

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 50/90

Transfer Application No:

DATE OF DECISION: 23.11.1994

M.A.Khan Petitioner

Shri M.S.Ramamurthy. Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

- Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,

The Hon'ble Shri M.R.Kolhatkar, Member(A).

1. To be referred to the Reporter or not ? *m*
2. Whether it needs to be circulated to other Benches of the Tribunal ? *m*


(M.S.DESHPANDE)
VICE-CHAIRMAN

(7)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

Original Application No.50/90.

M.A.Khan. Applicant.

V/s.

Union of India & Ors. Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,
Hon'ble Shri M.R.Kolhatkar, Member(A).

Appearances:-

Applicant by Shri M.S.Ramamurthy.

Oral Judgment:-

(Per Shri M.S.Deshpande, Vice-Chairman) Dt. 23.11.1994.

Heard Shri M.S.Ramamurthy, counsel for
the applicant.

2. By this application, the applicant challenges the order holding him guilty upon one of the heads of charge and the penalty of withholding two increments with cumulative effect, as well as, the order of suspension passed against him on 14.5.1987.

3. The charges against the applicant were that while he was on duty as TTE/CCG on 24/25.12.1985 in a 3 Tier sleeper coach on 2 Up Gujrat Mail he misused two vacant berths in S-3 sleeper coach being berth Nos. 53 and 54, though the passengers who had made the reservation had not turned up and he falsified the Government record and had allotted berth No.53 to a lady passenger holding an unreserved ticket after issuing coupon for Rs.12/- and thereby ignored RAC passengers. In respect of berth No.54 he allowed one of the passenger to use it without payment of Railway dues and when asked by the Vigilance Officers he refused to issue a receipt for Rs.12/- to the passenger and had thus not cooperated

with the Vigilance authorities.

4. The Enquiry Officer by his report dt. 10.12.1986 completely exonerated the applicant, but the Disciplinary Authority found the applicant guilty of not cooperating with the vigilance authorities when asked to issue a receipt for Rs.12/- ^{to} passenger occupying berth No.54 and imposed a penalty of withholding an increment for one year. The applicant's appeal was dismissed. But the Revisional Authority issued a show cause notice to the applicant on 3.3.1988 and after considering the applicant's submissions substituted the penalty of withholding ^{of} increments for two years with cumulative effect and this finding is being challenged by the applicant. It is apparent from the record that the Disciplinary Authority had not issued a show cause notice to the applicant before dis-agreeing with the Enquiry Officer's report and this was clearly not in conformity with the requirements laid down in Narayan Misra V/s. State of Orissa (1969 SLR 657). In para 6 of the report, the following observations were made:

"Now if the Conservator of Forests intended taking the charges on which he was acquitted into account, it was necessary that the attention of the appellant ought to have been drawn to this fact and his explanation, if any, called for. This does not appear to have been done. In other words, the Conservator of Forests used against him the charges of which he was acquitted without warning him that he was going to use them. This is against (all) principles of fair play and natural justice. If the Conservator of the Forests wanted to use them, he should have apprised him of his own attitude and given him an adequate opportunity. Since that opportunity was not given, the order of the Conservator of Forests modified by the State Government cannot be upheld."

In the present case the claim is that the berth Nos.53 and 54 had been occupied by the passengers for whom they are intended was not disputed. The question arose for issuing a coupon to the passenger

who was found occupying berth No.54. The contention of the applicant was that since berth No.54 was occupied by the genuine passenger the only course that could be adopted was that the unauthorised passenger should have been asked to alight at the next halt or prosecuted, but he could not be asked to pay the charges of Rs.12/- and a receipt could not therefore have been issued to him. Clearly the finding recorded by the Disciplinary Authority was based on the claim that the berth No.54 was vacant, but that was contrary to the finding of the Enquiry Officer which he had accepted. In these circumstances, it was all the more necessary for the Disciplinary Authority to issue a show cause notice to the applicant which was not done and the case squarely falls within the ratio of Narayan Misra's case. The penalty imposed by the Disciplinary Authority in these circumstances cannot be supported.

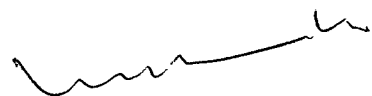
5. No doubt the applicant's appeal failed and the Revisional authority issued a show cause notice to the applicant, but the initial defect in the proceedings prior to the Disciplinary Authority's passing the order could not be cured by the show cause notice issued by the Revisional authority. A fresh opportunity should have been given to the applicant only by the Disciplinary Authority and this was not a factor which can be cured at a later stage by merely issuing a show cause notice for enhancing the penalty.

6. In the result, we find that the order imposing the penalty on the applicant, as well as, the finding holding him guilty cannot be upheld. The learned counsel for the applicant did not press the other reliefs which have been sought by this petition.

7. In the result, we allow the petition, set aside the orders holding the applicant guilty and imposing the penalty on him and direct the respondents to pay to the applicant all his monetary entitlements on the basis that the order imposing the penalty never existed. The pension and other retiral benefits of the applicant shall be worked out on that basis and the arrears paid to him. The entire process be completed within three months from the date of communication of this order. No order as to costs.



(M.R. KOLHATKAR)
MEMBER (A)



(M.S. DESHPANDE)
VICE-CHAIRMAN

B.