

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 527/91

198

T.A. No.

DATE OF DECISION 30-9-1991Dashrathlal Somchand Modi PetitionerMr. M. S. Ramamurthy

Advocate for the Petitioner(s)

Versus

Union of India and others RespondentMr. P. M. A. Nair

Advocate for the Respondent(s)


CORAM :

The Hon'ble Mr. M. Y. Priolkar, Member(A)

The Hon'ble Mr. T. C. Reddy, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

MGIPRRND-12 CAT/86-3-12-86-15,000


 (M.Y. PRIOLKAR)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.527/91

Dashrathlal Somchand Modi,
9, Shanti Kishan Apartment 1,
Wamanrao Sawant Road,
Maratha Colony,
Dahisar(East),
Bombay - 400 068.

.. Applicant

vs.

1. Union of India
through
The General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.

2. Chief Commercial Superintendent(Catering),
Western Railway Churchgate,
Bombay - 400 020.

3. Chief Commercial Superintendent,
Western Railway,
Churchgate,
Bombay - 400 020.

.. Respondents

Coram; Hon'ble Shri M.Y.Priolkar, Member(A)

Hon'ble Shri T.C.Reddy, Member(J)

Appearances:

1. Mr.M.S.Ramamurthy
Advocate for the
Applicant.

2. Mr.P.M.A.Nair
Counsel for the
Respondents.

ORAL JUDGMENT:

(Per M.Y.Priolkar, Member(A))

Date: 30-9-1991

The applicant in this case while serving as Catering Inspector on Rajdhani Express on 18-7-1983 to 20-7-1983 was issued a chargesheet dtd.6-7-1984 alleging that he had failed to maintain absolute integrity and devotion to duty. The enquiry was conducted in March,1986 and the Inquiry Officer exonerated the applicant from the charges levelled against him. Thereafter after an interval of three years and 9 months the second respondent called the applicant to see him in his office on 5-1-1990 along with the documents to help him to remember the facts pertaining to the chargesheet. It is alleged that the second respondent

in that meeting told the applicant that he would revive the proceedings because of pressure from vigilance and the rival union. Thereafter under letter dtd. 14-3-1990 the second respondent forwarded the report and finding submitted by the Inquiry Officer to the applicant and it was stated therein that the Disciplinary Authority would take a suitable decision after considering the enquiry report and the applicant's explanation. According to the applicant since the finding of the Inquiry Officer was one of exoneration he did not ^{think} ~~thought~~ it necessary to make any representation against the Inquiry Officer's report. Thereafter an order of removal has been passed by the second respondent dtd. 19-4-1990/2-5-1990. It is also alleged in the application that thereafter the applicant approached the Minister of Railways and Minister was pleased to order that the applicant should be reinstated in the service but inspite of Railway Board's advise the Western Railway authorities have not so far implemented the same order of the Ministry of Railways.


2. According to the applicant ^{he} is being victimised and harassed because he is office bearer and active worker of the Catering Union in the Railways. It is his contention that the rival union had brought pressure and the authorities imposed a severe penalty of removal from service on the applicant. It is also contended that the order of removal from service dtd. 19-4-90/2-5-90 ~~is~~ imposed by the second respondent and the ^{order} ~~letter~~ dtd. 10-7-91 passed by the third respondent are mala fide and illegal.


3. Although several grounds have been alleged by the learned counsel for the applicant

in support of his contention that the impugned orders are illegal we are of the view that this application can be decided finally at this stage itself on the short ground of violation of principles of natural justice. In the case of Narayan Misra v. State of Orissa, 1969 SLR 657, decided on 25-3-1969 the Supreme Court has held that where the punishing authority differs from the findings of the Inquiry Officer and holds the official guilty of charges from which he was acquitted by the Inquiry Officer, without giving him any notice or opportunity regarding the attitude of the punishing authority, such orders of the punishing authority are liable to be set aside being violative of natural justice and fair play. In our view this Supreme Court judgment is squarely applicable to the facts of this case. Admittedly, in this case also although the Inquiry Officer in the enquiry report had exonerated the applicant of all the articles of charge contained in the chargesheet issued against him, the order dtd. 19-4-90/2-5-90 had been passed by the Chief Commercial Superintendent who is stated to be almost three levels above Disciplinary authority who had issued the chargesheet ^{and has} ~~but the who have~~ disagreed with the findings of the Inquiry Officer without ~~having recorded~~ recording the reasons for such disagreement and heard the applicant thereon and had passed the order of removal and the reasons recorded by him were furnished to the applicant along with the order of removal dtd. 19-4-90/2-5-90.

4. We, therefore, hold that this order has been passed in violation of principles of natural justice and accordingly quash and set aside the order dtd. 19-4-90/2-5-90 as well as the subsequent order of the appellate authority confirming this

penalty. The applicant will be entitled to all consequential benefits in accordance with law. There will be no order as to costs.


(T.C. REDDY)
Member(J)


(M.Y. PRALOKAR)
Member(A)

MD

C.P.NO. 68/91

in

OA.NO. 527/91

Tribunal's Order

Dated: 4.12.1992

(PER: S.K.Dhaon, Vice Chairman)

The complaint is that the order dated 30.9.1991 and the order dated 30.12.1991 passed by this Tribunal in the Review Petition preferred by the Union of India & Ors. have been disobeyed by the Union of India & Ors. and, therefore, they should be punished ^{for} having committed contempt of this Tribunal.

2. Notices have been issued to the respondents to show ~~cause~~. The contemnors have filed their replies.

3. Disciplinary proceedings were initiated against the applicant. The Enquiry Officer exonerated ~~him~~. However, the punishing authority, without affording any opportunity of hearing to the applicant, disagreed with the recommendations of the Enquiry Officer and passed an order removing the applicant from service. He came to this Tribunal by means of OA.No. 527/91 which was disposed of on 30.9.1991. This Tribunal quashed the order of punishing authority on the short ground that the same had been passed in violations of principle of natural justice in so far as the applicant was not afforded any opportunity by the punishing authority to demonstrate as to why the recommendations of the Enquiry Officer should be accepted.

4. Upon an application made by the Union of India and Ors. (Respondents), this Tribunal on 30.12.1991 clarified its order dated 30.9.1991 to the effect that in a case where an enquiry proceeds and an order is passed thereafter, and the same is set aside on a technical ground, it is always open for the authority to proceed with the ~~enquiry~~ proceedings beyond that stage. This Tribunal made it clear that after complying with the order passed by the Tribunal it will be open ~~to~~ the respondents to decide as to whether, in the particular case,

it is desirable to go ahead with the enquiry proceedings beyond the stage of giving notice to the original applicant. In case they decide to go ahead with the enquiry proceedings, they will proceed in accordance with law.

5. We are informed that disciplinary proceedings were reinitiated and in those proceedings a fresh order of removing the applicant had been passed. We are also informed that the applicant had preferred a fresh original application before this Tribunal at the stage when he was given a show cause notice by the punishing authority as to why he should not disagree with the recommendations of the Enquiry Officer. That O.A. is still pending in this Tribunal.

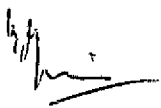
6. On 21.1.1992 an order was passed by the Chief Commercial Superintendent to the effect that, he on a consideration of the circumstances of the case, had also decided that further proceedings beyond the stage of giving notice to the applicant as per decision of this Tribunal shall commence. The said officer specifically set aside the order of removal from service passed against the applicant. He also directed that in accordance with Sub-rule (4) of Rule 5 of the Railway Servant (Discipline and Appeal) Rules, 1968, the applicant shall be deemed to be under suspension from the date of original order of removal from service.


7. We may first deal with the submission that inspite of the order of the Tribunal, the contemnors did not pay to the applicant his dues expeditiously. We may indicate that on 3.2.1992 this Tribunal had passed an order directing the contemnors to pay up the arrears etc. of the applicant within a period of two weeks from the said date. In the reply filed on behalf of the contemnors, the material averments are these. On 3.2.1992 a note was sent to APO(Bills) by SPO(G) to make arrangement for payment of subsistence allowance from 15.5.1990 within two weeks. The applicant had applied for

permission to leave Headquarters on the same day i.e. on 3.2.92 which was forwarded by Asstt. Commercial Superintendent (catering Mobile) to Headquarter Office on 6.2.92, which permission was given and noted by the applicant on 11.2.92. The Accounts Department was busy in preparing regular monthly bills to all employees. They wanted to peruse a copy of the original judgement of the Tribunal dated 30.9.1991 to enable them to pass the payment. The said judgement was furnished to them on 12.3.1992 and payment was kept ready and the applicant was advised as per Regd.A/D letter dated 13.3.1992 (Exhibit 'C' to the affidavit) that the same can be taken on any working day. Under Rule 70 of the Western Railway Pass Manual, the applicant was not entitled to be given a residential card pass. It is true that the payment was not made strictly within two weeks from 3.2.1992, but in view of the facts stated in the reply filed by the contemners, it cannot be said that they willfully refrained from making the payment. Therefore, disobedience, if any, is not wilful so as to enable this Tribunal to punish them for having disobeyed the order dated 3.2.1992. The thrust of the submission of Shri Ramamurthy is that in substance the disciplinary proceedings have been reinitiated merely to thwart the decision given by this Tribunal in the original application as well as in the review application. The argument is that really no decision was arrived at after due application of mind that it was desirable to continue with the disciplinary proceedings from the stage of giving of the show cause notice to the applicant. We have already indicated that there is a clear recital in the order passed on 21.2.1992 by the Chief Commercial Superintendent that he ^{the} had, on a consideration of ^{the} circumstances, decided that further proceedings should continue. We are refraining from expressing any concluded opinion on this particular question as we feel that this grievance cannot be gone into in the contempt proceedings. We have already indicated that the applicant has already filed a fresh original application which is pending before this

Tribunal. It will be open to the applicant to seek the necessary amendments in that application and challenge the fresh order of removal from service even on the ground that the initiation of the fresh proceedings was bad as it had taken place without due application of mind as well as in violation of the alleged direction of this Tribunal, as contained in the order of review.

5. Having considered the matter with anxiety, we are of the opinion that no relief can be granted to the applicant in this application. We, accordingly, dismiss ^{it} but without any order as to costs.


(M.Y. PRIOLKAR)
MEMBER (A)


(S.K. DHAON)
VICE CHAIRMAN