

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No:991/92.

Date of Decision: 16/6/99.

R.E.More

Applicant.

Shri C.M.Jha

Advocate for
Applicant.

Versus

Union of India & 2 Ors.

Respondent(s)

Shri R.K.Shetty.

Advocate for
Respondent(s)


CORAM:

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

Hon'ble Shri.D.S.Baweja, 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*

abp.


(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG, NO. 6, 4TH FLR, PRESCOT RD, FORT,
MUMBAI - 400 001.

ORIGINAL APPLICATION NO. 991/92.

DATED THE 16TH DAY OF JUNE, 1999.

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

Hon'ble Shri D.S. Baweja, Member(A).

R.E. More,
Ex-Head Clerk, Divisional Security
Commissioner's Office,
Bombay Central,
Bombay - 400 008 residing at
16/502, Shastri Nagar,
Goregaon(W),
Bombay - 400 104.

... Applicant.

By Advocate Shri C.M. Jha

V/s.

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

2. Divisional Security Commissioner,
Western Railway, Bombay Central,
Bombay - 400 008.

3. Mr. Nagin Verukhia,
Chief Clerk,
Divisional Security Commissioner's office,
Bombay Central,
Bombay - 400 008.

... Respondents.

By Advocate Shri R.K. Shetty.

I O R D E R I

[Per Shri R.G. Vaidyanatha, Vice Chairman]

This is an application filed under section-19
of Administrative Tribunals Act. Respondents have filed
reply. We have heard the learned counsels appearing on
both sides.

The applicant was working as Head Clerk in
the Office of Chief security Commissioner, Bombay Central

Western Railway, Bombay. The applicant was issued a Charge Sheet dated 24/2/88 for alleged misconduct. The Charge sheet had 4 articles of charges. The applicant filed a written statement denying the allegations except regarding one charge. Then a regular enquiry was held. The Enquiry Officer submitted report dated 20/8/88 holding that all the charges are proved. On the basis of the Enquiry Report, and after supplying a copy of enquiry report to applicant, the disciplinary authority passed an order dated 7/9/88 holding that the charges are proved and imposed the penalty of compulsory retirement. The applicant preferred an appeal and the Appellate Authority by order dated 27/2/89 confirmed the order of disciplinary authority and dismissed the appeal. The applicant preferred a Revision/review petition to the General Manager. By order dated 3/8/89 ~~Revisonal authority held~~ ~~Revisonal authority held~~ that there is no sufficient evidence to prove charges II, III and IV. However, he held that charge No.I is proved by evidence on record and also by admission of applicant. Then he has stated that the order of Compulsory retirement is not harsh but however taking into consideration the long length of service of applicant and other considerations, he took a lenient view. He therefore ordered that instead of Compulsory Retirement the applicant should be reduced from the grade of Head Clerk to Senior Clerk.

2. Being aggrieved by the order of revisional authority, the applicant sent petitions to Ministry of Railways and subsequently even the Railway Board has issued an endorsement stating that no case is made out for interference. In the meanwhile, in view of the order of Revisional Authority, the administration issued a posting

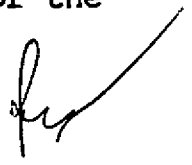
order to applicant in the reduced grade namely Senior Clerk at Bhavnagar; by order dated 21/8/89. Being aggrieved by orders of respective authorities including the order of posting., after making some representations, the applicant has approached this Tribunal.

In the present OA, the applicant is challenging the punishment imposed by Revisionary Authority. He is also challenging the order of posting at Bhavnagar. He has taken number of grounds to challenge these two orders.

3. The respondents in their reply have mentioned the facts and circumstances of the case and justified the action taken and particularly the final order passed by Revisionary Authority. As far as posting at Bhavnagar is concerned, that post was given to applicant since there was no vacancy of Senior Clerk at Bombay at that time. It is also stated that the order is passed with the approval of the Competent Authority.

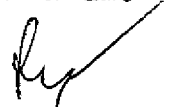
At the time of arguments, the learned counsel for applicant contended that the order of punishment by Revisionary Authority is bad both on merits and even regarding the quantum.

4. Now we find that there is concurrent view of all the four authorities as far as finding of charge No.I is concerned. Though there were earlier finding regarding charges II, III and IV, they have been set aside by Revisionary Authority. As far as charge No.I is concerned, there is concurrent finding of Enquiry Officer, Disciplinary Authority, Appellate Authority and the Revisionary Authority. Further this finding is also based on the admission of the applicant in addition to the evidence on record.



This Tribunal cannot reappreciate the evidence and take another view even if another view is possible. There are number of decisions on this point by Supreme Court where it is mentioned that Courts cannot act as an Appellate Court and re-appreciate the evidence and the finding on fact is binding on Tribunal unless it is a case of no evidence or the order is perverse (vide case reported in [AIR 1999 SC 625] in the case of (Apparel Export Promotion Council v/s. A.K.Chopra). Therefore we cannot interfere with the finding of misconduct recorded by all the authorities including the Revisional Authority.

5. Next submission of the applicant is that quantum of penalty is severe. Here the allegation of misconduct is in not properly maintaining the leave record. The Revisional Authority has stated that even for this, punishment of compulsory retirement may be suitable but however taking a humanitarian consideration he has converted the order of compulsory retirement into one of reduction in grade from Head Clerk to Senior Clerk. Even regarding the quantum of penalty, while exercising judicial review, Courts or Tribunals have no unfettered power. Normally it is for the domestic Tribunal to decide what is the proper penalty. Only if the quantum of punishment shocks the conscience of the Court or grossly disproportionate to the misconduct, this Court can interfere by itself directly or either/by giving suitable direction to the Competent Authority to pass appropriate orders. But in the facts and circumstances of the case we do not find that it is a case of penalty which shocks the conscience of the Tribunal.



6. Learned counsel for applicant relied on AIR 1979 SC 1022 (Union of India v/s. J.Ahmed). In our view this decision has no bearing on the facts and circumstances of the present case. A perusal of judgement shows that this is a case where the question was error of judgement which did not amount to mis-conduct. But in the present case, it is not an error of judgement but is a misconduct of not doing his work properly which infact has been admitted by the applicant.

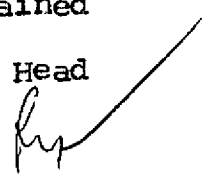
7. The next submission of learned counsel for applicant is that the order of reinstatement or order of posting dated 3/8/89 posting the applicant at Bhavnagar amounts to a punitive order and it amounts to an order of transfer which cannot be done in the facts of the case. The first submission is that the order is passed by the Deputy Security Commissioner by posting the applicant at Bhavnagar. It was argued that the Deputy Security Commissioner is the head of Bombay Division, he cannot post applicant to Bhavnagar, which is in another division. The argument is that he is not the head of the department and that the Chief Security Commissioner is the only person who can pass such an order and not by an Deputy Security Commissioner. Since, we had heard the matter yesterday, the case was adjourned to today to enable the respondent's counsel to produce the concerned file. Today the counsel for respondents has produced the relevant file before us which shows that in the office file, the Chief Commissioner has given a direction that this Officer shall be posted where-ever there is a vacancy. Then the Chief Security Commissioner has himself issued an order dated 9/8/89 where the applicant is ordered to be reinstated and posted at Bhavnagar. It is on the basis of this letter of Chief Commissioner dated 9/8/99



the applicant is ordered to be reinstated and posted at Bhavnagar. It is on the basis of this order of Chief Commissioner dated 9/8/89, the Deputy Security Commissioner has issued the Impugned order dated 21/8/89 posting the applicant in the Office of Assistant Security Commissioner at Bhavnagar. In this impugned order reference is given to the order of Chief Security Commissioner dated 9/8/89 which has now been produced by Counsel for respondents and it shows that the impugned order is passed on the basis of order of Chief security Commissioner(Head of Department).

Another submission was that applicant belongs to scheduled Caste and as per the transfer guidelines an official belonging to Scheduled Caste should not be transferred to distant places and postings to be given near their home place or home district. Even the Railway Board circular, placed reliance by counsel for applicant, says that this must be done as far as possible subject to administrative exigencies. We have come across a recent judgement which is reported in [1997 SCC L&S 643] (Laxmi Narain Meher v/s. Union of India & Ors) where identical question was pressed into service before Supreme Court. The supreme Court while noting the transfer guidelines observed that it is subject to administrative exigencies. Therefore, the supreme Court declined to interfere with that order though gave liberty to applicant to make a proper representation before the Competent Authority which could be considered on merits.

8. In the present case the respondents have explained that since applicant had been reduced from the Grade of Head

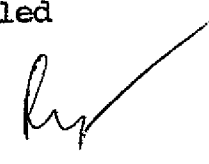


Clerk to Senior Clerk and vacancy was not available in Mumbai of Senior Clerk, they had to post him at Bhavnagar. Therefore, it is a case of posting being done in Administrative exigencies. Hence it cannot be said that the order of posting is bad or illegal.

Even agreeing for a moment that the order of transfer is bad, all that we can do is to direct the respondents to post the applicant to nearer place. But in the circumstances of the case, such an order cannot be passed since applicant has attained ~~Superannuation~~ on 31/3/96. Now we cannot give any direction to administration to give him a posting order at Bombay.


9. The applicant was issued the posting order dated 21/8/89, except sending 2 to 3 representations, he has not cared to join the post from 1989 to 1996. He did not immediately file an application challenging the order of posting and seeking a stay. He cannot sit at home and then approach this Tribunal after 3 years; therefore even by his conduct he cannot get relief at the hands of this Tribunal.

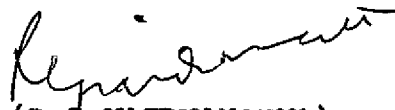
10. The last submission of the learned counsel for applicant is that he has not been given any Retirement benefits. It is obviously because the applicant never joined the post at Bhavnagar and he did not given any representation for counting of service from the date of compulsory retirement to the date of order of Revisional Authority as observed by Revisional Authority. But however since the applicant belongs to Scheduled Caste and since he may not be aware of his rights, we direct the respondents to pay whatever retirement benefits the applicant is entitled to on the basis of his actual service rendered by him.



11. In the result the application is disposed of as follows:-

While rejecting the prayers(a) and (b) prayed for in para-8 of OA, we direct the Railway Administration to grant whatever retirement benefits, Pension, etc that are due to the applicant on the basis of entire length of service for which he has actually worked. The applicant should give proper application to Competent Authority in prescribed form claiming pension and other retirement benefits as per rules. The respondents should comply with this direction within three months from the date of receipt of such application from applicant. No costs.


(D.S. BAWEJA)
MEMBER(A)


(R.G. VAIDYANATHA)
VICE CHAIRMAN

abp.