

**CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH: AT MUMBAI.  
O.A.NO.486/2001**

Dated this, Thursday, the 9th day of June 2005.

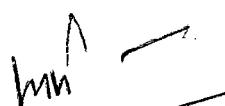
Shri G.S.Rathore ..... **Applicant**  
(Applicant by Shri D.V.Gangal, Advocate)

vs.

U.O.I. & 2 Ors.. .... **Respondents**  
(Respondents by Shri V.S.Masurkar, 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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Dated this *Thursday*, the 9th day of June, 2005CORAM: HON'BLE SHRI A.K. AGARWAL, VICE CHAIRMAN  
HON'BLE SHRI S.G. DESHMUKH, MEMBER (J)

Shri G.S. Rathore,  
Working as Project Manager (Elect.)  
G.M. Old Building  
Western Railway,  
Churchgate,  
Mumbai 400 020.

... Applicant.

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

vs.

1. Union of India, through  
the Secretary, Railway Board,  
Rail Bhavan,  
New Delhi.
2. Joint Secretary (E)  
Railway board,  
Rail Bhavan  
New Delhi.
3. The General Manager,  
Western Railway,  
General Manager's Office,  
Churchgate,  
Mumbai 400 020. ... Respondents.

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

## O R D E R

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

The O.A. is filed for quashing and setting aside the order dated 26.7.1997 imposing the punishment of withholding one increment of the applicant for a period of one year without postponing his future increments passed

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by the General Manager and the appellate order dated 21.6.2000 reducing the penalty to that of Censure and order dated 19.6.2001 rejecting the review petition.

2. The applicant's case is that he is posted as District Electrical Engineer since November, 2001 under the control of General Manager, Western Railway, Mumbai. It is contended that the applicant was implicated in wrong and malicious charges while serving minor penalty charge-sheet dated 10.1.2001 by respondent No.2 alleging that the applicant managed to get room conditioners installed in his chamber beyond his entitlement.

3. The applicant vide its letter dated 25.1.1995 denied the allegations levelled against him. The disciplinary authority decided to hold an enquiry against the applicant and appointed Shri M.S. Jadhav, Dy. C.E.E. (HQ), CCG as Enquiry Officer. The applicant participated in the enquiry proceedings conducted by Shri Jadhav. The respondents changed the Enquiry Officer and appointed Shri S.C. Bansal, CE(C) for completion of the enquiry. The Enquiry Officer held that the charge against the applicant is proved. The disciplinary authority after considering the enquiry report and other papers held the charge against the applicant proved and imposed the penalty of withholding of one increment for one year without cumulative effect vide order dated 26.7.1997. The applicant preferred an appeal against the penalty order. The appellate authority modified the penalty imposed by the disciplinary authority and reduced

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the same to that of Censure by its order dated 21.6.2000. The applicant preferred review petition which was rejected by the authority vide its order dated 19.6.2001. Hence this O.A.

4. The respondents filed the counter affidavit and resisted the O.A. in question.

5. Heard the learned counsel Shri D.V. Gangal for the applicant and Shri V.S. Masurkar for the respondents.

6. The learned counsel Shri Gangal submitted that the applicant has been punished for testing the performance of new A/C. units in the interest of Railways which was part of duties of SEF (C)/BRC/AEE and himself which is wrong and unjustified. The learned counsel submitted that the documentary evidence brought on record shows that A.C. Units were issued for testing purpose. The learned counsel further submitted that the Enquiry Officer prepared the report without considering the evidence of Shri Vankar, AEE and Shri Vajesingh, ELF and the applicant. The learned counsel further submitted that the appellate authority has held that the charge that the applicant installed the Air Conditioner in his room for his comfort is not fully established. He submitted that when the charge is not fully established, no penalty can be imposed. He submitted that the evidence of Akthar Hussain, Senior Electrical Foreman (C) (SEF) cannot be relied upon as per observations of the UPSC as Hussain was co-accused in infringements of rules and was let off with recorded warning. The learned counsel

further submitted that the statement that performance of A/C. Unit can be ascertained whether within 48 hours is arbitrary as no such time limit has been prescribed for ascertaining the performance of A/C. Units. The learned counsel submitted that the action against the applicant is discriminatory as other ineligible officers misusing Acs have not been chargesheeted. The learned counsel further submitted that the department has to prove its case by adducing cogent evidence, the burden of proving the same cannot be shifted to delinquent employee. Applicant is not required to prove his innocence.

7. On the other hand the learned counsel, Shri V.S. Masurkar, for the respondents submitted that the General Manager after considering the defence of the applicant and other relevant records of the case imposed the penalty of withholding of increment for a period of one year without any effect of postponing future increment. In appeal the President after careful consideration of the appeal and the relevant records and in consultation with the UPSC has come to the conclusion that charge against the applicant that he had installed the air conditioner in his chamber for his comfort is not fully established and thus the appellate authority has reduced the punishment to that of Censure. The Review Application preferred by the applicant has been rejected by the President by order dated 19.6.2001 as no new points were raised by the applicant. The learned counsel submitted that the prosecution witness Akthar

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Hussain has confirmed that normally testing of A/C unit takes 3 to 4 days. A/C was installed in the chamber of the applicant for a period from 17.3. 1993 to 7.7.1993. The learned counsel submitted that the applicant was not fully exonerated of the charges. And, therefore, the appellate authority reduced the penalty to that of Censure. The learned counsel submitted that the evidence of Akthar Hussain shows that A/C. Machine was installed in the Chamber of applicant for his comfort and not for the purpose of testing and thus the charge against applicant stands proved. The learned counsel submitted that the disciplinary authority has changed the enquiry officer on administrative ground. No prejudice has been caused to the applicant. Earlier Enquiry Officer had not submitted the report of inquiry. The learned counsel further submitted that the contention of the applicant that there are many such officers who are using A/c have not been charge-sheeted does not absolve the applicant of the charge levelled against him.

8. It is apparent that part of the Enquiry was conducted by the Shri Jadhav then he was replaced by Shri Bansal. It is also apparent that the applicant had attended the enquiry conducted by Shri Jadhav but the applicant did not take part in the enquiry conducted by Shri S.C. Bansal. It is also apparent that the enquiry officer S.C.Bansal held the charges against the applicant proved on the basis of evidence, Shri Akthar Hussain, Sr.

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Electrical Foreman. The evidence of Akthar Hussain is that only one A/C was installed; and the same was not changed with any other unit for the period from 17.3.93 to 7.7.1993. According to the witness A/C unit was installed in the chamber of applicant for his comfort and not for testing. Relying on this evidence the enquiry Officer held the applicant guilty. It is also apparent that the disciplinary authority held that the contention of the applicant that the A/C unit was installed in his Chamber for testing purpose as proper opening was available in his room is a strange procedure which has not been adopted by any other officer of the Electrical Department. The disciplinary authority also observed that if number of air conditioners were installed and tested in applicant's chamber as claimed by him then their issue to the applicant's room and their removal and issue to the further location/users would have been reflected in the issue and receipts register of SEF(C). The disciplinary authority relied on the statement of Akthar Hussain. It is also apparent that the disciplinary authority completely ignored the evidence of D.K. Vankar, AEE(C) and Vijesingh, ELF . It is also apparent that the appellate authority has come to the conclusion that the Charged Officer had an AC installed in his room for his comfort is not fully established for the reasons given in the UPSC advice. The appellate authority also observed that the appeal has some merit. The appellate authority reduced the penalty to that of

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Censure.

9. In *UOI vs. K.A. Kittu 2001 (1)SCSLJ 65* the Apex Court has held "*while exercising judicial review, the Tribunal may examine/consider contradictory findings of EO, findings based on no evidence and also instances where there are no clear findings.*" On perusal of papers it reveals that in the instant case, the Enquiry Officer had examined Shri Akthar Husain SEF(C), D.K. Vankar, AEE(C), and Vejesingh, Electrical Fitter during the course of enquiry. The Commission has observed in their advise that Hussain was a co-accused in the infringement of the rules and he was let off with a recorded warning. It is, therefore, extremely unlikely that Hussain is a reliable witness. The Commission also observed that the evidence of SEF(C) as a co-accused and someone who clearly did not maintain the registers in order cannot be relied on. Thus, it is apparent that the evidence of Akthar Hussain recorded by the Enquiry Officer during the course of enquiry is not to be relied on. The entry in the tally book has been brought on record during the course of enquiry. The entry reads, "issued to DDE(C) BRC Office for testing." The document in question has been initiated by Akthar Hussain SEF (C). The unit was installed by SEF Akthar Hussain for testing purpose only. It has been confirmed by the witness D.K. Vanker AEE (C) and also Shri Vejesingh, EF working under DE CEE. D.K.Vanker stated that he has seen SEF

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carrying out the performance test in the chamber of the applicant. Shri Vejesingh, EF also stated that SEF would have checked other 5 units but he has not made entry in the Tally Book in respect of other A/C units. It is also apparent that SEF (C) had installed the units one by one in applicant's chamber for testing purpose where the slot of A/Cs. existed. There were no other testing facilities available in the office of DEE(C) BRC. The UPSC also mentioned in their advice that Enquiry Officer and the Disciplinary authority have ignored the evidence of D.K. Vanker who stated that it has been decided by the DEE(C) and SFC to check the A/C unit performance one by one installed in the chamber of applicant. He has clearly testified that A/C units were installed in DEE(C) room for testing purpose and that he had seen SFC carried performance test in the chamber of DEE(C). The tally book maintained by SFC discloses that on 7.3.1993 one A/C unit has been issued to the DEE(C) for testing. The evidence of Vanker also shows that SEF has not made entries in the Tally Book in respect of other five A/C units. Vanker has categorically stated that new A/C units performance is checked one by one by installing in the chamber of DEE (C). He has clearly stated that A/C units were installed for testing purpose in the Chamber of DEE (C). Not only that, he also stated that he has seen SEF Akthar Hussain carried the performance test in the chamber of DEE (C) BRC.

 Thus, the evidence brought before the Enquiry Officer shows

that A/C units were installed in the Chamber of DEE (C) for testing purpose. The evidence also shows that six A/C units have been checked during the period from 17.3.1993 to 7.7.1993, but the entry of 5 A/C units was not taken in the Tally Book by SEF.

10. It also be mentioned that in conducting the domestic enquiry into the charges of misconduct against the employee, if the allegations are denied by him, the burden of proving the truth of allegations will be on the employer and the burden cannot be shifted to the delinquent employee. The evidence before the Enquiry Officer shows that six A.C, units were issued and checked during the said period and the entry of 5 units was not taken in the Tally Register by SCF. It also be mentioned that the Commission also observed that it is not for the charged officer to give proof of the number of Air Conditioners installed . The Commission<sup>3</sup> also mentioned that C.O. has clearly brought this out in his appeal and stated that he cannot be held responsible for the poor maintenance of the Tally Book by the SCF. We have mentioned that the Enquiry Officer, the Disciplinary Authority and the Appellate Authority did not take into account the evidence of D.K. Vanker and Vejesingh, EF, and completely ignored their evidence, which was recorded by the Enquiry Officer during the course of enquiry.

11. There is no dispute that the Tribunal cannot re-appreciate the evidence. But the Tribunal in judicial

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review can examine the contradictory findings and the findings based on no evidence. We have mentioned that the evidence of Vanker and Vejesingh have been completely ignored by the Enquiry Officer and the Disciplinary Authority as well as the Appellate Authority. If their evidence is considered and the evidence of Akhtar Hussain is not relied as per observations in UPSC advice the applicant cannot be said to have committed any misconduct as there is absolutely no evidence to prove the charge.

12. We have mentioned that the Appellate Authority has come to the conclusion that the charge that the C.O. has got installed one A.C in his room for his comfort is not fully established against the applicant. For imposing the penalty, the charge is required to be fully established but the charge is not established, hence no punishment can be imposed. When the appellate authority observes that the charge is not fully established, and even then imposes the penalty by reducing the same to Censure is inconsistent with the findings in question. When the charge is not at all established, the applicant is required to be exonerated. The evidence before the Enquiry Officer shows that the Air Conditioners were installed for testing purpose, the installation of Air Conditioner Units for testing purpose cannot be said to be a misconduct on the part of the applicant which forms part of the duties of the applicant, SCF and AEE.

13. In view of the above discussion, we are of the

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considered view that the impugned orders are not sustainable in law and the same are to be quashed and set aside. We order accordingly. The applicant stands exonerated. The O.A. is allowed. No order as to costs.



(S.G. Deshmukh)  
Member (J)



(A.K. Agarwal)  
Vice Chairman

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