

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1022/92

Date of Decision: 2.9.98

Shri Abdul Gaffar Khan

Applicant.

Shri G.S.Walia:

Advocate for
Applicant.

Versus

Union of India and others.

Respondent(s)

Shri V.S.Masurkar.

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? *✓✓*

(2) Whether it needs to be circulated to other Benches of the Tribunal? *✓✓*

R. G. Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman.

NS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, BOMBAY: 1

Original Application No. 1022/92

Wednesday the 2nd day of September 1998.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S. Baweja, Member (A)

Abdul Gaffar Khan
Block No. 609/D
Dhobighat
Freeland Guni
Dahod P M S
... Applicant.

By Advocate Shri G.S.Walia.

V/s.

Union of India through
General Manager
Western Railway
Churchgate
Bombay.

Deputy Chief Engineer (S & C)
Vasai Bridge
Western Railway
Churchgate
Bombay.

Executive Engineer (S & C)
Vasai Bridge
Western Railway
Churchgate
Bombay.

... Respondents.

By Advocate Shri V.S. Masurkar.

O R D E R (ORAL)

¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman

This is an application filed under Section 19 of the Administrative Tribunals Act 1985. The respondents have filed the reply. We have heard the learned counsel for both sides.

2. The applicant was working as Khalasi in Western Railway. He was chargesheeted and departmental enquiry was held on the allegation that he has produced fictitious service card for the period from 21.12.1983 to 20.4.1984. The applicant submitted written statement denying the allegation. After holding the enquiry,

the enquiry officer reported that the charge has been proved. Accepting the enquiry officer's report, the Disciplinary authority imposed punishment of removal from service. The applicant has challenged the same before the appellate authority who dismissed the appeal. Being aggrieved by the order of the respondents, the applicant has approached this Tribunal.

3. The respondents have filed reply justifying the action taken. The respondents have stated that the enquiry was held properly. The applicant had sufficient opportunity to justify himself.

4. We find from the records that the applicant has approached this Tribunal on earlier two occasions. Once in O.A. 125/89 and in OA 189/91. In the second case namely 189/91 the application was allowed by order dated 3.2.92 by remanding the matter to the appellate authority with a direction to give personal hearing to the applicant and pass a speaking order. After giving personal hearing to the applicant, the appellate authority has passed a speaking order on 27.5.92.

5. The applicant has taken a number of grounds in the application challenging the impugned disciplinary enquiry proceedings and the order passed by the competent authority. We will consider them one by one. The respondents on the other hand have ^{written} contended all those contentions and given their explanation.

6. The first contention of the learned counsel for the applicant was that he was not given legal assistance for engaging an advocate to defend himself. The competent authority has rejected the claim of the applicant for engaging an advocate. It is a well

known fact that advocates are not permitted as a matter of course in departmental enquiry though the competent authority has the power to grant permission for engaging an advocate, in the facts and circumstances of the case. Therefore in the present case the competent authority have rejected the request of the applicant and the applicant has not made out any special ground for engaging an advocate. The case against him was not a complicated one involving ~~disputed law and facts~~ ^{disputing law & facts}. It is a simple case of ~~benefit of doubt~~ ^{producing facts and}.

Another grievance made out by the applicant is that he was not given copies of documents which he has sought. The appellate authority has considered this ground and on perusal of the record we find that the copies of the documents were supplied to the applicant.

Another grievance of the applicant is that the statement of witness recorded in the preliminary enquiry were not given to him. The appellate authority has pointed out that no such statements have been recorded by the enquiry officer in the preliminary enquiry and therefore the question of furnishing of copies statements of witness does not arise.

7. We do not find any illegality or infirmity in conducting the enquiry.

8. As far as the merits are concerned, it is a well settled fact that the Tribunal can only examine the correctness or legality of the procedure or decision making process and not the decision itself.

It is also well settled as pointed out by the

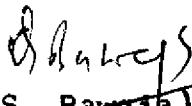




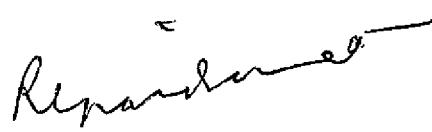
Supreme Court in a recent decision, 1998(1) SC SLJ 74
Union of India and others V/s. B.K. Srivastava and
1998(1) SC SLJ 78 Union of India and others V/s.
A. Nagamalleshwar, wherein it is held that the Tribunal
cannot sit on appeal on the findings recorded by the
competent authority and cannot take a different view.

9. ^{by Subram. Govt} In view of the law laid down we find that the
enquiry was done properly according to rules and there
are concurrent ^{findings} views of the disciplinary authority and
appellate authority. We do not find any merit in the
application.

10. In the result the application fails. Accordingly
the application is dismissed. No costs.


(D.S. Bawejia)

Member (A)


(R.G. Vaidyanatha)
Vice Chairman

NS