

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 977/92

Transfer Application No.

Date of Decision 16.8.1995

N.H.Babar.

Petitioner/s

Shri D.V.Gangal.

Advocate for  
the Petitioners

Versus

Union of India & Anr.

Respondent/s

Shri S.C.Dhawan.

Advocate for  
the Respondents

CORAM :

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

Hon'ble Shri. P.P.Srivastava, Member(A).

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

  
(M.S.DESHPANDE,  
VICE-CHAIRMAN)

(B)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
BOMBAY BENCH, BOMBAY.

Original Application No.977/92.

N.H.Babar.

... Applicant.

V/s.

Union of India & Another.

... Respondents.

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

Appearances:-

Applicant by Shri D.V.Gangal.  
Respondents by Shri S.C.Dhawan.

Oral Judgment:-

¶ Per Shri M.S.Deshpande, Vice-Chairman Dt. 16.8.1995.

By this application, the applicant challenges the finding holding him guilty of the and charges / the order of removal passed against him on 20.9.1990 and 20.2.1992.

2. The applicant joined the service with the Central Railway as Khalasi at Solapur on 30.12.1980. The alleged incident took place in the evening of 15th February, 1987 when the complainant and two of his friends were having a drinking party, and while the applicant was going towards his house the applicant was asked to get him a bottle of liquor but the applicant refused. ~~He~~ The applicant thought that the incident was closed and did not take any steps. The complainant, however, lodged a false complaint against him on the basis of which a charge sheet was issued to him on 22.4.1987, the charges being that the applicant had exhibited lack of integrity and devotion to duty by use of unparliamentary words and abused in vulgar language in a repressive manner as reported by Santram, BRI in his report dt. 15.2.1987. The applicant's grievance is that there was no inquiry, no witnesses were

only examined and that he had expressed his regrets, there being no un-conditional apology because he had given his own version of the incident. His version was not accepted and holding that the applicant was guilty of the charges framed against him, the Disciplinary Authority imposed the punishment of removal from service. The appeal to the Appellate Authority failed and the applicant approached this Tribunal by filing O.A. No.460/91. By the order dt. 13.2.1991, the respondents were directed to dispose of the applicant's appeal within two months. That appeal was not decided within two months as directed and the applicant took out a contempt motion against the respondents and ultimately the Appellate Authority passed an order on 20.2.1992 upholding the finding of guilty, as well as, the order of removal. By the present application the applicant challenges the orders so passed.

3. Earlier when the matter came up before us on 23.6.1993 the applicant's counsel was not present and Shri J.G.Sawant, counsel for the Respondents was heard. We took the view that there was an admission by the applicant himself of his guilt and we ~~was~~ therefore dismissed the O.A. summarily. Against that a review application was made and when the matter came up before us again we held on 12.6.1995 that there was substance in the plea raised on behalf of the applicant that there was no un-equivocal admission on the basis of which the termination was ordered and therefore the matter was placed for final hearing to day.

4. Shri S.C.Dhawan, counsel for the Respondents further requested us for time to file reply because it was

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not filed within four weeks as directed by us. It must be noted that even when the matter had been adjourned earlier for filing reply, none was filed on behalf of the Respondents. Even to day no reason has been given for not filing the reply within the time directed except stating that the papers were with Shri J.G.Sawant who used to appear for the respondents previously. It is difficult to see how this argument can now be availed of when Shri J.G. Sawant had intimated to the Court that he would not appear on account of his illness in any of the matters <sup>by</sup> in which he had been briefed the Respondents earlier <sup>had</sup> and asked the department for changing the counsel and entrusting the brief to some other advocate. Shri S.C. Dhawan appeared for the respondents on 12.6.1995 and was aware of the position that the reply had to be filed within four weeks. The matter was instituted in 1992 and we find that the respondents have not shown any seriousness in this matter. They have not filed any reply inspite of several opportunities granted to them and even though earlier order had been set aside in Review Petition No.29/94.

5. We enquired from the learned counsel for the Respondents if the original record of the inquiry was available with him and he told us that none of the officials from the department had turned up and he did not have any records with him. Considering all these aspects we declined to grant an adjournment to the respondents for filing the reply.

6. Shri D.V.Gangal, counsel for the applicant <sup>through</sup> took us to the copies of the documents which were filed on record. The charge is at Annexure 'D'. Neither the charge nor the statement of imputations mention the un-parliamentary words or the vulgar language attributed to the applicant. The applicant

(E3)

gave a reply on 12.5.1987 in which he stated that the allegations made against him were only due to some misunderstanding. On 15.12.1987 which was a Sunday, he had been to the Bridge Inspector to know what was to be his duty on Monday so that he could prepare for the duty and that he had never mis-behaved with his co-workers and superiors and there was no cause for complaint. In the penultimate paragraph he stated that there was some misunderstanding which might have been there for which he was <sup>would</sup> very sorry and apologise to his superiors. ~~xxxxxxxxxxxxxx~~ This statement cannot be construed as an unequivocal admission by the applicant of the use of unparliamentary or vulgar language. The department initially appointed Shri J.Patwardhan as Enquiry Officer and later Shri Bhatnagar. On 23.10.1985 the applicant filed a statement to the effect that the allegations made against him were unfair and that he had not quarelled with the Officer and that the allegations were not correct. The report made by the Enquiry Officer (Annexure -I) shows that in answer to questions No.7 and 11 the applicant had accepted his fault and that he accepted this <sup>report</sup> also vide written statement dt. 20.4.1987. It was also mentioned in the <sup>report</sup> that from the written statement of the complainant Santram and from the statement of witnesses R.R.Tiwari and R.U.Singh it was found and proved that the applicant had mis-behaved with Santram and also used unparliamentary words and abused him. On 14.8.1990, the applicant wrote to the Train Examiner, Manmad, wherein he made the following

statement:

"According to the above allegation against me, I do agree that there was an argument between us for some work. I have not disobeyed any orders and moreover, no bad language was used by me. Only for the sake of minor arguments, this has taken place. I am a regular worker without any disobedience to my superiors.

Because of this argument, I must humble request for your pardon and mercy I promise in future that this occurrence will not be repeated."

Even the above statement cannot be construed as an admission for the use of unparliamentary or vulgar language. In the letter dt. 5.10.1990 (Ex. 'K') sent after the order of removal was passed the applicant stated that the removal was brought about on the basis of the charges framed against him which were admitted by him and that it was his first mistake but this also cannot be construed as an admission of the use of unparliamentary or vulgar language.

7. The proper course for the Enquiry Officer in the face of the earlier statement which was made before him, was to examine the witnesses whose names had been mentioned at Annexure - III to the charge memo. The applicant has stated in his application that none of those witnesses were examined at the inquiry and the questions were based only upon the statements recorded at the preliminary inquiry, without affording the applicant an opportunity to cross-examine the persons whose statements were recorded. The proper course for the Respondents would have been to file a proper written statement denying the allegations made in the application to bring out the falsity of the averments made by the applicant and to produce the relevant records from which it could have been made clear that the two witnesses named in the charge sheet had been cross-examined. This has not been done.

...6.

8. Shri S.C.Dhawan, counsel for the respondents wanted to urge before us that the factual position was different, but since no written statement had been filed nor were original records produced before us inspite of opportunities available to the respondents, we declined to hear Shri S.C.Dhawan in the matter any further on facts not pleaded because we had to proceed on the basis of the averments in the petition which remained uncontroverted.

9. The position which emerges now is that the actual words which were used by the applicant were not mentioned in the charge sheet. No witnesses were examined at the time of the inquiry and no opportunity was given to the applicant to cross-examine those witnesses. What was merely an expression of regrets without admitting the facts was sought to be used as the prime material against the applicant. In these circumstances, it is impossible for us to support the finding of guilt. We find that since the requirement under Rule 9 of the Railway Service Rules have not been observed the punishment imposed on the applicant shall have to be quashed. We must mention that during the course of the arguments Shri D.V.Gangal the learned counsel for the applicant stated before us that he would request us not to direct a fresh inquiry against the applicant because in the event of our quashing the charge the applicant would be willing to forego fifty per cent of the wages which would become payable to him on account of his reinstatement and that the applicant does not want to be subjected to the travails of a fresh inquiry on a flimsy charge and would like to forego half of the wages than to meet the challenge nearly five years after the incident. In view of the offer made by the applicant we pass the following order.

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10. The orders passed by the Disciplinary Authority on 20.9.1990 and the Appellate Order dt. 22.2.1992 holding the applicant guilty and imposing the punishment of removal are set aside and the respondents are directed to reinstate the applicant to his original post within one month from the date of communication of this order. The applicant would be entitled to 50% of monetary benefits which would become payable to him had the impugned orders in the inquiry were not passed. He will also be entitled to continuity of service and all other consequential benefits on the footing that the charges had not been proved. The monetary benefits as ~~are~~ directed above shall be paid to the applicant within three months from the date of communication of this order.

  
(P.P. SRIVASTAVA)  
MEMBER(A)

  
(M.S. DESHPANDE)  
VICE-CHAIRMAN

B.

(21)

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

R.P. NO. 29/94 AND

R.P. NO.: 111/95 IN O.A. NO.: 977/92.

Dated this 10<sup>th</sup> the Twenty day of December 1996.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

HON'BLE SHRI P. P. SRIVASTAVA, MEMBER (A).

N.H. Babar ... Applicant

(By Advocate Shri D.V. Gangal).

VERSUS

Union Of India & Another ... Respondents

(By Advocate Shri V.S. Masurkar) (Review Petitioner).

: O R D E R :

Heard Shri D. V. Gangal for the applicant and  
Shri V. S. Masurkar for the respondents (Review Petitioner).

2. The respondents have filed a review petition seeking review of the judgement dated 16.08.1995 and to restore the original application to the file for fresh hearing. It may be recalled, initially the O.A. was dismissed summarily vide Tribunal's order dated 23.06.1993 stating that the order of removal came to be passed upon the admission of the applicant himself and we, therefore, see no merit in the application. Against this order, the applicant filed a Review Petition No. 29/94 which was disposed by the Tribunal vide its order dated 12.06.1995

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stating that "on the basis of the submission made by the Counsel for the respondents, the final order was passed in this case. There is some substance in the plea raised on behalf of the applicant in R.P. No. 29/94 that there was no un-equivocal admission on the basis of which the termination have been ordered. The Learned Counsel for the applicant was not heard at that time. We think that there was an error apparent on the face of the record. We, therefore set aside the impugned order and direct that the O.A. be placed for final hearing. Reply within four weeks. List the case for final hearing on 16.08.1995." The Tribunal vide order dated 16.08.1995 stated that "the applicant in the O.A. has challenged the finding holding him guilty of the charges and the order of removal passed against him on 20.09.1990 and 20.02.1992. The learned counsel for the respondents, Shri S.C. Dhawan, wanted to urge that the factual position was different, but since no written statement had been filed nor were original records produced before the Tribunal inspite of opportunities available to the respondents, the Tribunal declined to hear Shri Dhawan in the matter any further on facts not pleaded because we had to proceed on the basis of the averments in the petition which remained uncontraverted. The position which emerges now is that the actual words which were used by the applicant were not mentioned in the charge-sheet. No witnesses were examined at the time of the enquiry and no opportunity was given to the applicant to cross-examine those witnesses, etc.... In these

circumstances, it is impossible for us to support the finding of guilt." Accordingly, the order passed by the Disciplinary Authority on 20.09.1990 and the Appellate Authority dated 22.02.1992 holding the applicant guilty and imposing the punishment of removal are set aside and the the respondents were directed to reinstate the applicant to his original post within one month from the date of communication of the order.

3. The present Review Petitioner urged that since they could not file the written statement in time, the O.A. was disposed of without hearing their contention, therefore they are compelled to file the present Review Petition restoring the O.A. for further hearing. It is also stated that the applicant was working at the relevant time at Manmad and their H.O.D. is D.R.M., Solapur Division, which has not been made a party-respondents in the present case purportedly by the applicant. On the contrary, the applicant has made D.R.M., Bombay V.T. as party-respondents, who has no locus-standi in the present case and that is why the written statement could not be filed in the present case and the matter was decided without the written statement of the respondents and without D.A.R. proceedings. The disciplinary authority of the applicant was Executive Engineer B and F, Manmad, who had passed the impugned order under challenge in the present case. The applicant with ulterior motive did not make the disciplinary authority as party-respondents. In the facts and

circumstances of the case, the applicant ought to have made the General Manager, Central Railway, Mumbai V.T., as party-respondents, who has jurisdiction over other Divisions, which he has not made. Due to counsel's inaction, the written statement could not be filed.

Since the matter pertains to ~~Sholapur~~ Sholapur Division and the D.R.M., ~~Sholapur~~ has not been made a party-respondents, for want of communication the respondents could not file the reply in time.

4. In the light of the above, the matter requires to be heard in the Court, therefore, the respondents have filed this Review Petition urging the Court to hear the matter on merits. Since the necessary parties have not been impleaded in this O.A., this requires further hearing keeping in view the principles of natural justice and the order passed by the Tribunal without having the respondents written version would cause considerable damage.

5. For the reasons stated above, we are of the view, that the Review Petition filed by the respondents is sustainable and accordingly, we direct the respondents to file their written statement, which is to be taken on record and the copy of the same be given to the applicant's counsel in advance before the next date of hearing. Since the applicant has already filed reply to the R.P. filed by the respondents, the R.P. as well as O.A. will be heard on the next date of hearing which is fixed on 14.01.1997.

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Since we are allowing the review petition, the C.P. No. 169/95 filed by the applicant becomes infructuous and the same is discharged. R.P. No. 29/94 filed by the applicant also stands disposed of.

  
(P.P. SRIVASTAVA)

MEMBER (A).

  
(B. S. HEGDE)

MEMBER (J).

OS\*

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

(30)

Original Application No. 977/92

Transfer Application No.

Date of Decision 31-10-97

N.H.Babar

Petitioner/s

Shri D.V.Gangal

Advocate for  
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri V.S.Masurkar

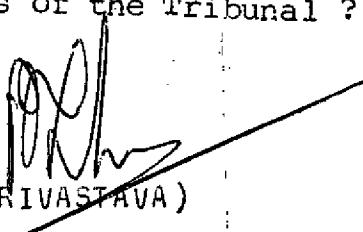
Advocate for  
the Respondents

CORAM :

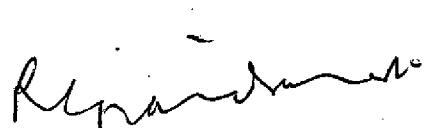
Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri. P.P.Srivastava, Member (A)

(1) To be referred to the Reporter or not ? No  
(2) Whether it needs to be circulated to  
other Benches of the Tribunal ? No

  
(P.P.SRIVASTAVA)

MEMBER (A)

  
(R.G.VAIDYANATHA)

VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

OA.NO.977/92

(31)

this the 31<sup>st</sup> day of OCT. 1997

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman  
Hon'ble Shri P.P.Srivastava, Member (A)

Namdeo Hari Babar  
R/o Dist.Solapur,  
Ganeshnagar,  
Post of : Kurdwadi,  
Taluk MADA (M.S.)

By Advocate Shri D.V.Gangal ... Applicant  
v/s.

1. Union of India through,  
The Divisional Railway Manager,  
Central Railway, Bombay V.T.
2. The Deputy Chief Engineer (B&F),  
Central Railway, Bombay V.T.

By Advocate Shri V.S.Masurkar ... Respondents  
C.G.S.C.

O R D E R

(Per: Shri P.P.Shrivastava, Member (A))

The case of the applicant is as under :- The applicant was working as monthly rated Khalasi under Bridge Inspector, Solapur since 30.12.1980. The applicant was issued a charge-sheet on 22.4.1987. The applicant submitted a reply to the charge-sheet dated 12.5.1987. The enquiry was conducted by Enquiry Officer one Shri P.K.Bhatnagar on 30.3.1989. The applicant was removed from service w.e.f. 24.9.1990. The applicant submitted an appeal dated 5.10.1990, 26.11.1990 and 18.12.1990. The appeal of the applicant was rejected by the order dated 20.2.1992. Aggrieved by the order of removal and rejection of appeal, the applicant has

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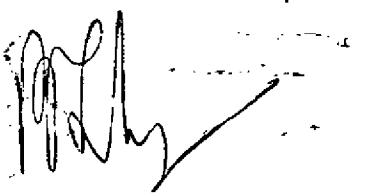
filed this OA. This OA. was first dismissed on 23.6.1993 with the following order passed by the Tribunal :-

" None for the applicant. Shri J.G.Sawant for the respondents.

We find that the order of removal came to be passed upon the admission of the applicant himself and we, therefore, see no merit in the application. It is dismissed summarily."

This order was reviewed by the Tribunal on 12.6.1995 on the ground that the learned counsel for the applicant was not heard at that time. The matter was, therefore, heard again and a judgement dated 16.8.1995 was delivered. This judgement also came for review through the review application which was disposed of by the Tribunal by the order dated 10.12.1996. By this order the Tribunal's judgement dated 16.8.1995 by which the OA. was partly allowed has been recalled and the OA. is placed for hearing again on the ground that the necessary party were not impleaded in the OA. The OA. is, therefore, heard again. Both the counsels for the applicant Mr. D.V.Gangal and for the respondents Mr.V.S.Masurkar were present and have been heard.

2. The applicant has challenged the enquiry on the ground that the enquiry was not conducted on the principles of natural justice and that the applicant had never accepted his guilt unconditionally. The



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applicant has further submitted that the charges have not been brought home to the applicant. The applicant has further mentioned that no witnesses were examined to say that the applicant had used unparliamentary words against the complainant, Mr. Shantaram, in the enquiry. The applicant has also mentioned that the charges are vague and the charge-sheet does not indicate what was the actual unparliamentary language used by the applicant and that these words should have been stated in the charge-sheet. The applicant has also brought out that the appellate authority has disposed of the appeal and the points raised by the applicant have not been considered in the appellate order. The applicant has further stated that the appellate authority has not considered the applicant's representation dated 18.12.1990 in which the applicant has categorically stated that he has admitted the guilt by mistake and wrongfully. He has further narrated that it was the applicant who was slapped by Shri Shantaram and by one Shri Tiwari.

3. The respondents on the other hand have submitted that the charge-sheet was issued to the applicant and the charges are definite and there is nothing vague in the charges. The Article of Charges read as under :-

"That the said Shri Namdeo Hari, Khalasi (MR) working under BRI (I) KVV has disregarded Shri Santram, BRI KVV on 15.2.87 at KVV and abused using unparliamentary words in vulgar language in repressive manner.  
Shri Namdeo Hari, Khalasi (MR) by his above

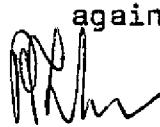
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acts exhibited lack of integrity and devotion to duty, thereby violating rule 3(1) (i) & (iii) of Railway Services (Conduct) Rules 1966."

The Statement of imputation reads as under :-

"That the said Shri Namdeo Hari, Khalasi (MR) working under BRI (I) KWV has mis-behaved with Shri Santram BRI Gr.III KWV on 15.2.87 at KWV and also used unparliamentary words and abused in vulgar language in repressive manner as reported by Shri Santram BRI KWV vide his report dt.15.2.87 obtaining two witnesses."

The list of documents by which the articles of charge framed against the applicant contains the report dated 15.2.87 of Shri Santram BRI Gr.III KWV. Learned counsel for the respondents has submitted that the articles of charges are quite definite and there is nothing vague in the charges. Respondents have annexed the complainant Shri Santram's report dated 15.2.1987 which is one of the documents relied upon by the applicant. Ld. counsel for the respondents has further argued that in the disciplinary enquiry conducted by the enquiry officer, the applicant had participated at the time of hearing. The applicant had been asked in question No. 4 that he has received the charge-sheet and he has given the acknowledgement to the charge-sheet. The ld. counsel for the respondent administration has further mentioned that in reply to question No. 5 the applicant has mentioned that he does not need the help of defence assistant for the purpose of enquiry and answer to question No. 6 the applicant has mentioned that he knows the charges framed against him. The Ld. counsel for the respondents has further





submitted that the question No. 7 was asked about the charges framed against him in the charge-sheet in as much as that he mis-behaved with Shri Santram and used unparliamentary language and abused him, in answer to this question, the applicant has accepted this charge and has mentioned that the charge made against him is correct and that he had already accepted his mistake in writing. The learned counsel for the respondents has further submitted that in view of the clear cut acceptance of the charges before the enquiry officer during the hearing of the enquiry, legally it is not necessary to prove any charges in the enquiry. According to the learned counsel for the respondents, the enquiry is required to be conducted only for those charges which are not accepted by the applicant.

4. After considering the arguments of both the counsels as well as after perusing the record, we are of the opinion that the applicant has accepted the charges during the course of enquiry. We, therefore, do not accept the argument of the learned counsel for the applicant that the applicant has never accepted his guilt unconditionally. We are of the opinion that the charges were brought to the notice of the applicant clearly during the course of enquiry. The argument of the learned counsel for the applicant that no witnesses were examined who had stated that the applicant had used unparliamentary words against the complainant is not acceptable as the





applicant had accepted the charges and it is not necessary under the rules to prove the charges by examination of witnesses when the charges had already been accepted by the applicant. We are also unable to accept the argument of the ld. counsel for the applicant that the chargesheet does not indicate the actual words used as unparliamentary words, as the letter dated 15.2.1987 written by Santram forms part of the charge-sheet and this letter had given details of the unparliamentary words used by the applicants. We, therefore, do not see any infirmity in the order of the disciplinary authority which will warrant interference by the Tribunal.

5. The applicant has also challenged the appellate order in as much as the ld. counsel for the applicant has argued that the appellate order has not considered all the issues raised by the applicant. authority by The appellate order dated 20.2.1992 placed at page 16 had confirmed the punishment imposed by the disciplinary authority. The appellate order also gives reasons for confirming the punishment given by the disciplinary authority. We, therefore, do not find any infirmity in the appellate order which would warrant any interference on our part.

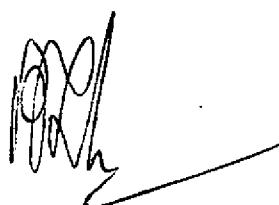
6. Learned counsel for the applicant has argued and has laid strong emphasis that the respondents have fabricated the enquiry proceedings in as much as the statement of two witnesses Shri R.R.Tiwari and Shri R.U.Singh were not recorded at the time of enquiry.



But we find that the applicant himself in the OA. has mentioned in Para 4.8 page 6 as under :-

"4.8 The enquiry was finally conducted on 30.3.89 and it is pertinent to note that only 3 persons were examined viz. Shri Shantaram, the complainant, Shri R.R.Tiwari, in whose house the incident took place and Shri R.U.Singh who was also present."

In view of the fact that the applicant himself has mentioned in the OA. that the 3 witnesses were examined, it does not lie with the ld. counsel for the applicant to argue that the statement of Shri Tiwari and Shri R.U. Singh have been fabricated by the respondents. We find that these statements have not been signed by the applicant and therefore at the most what can be said is that the applicant was not made aware of the contents of the letters. Otherwise also, in our opinion, since the applicant had accepted the charges, the infirmity in the statement of Shri R.R.Tiwari and Shri Singh caused no prejudice to the case of the applicant.



(38)

7. The next question raised by the learned counsel for the applicant is quantum of punishment. The learned counsel has heavily relied on the decision of the Hon'ble Supreme Court in Ram Kishan vs. Union of India & Ors. (1995) 31 ATC 475. The Hon'ble Supreme Court has considered the quantum of punishment with reference to the gravity of misconduct in this judgement. The Hon'ble Supreme Court has opined as under in Para 11.

"11. It is next to be seen whether imposition of the punishment of dismissal from service is proportionate to the gravity of the imputation. When abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No strait-jacket formula could be evolved in adjudging whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts. What was the nature of the abusive language used by the appellant was not stated."

The Hon'ble Supreme Court has further stated as under :-

"12. On the facts and circumstances of the case, we are of the considered view that the imposition of punishment of dismissal from service is harsh and disproportionate to the gravity of charge imputed to the delinquent constable."

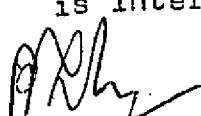
Accordingly, the Hon'ble Supreme Court has set aside the punishment and awarded punishment of stoppage of two increments. In our opinion, the situation in the present case is distinguishable in as much as in the present case the applicant has been apprised of the charges along with the report of the complainant which clearly



indicate the type of language used. From the reading of the report, we are satisfied that the use of the type of language which is recorded in the report by a sub-ordinate against his superiors would be a grave misconduct and disturb the discipline in the organisation. Therefore, the punishment of removal from service in the facts and circumstances of the present case cannot be considered a harsh punishment.

8. We are, therefore, of the view that the disciplinary authority's order as well as the appellate authority's order do not require any interference by the Tribunal.

9. However, there are certain mitigating circumstances in this case. The applicant is monthly rated casual labourer. He is not a regular civil servant and certainly he is from the lowest strata of society. It is also mentioned that the applicant belongs to the Scheduled Caste. In these circumstances, it is necessary to consider the quantum of punishment, especially, in view that the applicant is monthly rated casual labourer. The applicant is removed from service in 1990 and he is already out of job for last 7 years now. We have been informed that the penalty of removal is not a bar for further Government service. In this case, since the applicant is only a monthly rated casual labourer, there will be no infringement of rule if he is again given appointment as monthly rated casual labourer. The learned counsel for applicant has mentioned across the Bar that the applicant is interested in job and he is forgoing the back wages



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in case he is reinstated. Taking into account all the circumstances, we are of the view that in the facts and circumstances of the case and in the interest of justice the applicant deserves to be given fresh appointment as monthly rated casual labour.

10. Normally, we would have ordered the competent authority to take a decision concerning the fresh appointment of the applicant as monthly rated casual labourer but considering the long litigation and that the applicant has come to the Court 3 times, we consider that this is a fit case where it will be desirable to order fresh appointment of the applicant as monthly rated casual labourer. We order accordingly. This may be done within a period of one month from the date of receipt of this order. The applicant would be entitled to draw salary at the rate he was drawing at the time of his dismissal. The applicant will be considered as fresh appointee for all purposes and he would not have any advantage of his previous service. If the applicant has become over-aged for fresh appointment because of the passage of time, the same is also relaxed in the facts and circumstances of the case.

MMS

(G)

11. In the result, the OA. is disposed of by holding that the disciplinary authority's order as well as appellate authority's order do not require any interference by this Tribunal. However, in the peculiar facts and circumstances of this case, the respondents are directed to comply with the directions given in Para 10 above. No costs.



(P.P. SRIVASTAVA)

MEMBER (A)



(R.G. VAIDYANATHA)

VICE CHAIRMAN

mrj.