

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO.877/2001.

Dated: 26.7.2004


Ganpat Bhau DeshmukhApplicant(s)
Shri K.B.TalrejaAdvocate for
applicant(s).

Vs.

Union of India & Ors.Respondent(s)
Shri R.R.ShettyAdvocate for
Respondent(s)

Coram: Hon'ble Shri Ahand Kumar Bhatt, Member (A),
Hon'ble Shri Muzaffar Husain, Member (J)

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


(MUZAFFAR HUSAIN)
MEMBER (J).

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO.877/2001.

Dated: 26th October 2003

Hon'ble Shri Anand Kumar Bhatt, Member (A),
Hon'ble Shri Muzaffar Husain, Member (J).

Ganpat Bhau Deshmukh,
R/o. Chochewai,
Tal. Karjat - Dist. Raigad,
Post-BID.
(By Advocate Shri K.B.Talreja)

...Applicant.

v.

1. The Union of India,
through the General Manager,
Central Railway,
Mumbai CST.

2. Divisional Railway Manager,
Central Railway,
Mumbai CST.
(By Advocate Shri R.R.Shetty)

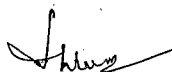
...Respondents.

: O R D E R :

{Muzaffar Husain, Member (J)}

Aggrieved by the order dt. 8.12.2002 passed by the Disciplinary Authority imposing the punishment of removal from service on the applicant, which was upheld by the Appellate Authority's order dt. 23.5.2001 and the order dt. 2.8.2001 passed by the Revisional Authority. The applicant has approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985 to quash and set aside these orders with consequential benefits.

2. The facts of the case, briefly enumerated are that the applicant at the relevant time were working as Mate under PWI Lonavala. A memorandum of charge sheet was issued to the applicant on 8.12.1997 for obstructing the railway working and manhandling Shri R.D.Verma, PWI (M), Karjat. The applicant denied the charges levelled against him. The inquiry was held and the Enquiry Officer found him guilty of the charges.

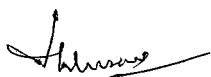


...2.

Disciplinary Authority awarded penalty of removal from service. The applicant filed OA No.30/2001. Tribunal remitted back the matter to the Appellate Authority to dispose of the appeal filed by the applicant dt. 18.12.2000 on merit. The Appellate Authority after giving personal hearing to the applicant and also supplying the copy of the Enquiry Report passed the order dt. 23.5.2001 rejecting the appeal. The revision preferred by the applicant was also rejected, hence this OA.

3. The Respondents have filed reply supporting the action taken by them in holding disciplinary enquiry and the imposing of the punishment of removal from service on the applicant. It is stated that the applicant was charge sheeted for mis-conduct of obstructing railway work and manhandling his superior Shri R.D.Verma, PWI (M), Karjat and assaulting him. List of witnesses and list of documents were also enclosed with the charge sheet. An enquiry was held properly and prosecution witnesses confirmed that the applicant was in fact involved in the physical assault of Shri R.D.Verma. This incriminating offence collectively and clearly goes to show that the charge against the applicant stood proved. Since the charge was duly proved on the basis of incriminating evidence which was led against the applicant by the prosecution witness which has culminated in imposing the penalty of removal from service by the competent authority. The order of the DA was upheld by the Appellate Authority, as well as, Revisional Authority. It is also stated that the directions of the Hon'ble Tribunal in OA No.30/2001 were duly complied and followed by the respondents. The contention raised in this O.A.

...3.



by the applicant seeks to persuade the Tribunal to step into the realm of the decision of the evidence which is not permissible in judicial review.

4. We have heard Learned Counsel for the applicant, as well as, respondents and perused the material placed on record.

5. The learned counsel for the applicant has raised the following major points :

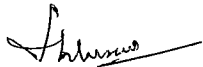
(1) Enquiry was conducted in violation of Rules and Procedures prescribed under the Railway Servants (Discipline and Appeal) Rules, 1968.

(2) Finding of the Enquiry Officer are perverse and passed on 'no evidence' and drawn casually without following the rules.

(3) The Enquiry Officer's report was not served on the applicant by the Disciplinary Authority, but it was furnished on 18.5.2001 by the Appellate Authority.

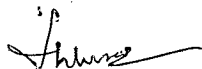
(4) Revisional Authority ADRM dealt with the case erroneously in terms of Rule 22 (2) of Railway Servants (Discipline & Appeal) Rules in place of Rule 25(1).

6. The first contention raised by the Learned Counsel for the applicant that the enquiry was conducted in violation of the Rules and procedures prescribed in Railway Servants (Discipline & Appeal) Rules. Learned Counsel for the applicant submitted that in the memorandum of charge sheet issued on 8.12.1997, there is no imputation of mis-conduct. Secondly, Annexure - 3 of the Memorandum is not signed. Thirdly, statement of witnesses PWI (M) Shri R.D.Verma and P.W.2 Chindu Kashinath, Mate of Unit No.6 were not recorded in the presence of the applicant and fourthly



...4.

xerox copies of the statements were used in all the enquiries conducted against all the employees involved in the incident. We have gone through the relevant record. Copy of the memorandum of charge sheet is placed as R-1 by the Respondents. The memorandum is signed by B.S.Kamble, Disciplinary Authority. The Article of Charge and the statement of imputation of mis-conduct and misbehaviour in support of the Article of the charge framed against the applicant is also signed. Annexure - III relates to the list of documents by which articles of charge framed against the applicant and Annexure IV is the list of witnesses. Thus, Annexure - 3 and 4 are collectively signed by the Disciplinary Authority. So far as recording of the statements behind the back of the applicant is concerned the proceedings of the inquiry (R-2) reveals that the statement of PWI Shri R.D.Verma was recorded on 26.12.1998 and it is signed by the enquiry officer, witnesses, ARE and by the applicant. The evidence of Raghunath Daji was recorded on 11.12.1998 and it is also signed by the Enquiry Officer, ARE, delinquent Employee and witnesses. Therefore, it cannot be said that the evidence of these witnesses was not recorded in the presence of the applicant. Allegation regarding use of xerox copy of the statements in all inquiries is not substantiated by record as each statement of witness is signed by the Enquiry Officer, witnesses concerned, ARE and delinquent employee. If it was so, the delinquent employee or ARE would have raised the objection at the relevant time. Since the delinquent employee or ARE has not raised any objection, he cannot take the plea before the Tribunal in judicial review as



review as held by Devkinandan Sharma Vs. Union of India {2001 SCC (L&S) 1079}. Various contentions have been raised by the applicant in the present OA. He is unable to show any prejudice whatsoever caused to him during the departmental proceedings. On the contrary, the applicant has made a categorical statement on 26.12.1998 when he was being examined by the Enquiry Officer that he is fully satisfied with the manner in which the inquiry was conducted and was of the opinion that reasonable opportunity was in fact being given to him. In case of State Bank of Patiala & Ors. Vs. S.K.Sharma {1996 (1) SC SLJ 440}. The Hon'ble Apex Court in State Bank of Patiala & Ors. Vs. S.K.Sharma {1996 (1) SC SLJ 440} has laid down the following proposition of law:

"In the case of violation of a procedural provision, the position is the procedural provisions are general meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are generally speaking conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed."

It was further held that :

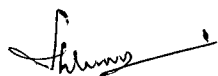
"In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance, be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee."



Therefore, no prejudice has been caused to the applicant. The contentions raised by the learned counsel for the applicant has no substance.

7. The second contention raised by the Learned Counsel for the applicant is that the finding of the Enquiry Officer are perverse and based on "no evidence" and drawn up casually without following rules. Learned Counsel has also invited our attention to the Enquiry Officer's report (Annexure - A-4) that it is not bearing any date of drawing the findings or date of issue of the same. He also contended that in the commencement of the finding it has been mentioned that "in answer to Question NOs.7, 9, 11 & 13 DE Shri Ganpat Bhau Deshmukh gave unsatisfactory answers which was away from facts due to which he could not explain properly as to who and why manhandled Shri R.D.Verma at site". Whereas, the examination of applicant reveals that only 8 questions were asked. The statement of the applicant has been annexed as Annexure - 5. This shows non-application of mind. Again concluding the finding Enquiry Officer observed "ARE also could not elaborate as to why Shri Ganpat Bhau Deshmukh could not come forward to safeguard Shri R.D.Verma while assault had taken place".

8. Learned Counsel for the respondents, on the other hand, contended that the evidence led by Prosecution Witness Shri R.D.Verma clearly shows that the applicant had participated in the assault and the charge against him is duly proved and notes of the evidence are enclosed collectively marked as Exhibit R-2. The point raised by the applicant are not of much importance as the finding of the Enquiry Officer are based on evidence. It is



further corroborated by the complaint made by Shri R.D.Verma and another complain given by Members of the Gang No.6 that R.D.Verma was manhandled and assaulted near Unit No.7 of which applicant is part of. The copy of the complaint translated by the respondents in English is enclosed as R-4. Therefore, he submitted that the findings of the Enquiry Officer are based on some evidence.

9. We have gone through the proceedings of the enquiry and the evidence of the witnesses recorded during the course of enquiry. The notes of enquiry dt. 11.12.1998, 12.12.1998 and 26.12.1998 marked as exhibit R-2.. The evidence of victim Shri R.D.Verma was recorded on 26.12.1998. Shri R.D.Verma has clearly stated in answer to Question Nos. 7, 9 and 18 that Shri Ganpat Bhau Deshmukh was involved in the physical assault on him. Question No.9 and answer thereof is extracted below :

" Ques.9. Shri Ganpat Bhawoo Mate Unit No.6, Shri Sunil Naiwant K/Man Unit No.7, Shri Gabaloo Kushaaba G/Man Unit No.7, Shri Pandharinath Baloo G/Man Unit No.7, Shri Vithal Tukaram G/Man Unit No.7 were of those persons who have assaulted on you or some of these have assaulted or there were some other Gangmen of Unit NO.7 who have also involved in assaulting on you?

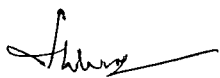
Ans. These above fives were closed to me and were directing assaulting to me from very close in which Shri Ganpat Bhawoo Mate Unit No.7 was hammering with Tommy bars, Shri Sunil Jaiwant, Shri Pandharinath Baloo and Vithal Tukaram were assaulting with boulders and handblows Shri Vithal Tukaram Caught me holding position. Shri Gabaloo Kushaba was hammering on me by wooden handle. There were other Gangmen of this Units also who were throwing ballast stones from some distance hence I could not recognise their names individually."

It is also seen that the complaint made by victim Shri R.D.Verma, PWI who was assaulted clearly gives narration of the entire incident and name of the persons involved in the incident have been mentioned therein. Copy of the complaint is annexed as R-3.

Shri

There is another complaint given by the Members of Gang No.6 in Marathi wherein they had clearly alleged that the victim Shri R.D.Verma was assaulted and man handled by the applicant Shri Ganpat Bhau Deshmukh at Unit No.7 to which the applicant belongs. The complaint and the English translation has been filed as Annexure - IV. These two documents clearly corroborates the statement of Shri R.D.Verma who deposed before the Enquiry Officer. Therefore, it cannot be said that the finding of the Enquiry Officer are based on 'no evidence'. The contention raised by the Learned Counsel for the applicant that the Enquiry Officer has not signed, report is against the record as the enquiry report filed by the applicant Annexure A-4 is signed by the Enquiry Officer. It is immaterial that he has not mentioned his complete designation. So far as questions asked to the applicant is concerned, the Enquiry Officer might have recorded the number of questions 7, 9, 11 and 13 under some mis-conception. It is true that only 8 questions were put to the applicant and the finding of the Enquiry Officer not only based on the evidence of the applicant, but also based the evidence of the Prosecution Witness and the complaints made by victim and other members of Gang No.6. Therefore, it cannot be said that the finding of the Enquiry Officer are based on no evidence.

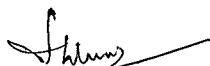
10. In judicial review, we are conscious of the limitation of the Tribunal that we cannot go into the sufficiency or insufficiency of the evidence and we cannot reappreciate the evidence adduced in the inquiry. The Apex Court in Union of India Vs. B.K. Srivastava {1998 SC SLJ 74} held that Tribunal cannot sit in appeal against the order of Disciplinary Authority



and Appellate Authority in exercise of powers of judicial review. In case of Union of India Vs. Nagamaleswar Rao {1998 (1) SC SLJ 78} Hon'ble Supreme Court held that "It is really surprising that inspite of clear position of law in this behalf and as regards the jurisdiction of the Tribunal in such cases, the Tribunal thought it fit to examine the evidence produced before the enquiry officer as if it was a court of appeal." In the case of Apparel Export Promotion Council Vs. A.K.Chopra {AIR 1999 SC 625} Hon'ble Apex Court held :-

"Once findings of fact, based on appreciation of evidence are recorded, the High Court in Writ Jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and / or legally untenable."

In the case of Syyed Rahimuddin Vs. Director General, CSIR & Ors. {2001 (2) SC SLJ 132} it was held by the Apex Court that findings of facts arrived at in a disciplinary enquiry Interference by the Court is permissible only when there is no material for the said findings or conclusion or on the materials available no reasonable man can reach to such conclusion. In case of N.Rajarathinam Vs. State of Tamil Nadu {1997 (1) AISLJ 10} the Apex Court held standard of proof in domestic inquiry is only preponderance of probability. Court cannot act as fact finding forum. If there is some evidence on record the decision of disciplinary authority cannot be faulted. In case of Government of Tamil Nadu & Ors. Vs. S.Vel Raj {1997 (2) AISLJ 32} the Apex Court held that standard of proof in DAR action is not a proof beyond doubt. In case of Government of Tamil Nadu Vs. N.Ramamurthy {AIR 1997 SC 3571}, the Apex Court held - The



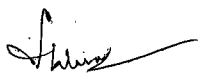
Tribunal has no jurisdiction to go into the correctness or truth of the charges and the Tribunal cannot take over the functions of the disciplinary authority. In case of Transport Commissioner, Madras Vs. A.Rakha Krishna Moorthy {1995 (1) ATJ 299} the Apex Court held - Administrative Tribunal has no jurisdiction to go into the truth of the allegations/charges particularly at a stage prior to the conclusion of the disciplinary enquiry. In case of High Court of Judicature at Bombay Vs. Shashikant S.Patil & Anr. {2000 (1) 171} it was held that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition under article 226 of the Constitution. In the case of Government of Tamil Nadu & Anr. Vs. A.Rajapandian {AIR 1995 SC 561}, the Apex Court held that it has been authoritatively settled by string of authorities of this Court that the Administrative Tribunal cannot sit as a Court of Appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably support the conclusion reached by the disciplinary authority, it is not the function of the Administrative Tribunal to review the same and reach different finding than that of the disciplinary authority. In case of R.S. Saini Vs. State of Punjab & Ors. {1999 (2) SC SLJ 213}, the Apex Court held "If there is some evidence to reasonably support the conclusion of the enquiring authority, it is not the function of the Court to review the evidence and to arrive at its own independent finding. The enquiring authority is the sole Judge



of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings.

11. In our view the scope of judicial review is limited so far as the merits of the case are concerned as rightly argued on behalf of the Respondents. This Tribunal cannot exercise appellate powers for deciding a matter like this. We are not sitting in appeal over the decision of the disciplinary authority or other competent authority who has passed the order in appeal or revision. Time and again the Apex Court has observed that the High Court or the Tribunals cannot reappreciate evidence and come to an independent conclusion in a matter like this. The scope of judicial review is very limited so far as the merits of the case are concerned. Therefore, we cannot go into the question whether the appreciation of evidence by the competent authority is correct or not, whether the finding of fact recorded by the competent authority is justified or not. We cannot reappreciate the evidence and substitute our own finding in place of finding of the competent authority. We find that there is sufficient evidence on record to support the findings of the Inquiry Officer. Therefore, there is no force in the contention of the learned counsel for applicant that findings of guilt recorded by the Inquiry Officer is against the evidence.

12. The third contention raised by the Learned Counsel for the applicant is that the Enquiry Officer's Report was furnished to the applicant on 18.5.2001 by the Appellate Authority. It is against the legal requirement and procedure. On the perusal of



record, it appears that the applicant filed OA No.30/2001 which was decided by the Tribunal on 12.1.2001 and the matter was remitted back to the Appellate Authority to consider the appeal made by the applicant dt. 18.12.2000. The Appellate Authority after furnishing the Enquiry Officer's report to the applicant and after giving him personal hearing rejected the appeal vide order dt. 23.5.2001. The applicant acknowledged the receipt of Enquiry Officer's report. The acknowledgement is placed as Annexure - IV (1) to the OA. The Appellate Authority has also recorded the proceedings of the personal hearing to the applicant which are Annexure II. The Appellate Authority in para 1 of the order has explained the circumstances as under :

"1. The enquiry report has been accepted by the disciplinary authority and penalty of removal from service is imposed upon you. However, the disciplinary authority did not forward the enquiry report and findings of enquiry officer to you. Since the disciplinary authority passed the final orders & his judgement without giving you the opportunity to submit your defence brief/representation, the undersigned forwarded the enquiry officers report & enquiry proceedings to you and called you for personal hearing. Accordingly the personal hearing was conducted on two days on 18.5.2001 and 21.5.2001 alongwith your ARE as requested by you. Few questions were asked by undersigned during the personal hearing to further clear the matter. By means of giving you the opportunity to represent and defend your case further the procedural lapse which was committed by the disciplinary authority has been corrected and you were supposed to make the same representation which you would have made before the disciplinary authority. In answer to Q.7, you answered that appeal had already given by you and appellate authority to decide on appeal only."

Thus, it appears that the Enquiry Officer has given an opportunity to the applicant to make his defence after providing Enquiry Officer's report and thus no prejudice has been caused to



the applicant by non-supply of the Enquiry Officer's report earlier. In the case of Managing Director, ECIL Hyderabad v. B.Karunakar, the Hon'ble Apex Court in para 31. held as under :

"31. Hence in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Courts/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment."

Thus, it appears that the Enquiry Officer has given the opportunity to make defence after giving Enquiry Officer's report, no prejudice has been caused to the applicant.

13. The fourth contention raised by Learned Counsel for the applicant is that Revisional Authority i.e. Additional DRM Sub-urban CSTM dealt with the case erroneously in terms of Rule 22 (2) of Railway Servants (Discipline & Appeal) Rules, 1968 in place of Rule 25 (I).

14. The Learned Counsel for the respondents, on the other hand, stated that the revisional authority has dealt with the case properly prejudice has been caused to the applicant. Unless the applicant satisfies the test of prejudice, the Tribunal cannot interfere with the departmental proceedings or penalty imposed upon the applicant. It is seen that the applicant submitted his revision petition dt. 16.7.2001 to DRM (S) Mumbai Division, Central Railway, Mumbai CST and this Revision Petition was submitted after the rejection of the appeal by Appellate

...14.



Authority by order dt. 23.5.2001. The Revisional Authority in its order dt. 2.8.2001 remarked that "After careful study of the case file and having gone through the speaking order of the Disciplinary Authority, your appeal and the order of the Appellate Authority which confirmed the penalty of removal from service, I came to the conclusion that you are guilty of two charges framed against you. Sufficient opportunities have already been given to you at various stages to represent your case.". Thus, it appears that it is the order passed on revision petition preferred by the applicant on 16.7.2001. For all purposes it is the order of the revisional authority in terms of Rule 25 (1) of the Railway Servants (Discipline & Appeal) Rules. If the number of rule is wrongly mentioned, it makes no difference and no prejudice has been caused to the applicant.

15. Thus, it appears that nothing is brought out to show any illegality or irregularity in the findings recorded by the Enquiry Officer. There is neither violation of any Rules nor any procedural law. The orders of the authorities are speaking orders and the penalties imposed upon the applicant is commensurate with the gravity of mis-conduct proved. The applicant had manhandled his own superior officer on duty. He deserves no leniency.

16. For the reasons stated above, the OA is devoid of merit fails. It is dismissed accordingly. No order as to costs.



(MUZAFFAR HUSAIN)
MEMBER (J)



(ANAND KUMAR BHATT)
MEMBER (A)

B.