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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
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Original Application No: 674/91

~~XXXXXXXXXXXXXXXXXXXX~~

DATE OF DECISION: 22.3.95

Mr. Ram Kumar Ramkripal Misra Petitioner

Shri C.M. Jha Advocate for the Petitioners

Versus  
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Union of India & Anr. Respondent


Shri N.K. Srinivasan Advocate for the Respondent(s)

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

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

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

  
(B.S. Hegde)  
Member (J)

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. NO. 674/91

Mr. Ram Kumar Ramkripal Misra ... Applicant

v/s

Union of India & Anr. ... Respondents

CORAM

- 1) Hon'ble Shri B.S. Hegde, Member (J)
- 2) Hon'ble Shri M.R. Kolhatkar, Member (A)

APPEARANCE

- 1) Shri C.M. Jha, Advocate for the Applicant
- 2) Shri N.K. Srinivasan, Counsel for the Respondents

JUDGEMENT

DATED: 22.3.95

(Per: Hon'ble Shri B.S. Hegde, M(J)).

1. The Applicant has filed this O.A. challenging the impugned orders of the Respondents dated 23-9-1988 passed by the Disciplinary Authority, Appellate Authority's orders dated 29-3-1989 and the order passed by the Revisional Authority vide dated 9-8-1990 and seeks directions to the Respondents to re-instate the Applicant as a senior clerk with all back wages and consequential benefits.

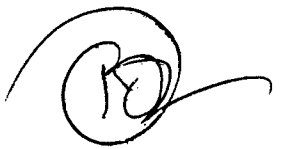
2. The brief facts of the case are, that the Applicant was initially appointed as substitute cleaner/khalasi on 1-5-1971 and posted to work under Loco Foreman Bandra. Thereafter, he was promoted as Fuel Checker on 2-2-1983 (Grade III). He was appointed on

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ad-hoc basis as a senior clerk on 21-12-1984. Though he was kept under suspension with effect from 24-4-1977, the suspension order was revoked on 5-10-1977. Thereafter, the Respondents initiated departmental proceedings on 7-11-1984. After completion of the departmental enquiry, he was removed from service on 23-9-1988 by the Disciplinary authority against which he preferred an appeal on 3-11-1988 which was rejected by the Appellate authority vide dated 29-3-1989; thereafter, he preferred a review petition to the competent authority who after giving a personal hearing to the Applicant modified the order of penalty from removal from service to the reduction to the lowest stage of his initial recruitment for a period of 3 years without the future effect. Thereafter, he preferred a mercy petition to the President of India on 5-5-1991 but he states that no reply has been received. Nevertheless, pursuant to the directions of the reviewing authority, he has joined the service as cleaner.

3. The main charge against the Applicant was that while functioning as a Fuel Checker at Bandra Diesel, Marshalling Yard, Western Railway, Bombay, during the period 1-2-1977 to 13-2-1977, he committed gross misconduct and failed to maintain absolute integrity and devotion to duty inasmuch as while issuing the the HSD oil to the Loco Engines did not record proper entries in the issue register of HSD oil in respect of opening and closing balance of the said oil and thereby caused wrongful loss to the Railway Administration



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and thus contravened Rules 3(1) of the Railway Service (Conduct) Rules 1966; which act is unbecoming of Railway Servant.

4. The grievance of the Applicant is that during the enquiry, apart from not supplying the key documents despite demand, the Respondents have also not supplied the enquiry report before imposition of the penalty and also there was undue delay in completion of enquiry proceedings and the Appellate Authority failed to give a personal hearing to the Applicant etc.

5. The Respondents in their reply have taken a stand that the Application filed by the Applicant is barred by limitation as he is challenging the final order of the Reviewing Authority dated 9-8-1990 i.e. beyond one year period as required under the Act. Moreover, he has not filed any Application for condonation nor made out any new grounds. The Applicant was promoted as Senior Clerk only on ad-hoc basis and as disciplinary proceedings were pending against him, he could not be considered on regular basis. The Respondents also denied the contention of the Applicant that the Appellate Authority has not given a speaking order in consideration of all the factors as per rules. As a matter of fact, the Revisional Authority has given a personal hearing to the Applicant and modified the order of Disciplinary Authority as well as the Appellate Authority and hence there cannot be any grievance on behalf of the Applicant that he was not given sufficient opportunity and that the CCS (CCA) Rules were not adhered to. It is further contended



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that since he has no right to seek promotion to the Senior Clerk's post, the reversion orders passed by the Respondents is valid and is in accordance with the rules. Regarding the Mercy Appeal, they are not covered under the rules and hence they are not required to file any reply.

6. We have heard both the counsels and gone through the pleadings and documents of the parties. It is an admitted fact that the plea of delay has not been taken either in appeal or review filed by the Applicant. The Respondents denied by stating that the alleged key documents to be supplied to the Applicant were in fact not readily available and was not relied upon in arriving at its conclusion. The removal order was passed by the Competent Authority on the basis that he did not record proper entries in the issue register of HSD Oil and thereby caused loss to the Government. Further, admittedly, the Applicant was working as a Senior Clerk on ad-hoc basis and no vested rights accrued to him. Thus, his claim for the post of Senior Clerk does not have any merit and is not based on any material facts.

7. In view of the pending enquiry against the Applicant, the Respondents passed the reversion order on 20-5-1988 and the removal order on 5-10-1988. It is an established fact that the Applicant has worked as a Fuel Checker on earlier occasion which is clear from the Fuel Checker Register. As per his duty as a Fuel Checker, he was required to record all proper entries in the issue register after ascertaining the factual position personally but he failed to do so. He is supposed to act as per rules, not according to

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his knowledge or belief. The contention of the learned counsel for the Applicant that he was not working as a regular Fuel Checker does not have any merit as he is required to act in accordance with the rules.

8. It is true that there is some delay in completion of the enquiry proceedings because of the change of the Presenting Officer from time to time. Nevertheless, the charge sheet was issued to the Applicant immediately after the incident of shortage. In this connection, the learned counsel for the Applicant relies upon the decision of the Tribunal (1987) 3 ATC 627 Shiv Rattan Gupta v/s Director of Education, Delhi wherein the Tribunal has held that Appellate Authority's order must be speaking and conforming to requirements of Rule 27(2) of CCS (CCA) Rules 1965. In that case, the Appellate Authority has not passed any speaking order whereas in the instant case, the Appellate Authority while passing the impugned order has given a reasoned order. We have gone through the Appellate Authority's order dated 29-3-1989 (Exh. 'F') and found that it is a comprehensive order and the Appellate Authority has taken into account the alleged procedural irregularities, the validity of the findings of the Disciplinary Authority and factors as such the Appellate order cannot be faulted for non-compliance of relevant Railway Rules. Against the Appellate order, the Applicant preferred a review petition before the Competent Authority. He has not averred anything before the Reviewing Authority that he has not been given a speaking order by the Appellate Authority nor sought any personal hearing. Despite the same, the Reviewing Authority has given him a personal hearing and after

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perusal of the entire records of the Applicant, come to the conclusion that there is evidence on record to show that there were malpractices at Bandra Diesel Loco Shed in manipulating records of receipts and issues of Diesel Oil to defraud the Railways and he has come to the definite findings that he had not properly recorded and tried to manipulate the receipts and issue of fuel during the period for the reasons best known to him and his partial involvement, however small, cannot be completely ruled out. Considering the entire documents of the case, the Reviewing Authority modified the penalty imposed by the Disciplinary/ Appellate Authority by reduction to the lowest stage in the initial recruitment grade for a period of 3 years without the future effect. In that view of the matter, the ratio laid down in the aforesaid judgement is not fully applicable to the facts of this case.

9. The learned counsel for the Applicant also relied upon the decision of the Tribunal in (1987) 3 ATC 629 - G. Ramachandran v/s Senior Superintendent of Post Offices, Madurai City Division, Madurai & Anr. In that case, the charge-sheet was issued after five years of the alleged incident but inquiry not started even thirteen years later; thereby the inquiry has been held to be vitiated and the same is not the scenario in this case, because the charge-sheet in the instant case was supplied immediately after the incident i.e. in 1978 itself and there was <sup>some</sup> delay in the completion of the inquiry proceedings; therefore, the said case is distinguishable from the present case. However, the Applicant has not taken a plea of delay either in



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facts of this case. Though the Appellate order does not reveal compliance with any of the conditions laid down in Rule 22 (2) of the Railway Servants (Discipline and Appeal) Rules, 1968, however, the said order has already been further modified by the Reviewing Authority reducing the penalty imposed against the Applicant; therefore, the question of re-considering the Appellate Authority's orders and to quash the same at this stage does not have any merit. However, on an overall view of the matter, we find that the procedure followed by the Inquiry Officer/Disciplinary Authority/Appellate Authority did not in any way prejudicially affect the defence of the Applicant nor has it resulted in miscarriage of justice except to the extent of punishment which according to us is not commensurate with the degree of delinquency on the part of the Applicant.

12. The learned counsel for the Applicant during the course of hearing brought to our notice that when the Applicant's colleague one Shri Unnikrishnan who was similarly situated and was involved in the same episode was punished with minor penalty. In order to avoid further waste of time and state of suspense, we are of the view, that no useful purpose will be served by referring it for further enquiry on account of technical flaw that the Appellate Authority has not given a personal hearing to the Applicant before passing the impugned order, and that having regard to what has already come out before us from the records and arguments of learned counsel for both the parties, it would meet the ends of justice if the Applicant is given the same penalty as that of Shri Unnikrishnan i.e. stoppage of

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increment for a period of one year without future effect passed by the Appellate Authority which was not challenged further. In the instant case, the Appellate Authority's order was challenged by filing a review petition though the Reviewing Authority further modified the order of the Appellate Authority by reducing the penalty to the lowest stage in the initial recruitment grade for a period of 3 years without the future effect. Apparently, the punishment imposed against the Applicant is discriminatory in nature to that of Shri Unnikrishnan and others. It is not the contention of the Respondents that the Applicant's case in any way is different from others. The charges levelled against Shri Unnikrishnan and others vis-a-vis the Applicant is one and the same. In that view of the matter, the Respondents are not justified in giving a different punishment and treatment than that of others, which is contrary to the provisions of Article 14 of the Constitution. We have called for Shri Unnikrishnan's file and found that the Appellate Authority itself had imposed a minor penalty. That being so, the impugned orders of both the Appellate Authority as well as the Reviewing Authority is unreasonable; however, for the reasons stated above, the ends of justice would be served if the penalty is reduced to that of stoppage of increment for a period of one year without future effect.

13. In the result, the O.A. is allowed and the penalty imposed by the Reviewing Authority is being modified to the extent of punishment i.e. from reduction to the lowest stage in the initial recruitment grade to that of stoppage


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of increment for a period of one year without future effect as in the case of Shri Unnikrishnan. The period of absence from the date of removal to the date of reinstatement, the Respondents have already passed an appropriate order and no clarification is called for.

14. Accordingly, the Respondents are directed to modify the order in the case of the Applicant similar to the order passed in the case of Shri Unnikrishnan within a period of 2 (two) months from the date of communication of the orders. In the circumstances, no orders as to costs.

  
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(M.R. Kolhatkar)  
Member (A)

  
(B.S. Hegde)  
Member (J)

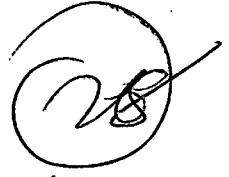
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**C. M. JHA**

M. A., LL. B.  
ADVOCATE HIGH COURT, BOMBAY

RESI. : 8070775, 8075980  
B-17, 'ABHILASHA',  
MATHURADAS ROAD (EXT.),  
DATTANIGRAM,  
KANDIVLI (W),  
BOMBAY-400 067.

CHAMBER: 2835285  
ROOM NO. 22, 4TH FLOOR,  
ESPLANADE MANSION,  
144, M. G. ROAD, FORT,  
BOMBAY-400 023.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

M U M B A I

C. P. NO. 142 OF 1991

IN

O. A. 674 OF 1991

R. R. Misra .....Applicant

V/s.

Union of India .....Respondent

To,

The Registrar,  
Central Administrative Tribunal,  
MUMBAI.

Sir,

Be pleased to produce the papers & proceedings of the above matter before the Hon'ble Justice Hegde on 3-2-97 at 11.00 a.m. for "Speaking to the Minutes" as the order passed while desposing of the contempt application His Lordships have stayed their own order passed in the original application.

"On 25-10-96 Ld. Counsel for Respondent made specific statement before the Court that "Irrespective of out come of SLP filed by the Respondent order dt. 22.3.95 will be implemented within two weeks"

But the order passed by the Hon'ble Tribunal is just reverse of what agreed to by both the Counsels.

