

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

R.P.No. 205/92
in

OA No. 814/92

Shri L. S. Chavan Applicant

Vs.

Addl. Div. Rly. Manager,
Central Railway, Bhusawal & Anr.... Respondents

CORAM : Hon'ble Shri M. R. Kolhatkar, Member (A)
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Appearance :

Shri D.V. Ganai, Advocate
for the Applicant.

Shri J. G. Sawant, Advocate
for the Respondents.

Tribunal's Order :

¶ Per : M.R. Kolhatkar, Member (A) ¶ Dated 9-3-1994

In this review petition the original respondents, Railway Administration have sought review of the oral judgement dated 28.9.1992 passed by this Bench in OA. No. 814/92.

2. In OA No. 814/92 the penalty of reduction to lowest stage in the same time scale Rs. 1200-2040 (RPS) from stage of Rs. 1500/- to Rs. 1200/- for a period of two years with immediate effect, with further directions that on expiry of the period this will have the effect on postponing future benefits was imposed on the original applicant by order dated 21.8.1991 at 'Annexure A-5' Page 53 of the OA. Against this order of penalty by the disciplinary authority viz. DCS Bhusawal, the original applicant filed an appeal on 25.9.1991 before the Additional Divisional Railway Manager, Central Railway, Bhusawal. The A.D.R.M. by his show cause notice dated

15.7.1992 at 'Annexure A-8' page 62 of the OA, asked the applicant to show cause as to why the penalty should not be increased, that is to say, as to why the penalty of reduction to the lowest stage in the same time scale should not operate for a period of three years instead of two years as per the original order of punishment with ~~effect~~ ^{on} ~~future~~ ^{benefits}. The OA. was filed on 20.7.1992 and prayer (A) in the OA. was to quash and set aside the order by which the applicant's pay was reduced to the minimum of the same scale i.e. to Rs. 1200/-, prayer (B) was to direct the respondents to pay all consequential benefits including refund of reduced pay and allowances, prayer (C) was to saddle the cost of the application on the respondents and prayer (D) any other reliefs.

3. The order sheet shows that on 24.8.1992 notice to the respondents, returnable on 26.9.1992 for admission hearing was issued. The oral order was passed on the date fixed for admission hearing. On that date, it is clear that the counsel for the respondents had appeared but the Court observed that "in view of the order we are about to pass, we do not consider it necessary to call for a reply and that we are disposing of this application finally". The directions are contained in Para 4 of the order and the reasons therefor are contained in Para 3 which are reproduced below :-

" 3. It is averred in paragraph 4.9 of the application that on 25.9.1991 the applicant preferred an appeal addressed to the Additional Divisional Railway Manager, Central Railway,

Bhusaval, a copy of the appeal dated 25.9.1991 is annexed as 'Annexure A-6'. It is also averred that on 21.11.1991 the applicant sent a reminder to the Appellate Authority. A copy of the said reminder has been filed as 'Annexure A-7'. It is also alleged that the appeal has not been disposed of as yet but nonetheless the Divisional Railway Manager has initiated the proceedings to enhance the punishment.

4. If the appeal is pending and has not been disposed of as yet, the proceedings initiated by the Divisional Railway Manager for enhancing the punishment is clearly illegal. The Divisional Railway Manager shall stay his hands till the appeal is disposed of. After the decision of the appeal, the said officer shall give a fresh notice to the applicant to show cause, if he feels necessary, as to why the punishment imposed upon the applicant may not be enhanced. However, we make it clear that this order does not empower the Divisional Railway Manager to revise the order of punishment if he does not possess that power under the law. The Appellate Authority shall endeavour to dispose of the appeal as expeditiously as possible but not beyond a period of four months from the date of presentation of a certified copy of this order from the applicant. The applicant is permitted to transmit a certified copy of this order under the Regd. Post A.D. With these directions the application is disposed of finally but without any order as to costs".

4. The contention of the Railway Administration, i.e. Review Petitioner is that this judgement is required to be reviewed because there is an error apparent on the face thereon. The judgement had proceeded on the footing that the show cause notice issued by ADRM (who has been refereed to as DRM in the first and third paras of judgement) was under Rule 25 of

the Railway Servants (Discipline and Appeal) Rules, 1968 for enhancing the punishment by way of revision in as much as the show cause notice itself referred to Rule 25. According to the Review Petitioners, the reference to Rule 25 in the show cause notice by the ADRM was a typographical error and that it was a show cause notice in terms of Rule 22 and it is a well settled position that in case of a wrong reference to a particular rule, so long as powers exist and the powers are ^{otherwise} exercised ~~otherwise~~ in accordance with the rules, the mere misquoting of the rule would not vitiate the order.

5. The second contention of the review petitioners is that where as the prayer in the original application was for quashing the penalty imposed by the disciplinary authority on 21.8.1991, the Tribunal's order proceeded on the basis that the original applicant had impugned the show cause notice dated 15.7.1992 and the order states so in Para 1.

6. The third contention of the review petitioners is that the order itself shows that it is an ex-parte order. According to him, this is also a strong ground for the review of the order.

7. In their Review Petition, the contention has also been taken that even assuming that the Tribunal was clear about the show-cause notice being under Rule 22, Tribunal misinterpreted the Rule 22, because that rule does not envisage that the appellate authority must

first dispose of the appeal and then, by an independent and subsequent action should issue the show-cause notice to the delinquent.

8. The prayer of the review petitioners therefore is that the ex-parte order dated 28.9.1992 may be reviewed for the reasons indicated and restore the proceedings of the original application 814/92, for fresh hearing of the same at the stage where it was, prior to the passing of the oral judgement dated 28.9.1992.

9. Shri Gangal for the original applicant has strenuously opposed the application for review. According to him power to review, whose scope is much more limited than that of appeal, is to be sparingly used and that there is no such error apparent on the face of the record as would justify this Tribunal in reviewing its earlier order. According to him, we must read the order the way it is worded and should not attribute to the Bench any misunderstanding between Section 22 and 25 of the Railway Servants (Discipline and Appeal) Rules, 1968 on the footing that ADRM was proceeding to revise the order of the disciplinary authority. He also contends that the ADRM was without jurisdiction in issuing show-cause notice on the relevant date, that is to say 15.7.1992, as ~~the Applicant~~ ^{he Applicant} was no longer within the jurisdiction of the ADRM, Bhusaval having been transferred to Jabalpur earlier. According to him, the appellate authority was senior Divisional Commercial Superintendent and not the ADRM. Further, the show cause notice is also vitiated because it does not give any reason for enhancement of the

penalty apart from a bare statement that the penalty is regarded as inadequate. So far as the original prayer in (A) of the application being different is concerned, according to him, the prayer for quashing the show cause notice dated 15.7.1992 can be read into prayer (D) which refers to "any other reliefs". He also states that the practicalities of the matter may also be considered. The charge-sheet was issued on 19.10.1989 and the penalty was imposed on 21.8.1991. He has already undergone the penalty which originally related to reduction to lowest stage of the pay scale for two years and any further proceedings cannot but cause harassment to him. Finally, Shri Gangal has raised the point of limitation. Though the judgement dated 28.9.92 was admittedly despatched to and received by the respondents on 14.10.1992, the application for review though dated 13.11.1992 was actually registered on 17.11.1992. The period of review petition being one month, there is a delay of two days. According to counsel, while the delay is not too long, no formal application has been made for condonation of delay. He, therefore, argues that the review petition may be dismissed. In reply the counsel for Railway Administration has stated that so far as delay of two days is concerned, he makes an oral application for condoning the delay and the same may be condoned. According to him, the appellate authority was fully competent to issue show cause notice even after Applicant's transfer to Jabalpur. So far as the

reading of the prayer regarding quashing of the show cause notice dated 15.7.1992 into the original prayer for quashing of the penalty dated 21.8.1991 is concerned, according to him, the prayer "any other reliefs" may be so construed if it is "~~ex~~ ejusdem generis" with the original prayer. This is not so in the present case. He, therefore, prays for allowing the review petition.

10. So far as the point of limitation is concerned the delay involved is of only two days. The oral application of the counsel for the Railway Administration for condonation of the same is allowed and we proceed to dispose of the matter on merits.

11. So far as the contention of show cause notice dated 15.7.1992 not containing detailed reasoning is concerned, it is open to the applicant to take this and any other contentions at an appropriate stage before appropriate forum. Regarding the question of applicant having undergone the penalty, we are not impressed by this argument. The charges involve moral turpitude and it is competent for the appellate authority to take action to enhance penalty as per rules. In any case, the show cause notice by itself does not mean that the penalty would be finally enhanced. ~~In any case,~~ All these are arguments on the merits of O.A.

12. The original applicant has addressed his arguments in regard to Review Petition on the supposition that the show cause notice was issued by the revisionary authority under Section 25. However, we are required to

carefully examining the contention of the review petitioners that the show cause notice was not under Rule 25 but it was under Rule 22. On a plain reading of the documents on record, we have no doubt that the show cause notice was under Rule 22 and not under Rule 25. The disciplinary authority in its original order dated 21.8.1991 itself indicated that the appeal shall lie before the ADRM and the original applicant could file an appeal before ADRM within 45 days. No contention was taken in ^{the}OA that the ADRM was not the appellate authority and that the show cause notice was actually issued by a revisionary authority. Under Rule 22, Appellate Authority does have power to enhance the penalty after giving a reasonable opportunity to the appellant to make a representation. There is also no doubt that what was challenged in OA before the Tribunal was not the show cause notice dated 15.7.1992 but the order of penalty dated 21.8.1991. In the review proceedings, we are not required to go into the merits of original application but we are required to see whether the judgement dated 28.9.1992 had contained an error apparent on the face of it. We are of the view that the oral judgment contained following such ~~errors~~:-

- (1) Para 1 refers to show cause notice issued by DDM where ^{as} it was issued by ADRM vide Page 62.
- (2) Para 1 states that the show cause notice was impugned whereas it was penalty which was impugned. Challenge to show