

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1317/92

Date of Decision: 28/7/99

Shri T.L.Naik Applicant.

Shri V.M.Bendre. Advocate for
Applicant.

Versus

Union of India and others Respondent(s)

Shri S.S.Karkera for Shri P.M.Pradhan Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri. S.L. Jain, Member(J)

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

S.L.JAIN
(S.L.JAIN)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 1317 OF 1992.

Dated the 28th day of July, 1999.

CORAM : Hon'ble Shri D.S.Baweja, Member[A]

Hon'ble Shri S.L.Jain, Member[J]

T.L.Naik
L.S.G.P.A.
Dhule Head Post Office. Applicant.

By Advocate Shri V.M.Bendre

v/s

Union of India Through
Secretary,

Ministry Of Communication
New Delhi.

Chief Post Master General
Mahaarashtra Circle, Bombay

Senior Superintendent of Post Office
Dhule Division, Dhule,
Maharashtra State.

Director of Postal Services
Aurangabad. Respondents.

By Advocate Shri S.S.Karkera for Shri P.M.Pradhan.

ORDER [ORAL]

[Per Shri S.L.Jain, Member[J]

The Applicant is challenging the order of the Disciplinary Authority dated 10.10.1990, order of the Appellate Authority dated 22.7.1991 by which the penalty of reducing the pay of the applicant by 5 stages from Rs.1760/- to Rs.1560/- in the time scale of Rs.1400 -2300 for a period of 5 years with effect from

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1.11.1990, will not earn increment of pay during the period of reduction and that on expiry the reduction will not have the effect of postponing his further increments of pay is awarded and appeal against the same was rejected respectively. He has further challenged the order dated 9.3.1984 by which the L.T.C.Claim is rejected with a direction for payment of the same and consequential benefits like promotion,increment alongwith cost of application.

2. The applicant who was LSG I entitled to LTC and travel by Taxi submitted LTC claim which was rejected by the respondents. Disciplinary action was taken against the applicant, after a preliminary enquiry; the applicant was found guilty and penalty order as stated above was passed on 10.10.1990. Appeal against the same was rejected vide order dataed 30.11.1990 [Annexure A-9].

3. The Applicant's case in brief is that in fact he actually performed the journey from Nandurbar to Haridwar along with family members during the period from 30.12.1982 to 5.1.1983 paid the amount of Rs.4,200/-as taxi charges to "Safari Travellers" obtained the receipt.His claim of LTC has been rejected arbitrary, illegally, investigation was entrusted to Shri Wani who was asked to submit the report as desired which he did. During the course of enquiry he denied the charges levelled against him. The Enquiry Officer did not supply the documents asked for, relied the evidence which was recorded during the course of preliminary enquiry relied the documents ,the

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authorship/ which is not established that he travelled by Safari Travellers,while the reply is from 'Safari Travels' which are different organisations,noone is examined to prove the same. Hence this OA for the above said reliefs.

4. The calim of the applicant is resisted by the respondents with the allegation that during the course of preliminary enquiry the statement of father and wife of the applicant were recorded with the help of interpredator who happens to be the brother-in-law of the applicant. The enquiry was fairly conducted, the relevant documents asked for were supplied. Saffari Travellers and Saffari Travels are one and the same organisation. In fact the applicant travelled only from Nandurbar to Ajmer and back by train and the claim was for the block year 1978-81. Hence prayed for dismissal of OA along with costs.

5. The applicant has filed this OA on 9.9.1992, while the Appellate Authority has rejected his apeal on 22.7.1991. Hence the applicant has filed an application for condonation of delay in filing the OA on the ground that he was advised that limitation for filing the OA is three years, but when he came to know the provisions of Administrative Tribunals Act 1985 after collecting the documents he filed O.A. In the circumstances when the applicant due to wrong advice could not file the OA in time, we feel this is a sufficient cause for condoning the delay. We condone the delay and proceed to decide the matter on merits after allowing the M.P.1081.92.

The applicant has claimed that he has made a complaint

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against Shri Wani who had direct involvement in the fraud. The ground raised by the applicant is denied by the respondents and applicant failed to file any complaint which he has lodged against Shri Wani. In the circumstances it is hereby held that the applicant failed to establish this fact. Further Shri Wani has conducted a preliminary enquiry which resulted in disciplinary action. In disciplinary proceeding when the applicant has a chance to cross examine the evidence collected during the course of preliminary enquiry he cannot have a grievance like it at this stage, particularly when he has not agitated the said matter at the time of preliminary enquiry or immediately thereafter at the commencement of the disciplinary.

6. On perusal of the LTC claim filed by the applicant, it is apparent that he has not claimed that preliminary enquiry led alongwith him. During the course of preliminary enqel, the witnesses deposed about his mother accompaning in the travael, the said statements may relate to earlier LTC claim which was sanctioned by the respondents, hence on the said basis it cannot be said that the applicant travelled by rail and not by taxi.

7. The mother of the applicant expired on 15.4.1981 while is established vide annexure A/4 . The death certificateswhile the journey which is saiIn such circumstances it is not possible 30.12.982 to 51.1983. Inscumstances it i whos not possibleier, rather to say impossible to say that the mother, died earlier accompanied during the said travel.

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g. The Enquiry Officer at page 60 in last but in para 4 has mentioned as under:

"Under the circumstances I am unable to come to the conclusion about the mode of transport actually used in this case with the help of oral evidence."

He has also mentioned in last para of page 61 which is as under:

"On the basis of documentary as well as oral evidence, adduced before me, and in view of the evidence, adduced before me, and in view of the Charge -I & II framed against said Shri T.L.

Naik APN, Dhule, by the disciplinary authority are proved."

file the oral testimony of the witness does not establish the fact that the mother accompanied during the said travel and it was performed by rail only.

q. It is true that letter head of annexure A 4 and letter head of reply received vide letter dated 27.10.1986 is as under: "Safari Travellers" and "Safari Travels". The letter head bears same address, same telephone numbers of the establishment alongwith the same telephone number of the residence. On the basis of the same it cannot be said with certainty that it is

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established that reply of letter dated 27.10.1986 was issued by "Safari Travellers". A letter is not a public document, it is not coming from the custody of proper person i.e. "Safari Travels" but it has been obtained during the course of investigation. Hence in such circumstances when none has been examined to establish the fact that it is issued by "Safari Travels" bearing the signature of the proprietor of the said organisation, no reliance can be placed on it.

10. We are aware that during the course of disciplinary proceedings the same proof must be preponderance the case of criminal case but there must be preponderance of evidence in disciplinary proceeding. In the present case there is no evidence as a document is relied whose authorship and proper custody is not established. In such circumstances evidence of said persons who has signed the reply dated 27.10.1986 was essential. In the name of "Safari Travels" whether the person claims to be proprietor, was proprietor in the year 1983 also, was working alone having no employee, the reply which is said to have been signed by the proprietor, whether is based on the record or memory all these facts must have bearing before placing reliance on the said reply dated 27.10.1986.

11. On perusal of the enquiry report we find that the applicant has

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asked for number of documents as mentioned at page 55, out of which documents mentioned at serial No. 3 to 16 were not supplied. Keeping in view that non supply of the documents whether relevant to the case, after examining the list of additional documents we find that the documents which were not existing and the documents which are not material for disciplinary proceedings have not been supplied.

12. In the circumstances we hereby hold that it is a case of "no evidence". Hence the order of the Disciplinary Authority and Appellate Authority dated 10.10.1990 and 22.7.1991 respectively deserves to be quashed and are quashed. Resulting thereby that the applicant is entitled to all consequential benefits which are not provided to him due to existence of these orders.

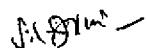
13. The applicant has also claimed the LTC amount which was disallowed to him long back in the year 1982. Further more the applicant is not entitled to claim plural reliefs on account of Rule 10 of CAT Procedure Rules 1987 which is to the fact that application shall be based upon a single cause of action and one or more relief provided that they are consequential to one another. Rejection of LTC claim, Disciplinary action and awarding punishment are entirely different cause of action. Hence on this count also we refrain to decide the same.

14. In the result O.A. deserves to be allowed and is allowed. The orders of the Disciplinary Authority and Appellate Authority dated 10.10.1990 and 22.7.1991 are quashed. The applicant be placed in the same position as if no penalty orders were passed alongwith consequential benefits. He shall be entitled to cost

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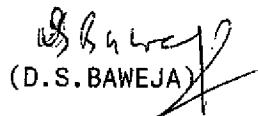
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of Rs.650/- (Rs.500/- Legal practitioner's fee + Rs.150/- other expenses) from the respondents which is payable within one month from the date of receipt of this order.



(S.L.JAIN)

MEMBER(J)



(D.S.BAWEJA)

MEMBER(A)

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