

(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR.

D.A.NO. 339/91
TR.A.NO.

199

DATE OF DECISION 22.4.1994

Shri Yadao Champat

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

1. Whether it be referred to the Reporter or not ? *no*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *no*

MR K. K. H. H.
MEMBER


(M.S. DESHPANDE)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

CAMP : NAGPUR

OA.NO. 339/91

Shri Yadao Champat

... Applicant

V/S.

Union of India & Ors.

... Respondents

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

Appearance

Shri B.J.Kawade
Advocate
for the Applicant

Shri P.S.Lambat
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 22.4.1994

(PER: M.S.Deshpande, Vice Chairman)

The applicant who was a Railway employee was charged with having misbehaved while he was working on 15.8.1987 by assaulting the mate who had distributed the work and injuring the mate in the presence of witnesses. The Enquiry Officer made his report and in consequences thereof the disciplinary authority passed an order directing the applicant to be removed from service. The applicant filed an appeal on 21.5.1988. By the appellate order which was passed on 26.10.1988 the penalty of removal was set aside and instead the applicant's pay was reduced from Rs.980/- to Rs.920/- for a period of four years.

2. The grievance of the applicant is that when the applicant made a submission before an appellate authority, that certain defence witnesses were not allowed to be examined in pursuance of the letter dated 28.8.1987, an oral order was passed by the appellate authority requiring the Enquiry

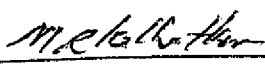
Officer to examine the witnesses. On 12.9.1988 when the applicant appeared before the Enquiry Officer only one witness Purshottam Gopal, whose name also figured in the list of prosecution witnesses, was stated to have been examined. There is no mention in the pleadings ~~before the Enquiry Officer~~ regarding what was done in respect of other three witnesses. Firstly, it was irregular to have made an oral direction during the pendency of appeal, ^{before by to} through the disciplinary authority upon a plea raised by the applicant to examine the witnesses. The appellate authority should have passed a reasoned order showing why this course had been adopted. There is nothing in the record of the enquiry officer that the other three witnesses who were named in the letter dated 28.8.1987 which was sent by the applicant to the enquiry officer were examined or why they were not examined. Learned Counsel for the respondents stated that it was for the applicant to produce those witnesses in accordance with Para 19 of the Procedure Rules framed by the respondents and it was not obligatory on the part of the enquiry officer to summon those witnesses. It was unfortunate that the learned counsel for the respondents did not point out the correct rule position in respect of this to the Tribunal. What we find is that by the Railway Board's letter dated 8.12.1970 at page 164 of M.L.Jand's commentary on The Railway Servants (Discipline & Appeal) Rules, 1968, III Edition, a clarification has been issued that:


"while the delinquent Railway servant should be given the fullest facilities by the Inquiring Authority to defend himself and with that end in view the witnesses which he proposes to examine, should ordinarily be summoned by the Inquiring Authority, it is not obligatory for latter to insist on the presence of all the witnesses cited by the delinquent Railway Servant and to hold up disciplinary proceedings until then attendance has been secured. The Inquiring Authority would be within his right to ascertain in advance from the delinquent Railway Servant as to what evidence a particular witness is likely to give. If the Inquiring Authority is of the

view that such evidence would be entirely irrelevant to the charge against the delinquent Railway servant and failure to secure the attendance of the witness would not prejudice defence, he may reject the request for summoning such a witness, but in every case of rejection he should record his reasons in full for doing so."

3. It is noteworthy that in the present case not only did the enquiry officer failed to take action on the letter dated 28.8.1987 by summoning the witnesses but when the matter was ^{fixed} ~~summoned~~ for examination of the additional witnesses, no steps were taken for securing the attendance of the defence witnesses nor were any reasons recorded why the enquiry officer found it unnecessary to examine these witnesses or to show that the evidences ^{was} ~~were~~ irrelevant. Unfortunately, even the appellate authority having issued the oral direction failed to notice the rule position and that there was non-compliance of the instructions issued by the letter dated 8.12.1970 aforesaid. This clearly was therefore a case where both the enquiry officer and the appellate authority failed to give a proper opportunity to the applicant to adduce defence evidence. Therefore, it ^{resulted} ~~was~~ ^{this} miscarriage of justice in denying an opportunity to the applicant to make his defence and we find that the order passed by the appellate authority cannot be supported.

4. In the result, we allow the application and set aside the order imposing the penalty of reduction of pay from Rs.980/- to Rs.920/- for a period of four years and direct that the amounts which were recovered from the applicant will be refunded to him within two months from the date of communication of this order.


(M.R.KOLHATKAR)
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN