of three Members, the applicant, V.V. Kathavate (Technical Member) and G.V. Acharya (FM) Applicant's role was convenor. The applicant himself has mentioned in para 10 of rejoinder that the Technical ^{member} ~~(Supdt.)~~ of the Tender Committee has also been punished with the penalty of reduction by two stages. Thus it cannot be said that ~~the~~ it is a case of discrimination as other members ~~was~~ issued the charge-sheet for his role and was imposed the penalty.

16. It is settled law that in case of departmental ^{enquiries} and the findings recorded therein, the Tribunal

does not exercise the powers of an appellate authority. The jurisdiction of the Tribunal in such cases is very limited for instance where it is found that domestic enquiry is vitiated for non observance of principles of natural justice, denial of reasonable opportunity, findings are based on no evidence or the punishment is totally disproportionate to the proved misconduct of an employee. In the limited scope of judicial review sufficiency or otherwise of the evidence cannot be looked into by the Tribunal. It is also well settled that substantive provisions in the departmental proceedings normally to be complied with and in case of procedural provisions which is not substantial or mandatory character if no prejudice is caused to the person proceeded against no interference of the court is called for.

17. It is the contention of the applicant that no opportunity was given to him before appointing Enquiry Officer and the Presenting Officer. When the applicant filed the representation after receiving the charge-sheet, the respondents have nominated the enquiry officer and Presenting Officer. There is no provision for giving an opportunity to the applicant before appointing authority. If the applicant had any grievance, the applicant could have given application for change of Enquiry Officer. No such application had been filed by the applicant.

18. It is tried to contend that the additional documents demanded by the applicants have not been provided to him. The relevancy of the document is to be decided by

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the Enquiry Officer on the basis of the reasons cited by the applicant in his submissions seeking additional documents. The Enquiry officer examined the relevancy and allowed the documents to be brought on record which are relevant. The Enquiry officer is bound to supply only relevant documents and not each and every documents asked by the delinquent officer. The documents rejected to be brought on record by the Enquiry Officer do not pertain to the alleged enquiry. The decision on the question whether documents are material or not will depend upon the facts and circumstances of the case. The applicant's contention was examined by the Enquiry Officer and the Enquiry officer decided that the documents which were demanded by the applicant and the relevant 18 documents required for the Enquiry Officer were brought by the Enquiry Officer. No material has been produced to enable us to come to a conclusion whether the documents which were rejected by the applicant were relevant in the present case. It is also apparent that the applicant had cross examined the witness examined during the course of enquiry though the other additional documents were not produced. No grievance was made at that time on the score non production of documents which according to him could have established his defence. The applicant did not point out what prejudice has been caused to him for non production of the documents.

19. It is the contention of the applicant that the order of the disciplinary authority is not a speaking

order. There is no obligation on the disciplinary authority to record the reasons if the disciplinary authority agrees with the findings of the Enquiry Officer. On perusal of the order it reveals that the disciplinary authority agreeing with the findings of the Enquiry Officer went through the entire proceedings and applied its mind and accepted the reasons given by the Enquiry Officer in support of such findings. It is not necessary that the disciplinary authority apprised the evidence arrived at the same findings. This view has been fortified in the case of **State Bank of Bikaner and Jaipur vs. Prabhu Dayal Grover** 1995 (6) SCC 279. The order of the disciplinary authority shows how the findings were reached.

20. It is apparent that Shri V.V. Kathavate was the Technical Member~~s~~ of the Tender Committee. It is also apparent that he was the co-accused. In para (1) of the Enquiry report the Enquiry Officer has mentioned that Enquiry Report is for the departmental enquiry against A.D. Watwe withall related counter reference. It appears that because of typographical error ~~was~~ the name of the applicant ~~has~~ been inadvertently replaced by the name of co-accused V.V. Kathavate against whom also charge sheet is issued. By issuing corrigendum the name of Kathavate has been corrected by mentioning the name of A.D. Watwe. Thus it cannot be said that as the name of Kathavate has been mentioned inadvertently, there was a non application of *mind* by the enquiry officer. We have mentioned that

Kathavate was co-accused in the case. It is also apparent that the disciplinary authority has imposed the penalty of reduction by two stages in the time scale of pay till retirement of applicant with cumulative effect. However, while conveying the appellate authority's order, the penalty of Censure was mentioned mistakenly. This is clear from first part of the appellate order which mentions the penalty of reduction. It is also apparent that on 11.6.2001 a corrigendum was issued in that respect. Thus, it is not a case of enhancement of penalty. It is the case of typographical mistake as it is not the case of enhancement, the question of show cause notice does not arise. No Show cause Notice is necessary for correction of the Typographical mistake.

21. Let us consider whether it is a case of no evidence. The Enquiry Officer has relied on evidence of P.K. Dwivedi and 'relied on documents' and 18 Additional documents brought by applicant and his evidence. It appears that the applicant while making Tender Committee proceedings recommendations over looked the lower offer of M/s SKEFKO India Bearing Co. Ltd. who had quoted as per tender specifications. Reasonableness of the rate was not worked out in a logical manner by the applicant. The Enquiry Officer has observed that the item being stock item it was his duty to ensure his availability as per requirements. The Enquiry Officer has dealt with the evidence before him and relied on documents while holding the applicant guilty

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for charges I to III and V.

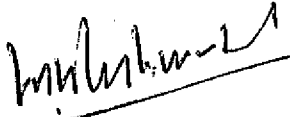
22. We have mentioned that the Tribunal has no jurisdiction to go into the correctness of the truth of the charge. The truth or otherwise of the charges is a matter of disciplinary authority to go into. The function of the Tribunal is one of the judicial review which cannot extend to the examination of correctness of the charges or reasonableness of the decision. It is not open for the Tribunal to examine the evidence adduced before the Enquiry Officer and on re-appreciation of the same disturb the findings arrived at. The report of the Enquiry Officer is of full reasons for the conclusion arrived. The conclusions are supported by the reasons. After analysis of the evidence the Enquiry officer has reached clear findings based on oral and documentary evidence. If there is some evidence, which reasonably support conclusion of the enquiry authority the Tribunal cannot review the evidence and arrive at its own independent findings.

23. The conclusion of the enquiry officer is based on the evidence, the disciplinary authority after considering the evidence, report of the enquiry officer, representation of the applicant against it and following the principles established by rules and natural justice arrived at its own conclusion, regarding the guilt. The appellate authority has dismissed the appeal by confirming the imposition of the penalty of reduction to two stages after applying its mind. After considering the gravity of charges proved against the applicant, we are of the view that the penalty

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imposed cannot be said to be disproportionate.

24. To sum up, in view of the foregoing discussion and in the facts and circumstances of the case we do not find any reasons to interfere with the orders of Disciplinary Authority confirmed by the appellate authority and the same is accordingly dismissed. No order as to costs.



(S.G. Deshmukh)
Member (J)



(A.K. Agarwal)
Vice Chairman

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