

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? *no*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *no*

  
(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.

ORDER (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,

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the enquiry officer reported that the charge<sup>1</sup> 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 <sup>contested</sup> 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 <sup>disputing or</sup> a disputed law <sup>and facts</sup> point. It is a simple case of <sup>Producing Fictitious card</sup> ~~benefit of doubt~~.

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

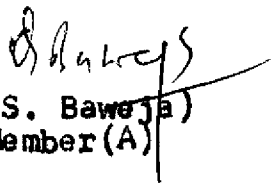


Supreme Court in a recent decision, 1998(1) SC SLJ 74  
Union of India and others V/s. B.K. Srivastava and  
1998(1) SC SLJ 78 Union of India and others V/s.

A. Nagamalleswar, 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. In view of the law laid down <sup>by Supreme court</sup> we find that the  
enquiry was done properly according to rules and there  
are concurrent <sup>findings</sup> 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. Bawajha)  
Member (A)

  
(R.G. Vaidyanatha)  
Vice Chairman

NS