

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 720/2001

Date of Decision: 22.10.2003

V.I. Karandikar. Applicant

Shri G.S. Walia. Advocate for Applicant(s)


Versus

Union of India & Ors. Respondents

Shri V.S. Masurkar. Advocate for Respondents

CORAM: HON'BLE SHRI S. BISWAS MEMBER (A)  
HON'BLE SHRI MUZAFFAR HUSAIN 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.

4.   
(M. HUSAIN)  
MEMBER (J)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 720/2001

THIS THE 22<sup>nd</sup> TH DAY OF OCTOBER, 2003

CORAM: HON'BLE SHRI S. BISWAS. .. MEMBER (A)  
HON'BLE SHRI MUZAFFAR HUSAIN. .. MEMBER (J)

V.T. Karandikar,  
Residing at Block No.4,  
Rushab Darshan,  
Bhoir Nagar, Vidhdyalaya Marg,  
Mulund (E) Mumbai-400 081. .. Applicant

By Advocate Shri G.S. Walia.

Versus

1. Union of India, through  
General Manager,  
Central Railways, CST,  
Mumbai-400 001.
2. Dy. Chief Electrical Engineer (EMU)  
CWE Workshop, Matunga,  
Mumbai-400 019.
3. Chief Works Manager,  
CWE Workshop,  
Matunga, Mumbai-400 019.
4. Asst. Works Manager (EMU),  
CWE Workshop, Matunga,  
Mumbai-400 019. .. Respondents

By Advocate Shri V.S. Masurkar.

O R D E R

Hon'ble Shri S. Biswas. Member (A)

By this OA under Section 19 of the Administrative Tribunals Act 1985 the applicant has impugned the punishment order dated 12.02.2000, the appellate order dated 05.9.2000 and also the revision order dated 16/19.01.2002. In otherwards, an order of removal was passed by the Disciplinary Authority on 12.02.2000, which was upheld by the appellate authority after giving hearing on 05.9.2000. The revisional

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authority (General Manager) has also decided the case after giving a personal hearing to the applicant. By the order dated 16/19.01.2002, the revisional authority has reduced the penalty of removal to that of compulsory retirement. The applicant seeks quashment of these impugned orders with further directions upon the respondents to reinstate him with consequential benefits such as 18% interest on the arrears of full salary increments etc.

2. Necessary facts in the case are that the applicant while working as Senior Section Engineer rewiring section EMU MTN (Central Railways) allegedly committed certain irregularities in procurement of 130 fibre glass safety helmets at a higher cost of rs.200/per helmet as impugned in the form 5 memo which is briefly as follows:-

"He initiated a non-stock requisition No.94621346 dated 22.1.96 for 130 nos. safety helmets fibre glass at an approximate cost of Rs.200/- each. He carried out inspection of helmets as received against requisition No.94621346 dated 22.1.96 covered by supply order No.42.96.5392.1.65528 dt.11.3.1996."

Consequently the respondents allegedly suffered a financial loss to the tune of Rs.20,128/- for which charge sheet was served on him on 02.9.96 under Rule 9 of Railway Servants (Discipline & Appeal) Rules, 1968.

3. A departmental inquiry as instituted under Rule

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9(2) was conducted and completed. The charges were found proved. The disciplinary authority, after serving him with the inquiry report and also after considering his detailed representation dated 18.12.1996 ordered a penalty of removal from service on 12.02.2000 which has been impugned. The applicant filed a detailed appeal before the Chief Works Manager on 06.3.2000, the same was disposed after giving personal hearing on 05.9.2000 and the appellate authority upheld the punishment order. This order has also been impugned. In disposing his revision application dated 17.11.2000 before the G.M., who gave him patient personal hearing as averred in the order dated 16/19.01.2002 the Revision Authority has interalia observed that "Your plea that you had given 12 names to be examined as witnesses, which were not done by the Enquiry Officer is also not acceptable as defence witnesses are to be produced by Charged Officer and not by Enquiry Officer."

4. Heard the rival counsel on facts and legal points which were also argued at great length. The learned counsel for the applicant submitted a catina of judgment in support of his contention that the inquiry was not properly conducted. The first objection, which he has raised is that a fair and impartial inquiry was not conducted. Neither the Disciplinary Authority nor Appellate Authority and Revisional Authority applied their mind in disposing the representation of the

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charged officer. The learned counsel for the applicant has pointed out that the applicant is a Senior Section Engineer, his promotion order was issued by the CEE, accordingly the CEE should be the appointing authority. Therefore, the removal order passed by Dy. CEE is abinitio, void and illegal. In replying to this, the learned counsel<sup>27</sup> for the respondents has drawn our notice to the gradation chart for Disciplinary Authority.

5. A suitable reply was given in disposing of the representation of the applicant by the authority stating that a Junior Grade Officer has been delegated with the major penalty powers. The Senior Section Engineer being in the grade of Rs.2375-3500 (RPS), he can even be dismissed by a JAG officer who has been delegated with such powers. Further, the most crucial objection raised by the learned counsel for the applicant is that, despite repeated request for documents at the stage of inquiry, before the Disciplinary Authority, Appellate and Revision Authority, the documents required by the applicant were not furnished. The prayer was made for supply of documents before the inquiry officer, who has observed in page 72 of his report that "Necessity of calling witnesses will be considered, "but the inquiry will be conducted only on the basis of documents available in the file and which are relevant to the articles of charge 1, 2 & 3 in otherwards, these documents as appended to the charge has already been furnished".

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6. We have perused the receipt given by the charged officer to this effect. It is a fact that a list of documents were given by the charged officer, but these documents except one was not filed. We have gone through the records produced before us to show that he has filed his letter dated 12.9.96 to the Dy. CEE requiring nine different documents. These documents are challan, ~~inspection~~ inspection record, gate pass etc. Only item No.6 could have been refused as he has called for copies of all the documents contained in the stores without specifying any particular documents and its relevance, but the authority in disposing of his application has replied stating that the challan dated 27.4.96 of M/s. Sunit Industries have been furnished, but no comments have been made regarding remaining documents. Similarly the request of the charged officer for production of certain witnesses have also been turned down at various stages including by the revisional authority, who has stated in his order dated 16/19.01.2002 the General Manager, being the revisional authority has observed that "you have given names of 12 persons to be examined as witnesses which were not done by the inquiry officer. This is also not acceptable by us. But we notice when the charged officer made the request, the inquiry officer over ruling the necessity of calling for these witnesses is not fully justified, but later on no mention has also been made as to why these witnesses are not considered relevant. Thereafter, the inquiry

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officer as well as the disciplinary authority had adequate opportunity to evaluate the relevance of the witnesses called for by the applicant. We find that most of the witnesses are departmental staff, including the persons, who are involved in procurement of helmet. Therefore, neither the inquiry officer nor the disciplinary authority was justified in denying the opportunity to the applicant to call the for witnesses. As such we consider this rejection as blunt and prejudicial to the fair conduct of the inquiry.

5. The issue involved in the placement of order for certain special type of helmet, it is alleged that the charged officer namely the applicant had received supply as per directions of superiors. However, it was at higher rate than the market rate. In the context, the relevance of all witnesses were necessary to be determined before rejection. Throughout his representation the charged officer has agitated for the documents and witnesses. We fail to understand why no weight had been given to his request. A patent reply has been given in response to his letter dated 12th November, 1996 that the documents were given except one which was cited in the articles of charge. To this extent the inquiry has been incomplete and not impartial, though a copy of the inquiry report was furnished to him. It has also been alleged that no statements of any other officers and staff involved in

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the exercise of procurement of helmet were obtained by the inquiry officer.

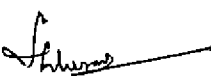
6. We have also perused the official records, which shows against last question No.19 put to the charged officer is quite fair. Quest. Do you want to add anything more in this connection with this enquiry?


7. Since the charged officer stated that he did not mislead anybody as the procurement order on standard form No. D458 of dated 6.6.96 made it clear that the material was inspected by Dy. COS (CWE) Matunga. He only remarked on the form of "checked for physical fitment" only. In otherwards it shows that the applicant did not inspect the quality but its size and fitment. This was a relevant point which ought to have been looked into by the inquiry officer before coming to the conclusion that the charged officer has misled and misrepresented. The record also say that it has not been properly looked into. Further the listed documents were not furnished. In the circumstances of this apparent short-coming in the inquiry, we would constrain ourselves from going into the citations made by the respective counsel. We also observe that in a case like this where there is no record to show that the authorities had observed the rules, the proceedings stands vitiated. In view of this we find enough justification to hold the inquiry as vitiated by non

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observance of the principles of natural justice. We set aside the impugned order dated 12.02.2000 appellate order dated 05.9.2000 and the revision order dated 16/19.01.2002. In the result the applicant would be reinstated as if he was not removed or compulsorily retired with consequential benefits. However, there is no question of payment of interest as the applicant availed pensionary benefits under compulsory retirement. Back salary would be payable on refund of all pensionary benefits.

8. However, liberty is given to the respondent authorities to initiate the disciplinary proceedings against the applicant afresh, if they wish. The said exercise shall be completed within a period of four months from the date of receipt of copy of this order. For any and every contributory delay caused by the applicant would extend the time by that many number of days, weeks and months. No costs.

  
(M. HUSAIN)  
MEMBER (J)

  
(S. BISWAS)  
MEMBER (A)

Gajan

Dated: 15.8.2004 (12)

Applicant - by Shi. R. G. Wadia.  
Respondents by Shi. V. S. Marubkar with  
Shi. S. C. Sharan.

The learned Counsel for the  
respondents states that after the  
matter was disposed of by the  
High Court vide order dated 21.6.2004  
dismissed the writ Petition and the  
applicant has been reinstated by the  
Railways by order dated 14.8.2004.  
Copy of the order has been produced.

We are satisfied that substantial compliance  
of the order has been done.

In the circumstances the C.P. 27/2004  
stands disposed of.

Shri  
(Muzaffar Hussain)  
MJS

(A. K. Gargwal)  
vc

18/8/04  
order issued  
on 23/8/04  
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