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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 407/91

Transfer Application No:

DATE OF DECISION 19/1/95.

Dinkar Fakira Shinde Petitioner

K.B.Talreja Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

J.G.Sawant

Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri B.S.Hegde, Member(J).

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

1. Whether Reporters of local papers may be allowed to see the Judgement ?

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of the Judgement ?

4. Whether it needs to be circulated to other Benches of the Tribunal ?


(B.S. HEGDE)
M(J)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

O.A.407/91

Dinkar Fakira Shinde ... Applicant.
V/s.
Union of India & Ors. ... Respondents.

CORAM: Hon'ble Shri B.S.Hegde, Member(J).
Hon'ble Shri M.R.Kolhatkar, Member(A).

APPEARANCES :

Shri K.B.Talreja - Counsel
for Applicant.

Shri J.G.Sawant - Counsel
for Respondent.

ORAL JUDGEMENT: DATED : 19/1/95.

{ Per Shri B.S.Hegde, Member(J) }

The main prayer in the OA is that imposing of the Compulsory Retirement of the Applicant passed by the Respondents on 11/6/90 and subsequent order of reinstatement in a different cadre as 'Fitter' on 8/10/90 is to be set aside and quashed.

2. The Applicant was initially appointed as Khalasi in the year 1961 and in 1979, he has been promoted and appointed as Motor Lorry Driver in the scale of 950-1500. At the time of imposing the major penalty of compulsory retirement, he was drawing the scale of 1450/- and had put in 28 years service on the whole.

3. The main contention of the applicant is that it is not open to the Respondents to change the cadre from Motor Lorry Driver to Fitter which is not permissible under the rules.

4. Regarding Enquiry, since it was admitted by the applicant himself that on account of giddiness while driving the vehicle, he had

allowed the cleaner to drive the vehicle. Accordingly, the fact finding report of the inquiry Officer is that the applicant Shri D.F.Shinde should not have given this lorry to be driven by his cleaner Shri S.D.Shinde and it is obvious that the cleaner had driven the vehicle at his behest. Therefore, the question of further enquiry hardly arises. Accordingly, the Competent Authority issued a major penalty Charge-sheet to the applicant vide order dt. 8.9.89. The Applicant submitted his representation on 16.10.89 requesting the authority to take a lenient view. Considering his representation the Competent Authority, withdrew the charge-sheet vide its order dt. 6.12.89. Again on the same day, the Respondent re-issued a charge-sheet to the Applicant, he submitted his explanation on 14.12.89.

5. In the light of the above, the Learned Counsel for the applicant contends that without making any enquiry, ex parte decision was taken by the Respondent as required under Railway Employees Discipline & Appeal Rules 1968 and imposed a "penalty of Compulsory Retirement from Railway Service with full pensionary benefit admissible under the Rules", on 11.6.90.

against which he preferred an appeal vide letter dt. 13.6.90, The Appellate Authority vide its order dt. 8.10.90 passed the following order stating that on humanitarian ground and long length of service still to go allegedly taking a lenient view, accordingly, he was given an alternate post of 'Fitter grade III' in the grade of 950-1500 with a basic pay of Rs.1350/- p.m.

6. Heard the arguments of both the parties, Admittedly, the order of the Appellate Authority dt. 8.10.90 changing the penalty from Compulsory Retirement

to that of posting in a different cadre of the post of 'Fitter grade III apparently is bad in law and the said order is not in accordance with the Rules. Besides, that the order of Compulsory Retirement issued by the Competent Authority dt. 11.6.90 is rather on the high side, in the circumstances, we hereby quash and set aside both the order of 'Compulsory Retirement as well as posting him to the post of Fitter grade-III by the Appellate Authority which is not only bad in law but not sustainable in law.

7. However, it is open to the Competent Authority to pass any appropriate order keeping in view the situation in which the accident took place and the circumstances in which the applicant allowed the cleaner to drive the vehicle and pass appropriate orders in this behalf except the Compulsory Retirement within a period of three months from the date of receipt of this order. In the light of the above, OA is allowed to the extent of direction given to the respondents and the same is accordingly disposed of. No order as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
M(A)

B.S.Hegde

(B.S.HEGDE)
M(J)

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