CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. : 392 OF 1992.

Date of Decision : 29.5.95

Shri Dashrathlal S. Modi, — Petitioner

Shri M. S. Ramamurthy, — Advocate for the Petitioners

Versus

Union Of India & Others, — Respondents

Shri N. K. Srinivasan, — Advocate for the respondents

C O R A M :

The Hon'ble Shri B. S. Hegde, Member (J).

The Hon'ble Shri M. R. Kolhatkar, Member (A).

(1) To be referred to the Reporter or not ? ✓

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

(B. S. HEGDE)
MEMBER (J).

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BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO.: 392 OF 1992.

Shri Dashrathlal S. Modi ... Applicant

Versus

Union Of India & Others ... Respondents.

CORAM :

Hon'ble Shri B. S. Hegde, Member (J).

Hon'ble Shri M. R. Kolhatkar, Member (A).

APPEARANCE :

1. Shri M. S. Ramamurthy,
Counsel for the applicant.

2. Shri N. K. Srinivasan,
Counsel for the respondents.

JUDGEMENT DATED : 29.5.95

Per.: Shri B. S. Hegde, Member (J)

1. In this O.A., the applicant challenges the Show Cause Notice dated 07.02.1992 and also the Removal Order dated 19.05.1992 from service as a sequel to the departmental ex-parte enquiry held against him for the charge of misappropriation.

2. This case has got a chequered history. Initially the applicant has filed O.A. No. 473 of 1991 challenging the penalty imposed by the Appellate Authority as well as the Revisional Authority. The Court after

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hearing the rival contentions of the parties, set aside the Penalty vide its order dated 08.08.1991 on the ground that the removal order was issued without furnishing an enquiry report. On receipt of the enquiry report, the respondents proceeded further with the enquiry and again removed him from service, against which, he filed an application being O.A. No. 527 of 1991 challenging the order of removal from service, dated 19.04.1990/02.05.1990 against which he preferred an appeal. The Appellate Authority passed the order dated 10.07.1991 confirming the order passed by the Disciplinary Authority. Both the orders were challenged and the Tribunal disposed of the same vide its Order dated 30.09.1991 (exhibit-A). The Tribunal allowed the application and set aside the Removal Order for the reasons stated therein saying "that this order has been passed in violation of principles of natural justice and accordingly quashed and set aside the order dated 19.04.1990/02.05.1990 as well as the subsequent order of the Appellate Authority confirming the penalty. The applicant will be entitled to all consequential benefits in accordance with law."

3. Pursuant to Tribunals Order the applicant requested the Respondent No. 2 to take him back on duty and pay all the consequential benefits vide letter dated 21.10.1991. Neverthless, the Respondents did not comply with the directions of the Tribunal. Thereby, he filed a C.P. No. 68/91 on 18.12.1991. The said C.P. stood adjourned for further orders on 04.06.1992. Thereafter, the Respondents filed a Review Petition No. 78/91 against Tribunal's Order dated 30.09.1991 seeking permission from the Tribunal to conduct the enquiry from the stage of giving notice to the original applicant by the

Disciplinary Authority although the applicant has been exonerated by the said charges by the Enquiry Officer. This O.A. was filed by the applicant challenging the order of removal without furnishing the disagreement note by the Disciplinary Authority. Despite the Tribunals direction, the Respondents did not reinstate the applicant. Pursuant to Tribunals order and after the disposal of the Review Petition vide its order dated 30.12.1991 the Respondents had passed the following orders vide dated 21.01.1992, alleged to be in compliance with the Tribunals Order :

> "(i) Set aside the said order of removal from service.
>
> (ii) direct that a further disciplinary proceedings should be held from the stage of supplying him a copy of disagreeing note of disciplinary authority with the Enquiry Officer's findings.
>
> (iii) direct that the said Shri D. S. Modi, Catering Inspector (Dining Car Unit), Bombay Central shall under sub-rule 4 of Rule 5 of the Railway servants (Discipline and Appeal) Rules, 1968, be deemed to have been placed under suspension with effect from 15.05.1990 and shall continue to remain under suspension until further orders."

The Tribunal while disposing of the Review Petition No. 78 of 1991 had observed as follows :-

> "The review application is made only on the ground that in the judgement it has not been specifically said that it will be open for the respondents to go ahead with the enquiry proceedings. Obviously, in case an enquiry

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proceeded and an order is passed thereafter to set it aside on a technical ground, it is always open for the authority to proceed with the enquiry proceedings beyond that stage. We make it clear that after complying with the order passed by the Tribunal it will be open for the respondents to decide as to whether in this particular case it is desirable to go ahead with the enquiry proceedings beyond the stage of giving notice to the original applicant. In case they decide to go ahead with the enquiry proceedings they will proceed in accordance with law."

4. We have heard the Learned Counsel for the parties and perused the pleadings. During the course of hearing, it is urged by the Learned Counsel for the applicant Shri Ramamurthy that the Review Petition came up for orders on 30.12.1991 before the then Vice-Chairman and the Hon'ble Member Shri M.Y. Priolkar, though the judgement was delivered by Hon'ble Member Shri M.Y. Priolkar and Hon'ble Member Shri T.C. Reddy. As per the Central Administrative Tribunals provisions, the Review Petition ought to have been decided by the same Bench. Although the members who delivered the judgement were in service, the R.P. order was passed by other than the Bench who heard the matter. Therefore, the order passed by the Bench on 30.12.1991 passed in the R.P. is having been passed without jurisdiction and therefore, in the eye of law it is nonest and the same requires to be quashed. Pursuant to the order passed by the Tribunal in the Review Petition, the applicant vide his letter dated 09.01.1992 requested the Respondents to reinstate him in service instead the second

Respondent by its order dated 21.01.1992, alleged to be in compliance with the judgement of the Tribunal, had set aside the Removal Order from service stating that further disciplinary proceedings to be held from the stage of supplying him a copy of dis-agreement note of disciplinary authority with the Enquiry Officer's findings and in the same order, the applicant was deemed to have been placed under suspension with effect from 15.05.1990 (original date of suspension) with retrospective effect and shall continue to remain under suspension until further orders.

5. The Tribunal took up both C.P. as well as R.P. vide its order dated 30.12.1991 and disposed of the R.P. and so far as C.P. is concerned, the respondents have been given time to file reply to the C.P. on 03.02.1992. When the matter came up on 03.02.1992 for disposing of the C.P., the Tribunal directed the Respondents to make payment of whatever wages or subsistence allowance is due and payable to the applicant within a period of two weeks from today i.e. 03.02.1992 and also take a final decision on the fresh proceedings they have initiated within six weeks from today and the case was kept for orders on C.P. on 24.03.1992. In the meanwhile, the applicant applied for Residential Card Passes which was refused on the ground that he is under suspension. Thereafter, the Respondents issued a Show Cause Notice dated 07.02.1992 calling upon him to make his representation or submission, etc. stating that the Disciplinary Authority has disagreed with the findings of the Enquiry Officer and holding him guilty of charges. On 09.03.1992, the applicant made

the applicant made a detailed representation to the Respondents requesting them to make immediate payment of subsistence allowance, thereafter, he would file a reply to the Show Cause Notice, for which the Respondents vide their letter dated 13.03.1992 informed the applicant that his representation has been duly considered and that there is no link at all, even as per the C.A.T. order about payment to be made to you and pursuing the DAR action and asked him to give a representation, if he so desired. The applicant sent a reminder on 03.04.1992 and he collected Subsistence Allowance payment only on 07.04.1992. He filed this O.A. on 10.04.1992 and this O.A. pending consideration, the respondents again removed him from service oh 19.05.1992 which is under challenge.

6. It is true that the applicant has not preferred any appeal and straight away challenged the Show Cause Notice as well as the Removal Order, since he was permitted to amend the O.A. to incorporate the Removal Order, the preliminary objection of the Respondents, that he is not permitted to approach the Tribunal against this Show Cause Notice does not subsist. Right from the beginning it was the contention of the applicant that the second Respondent has been dealing with the applicant with remarkable vindictiveness at the instance of the activist of rival union on the Western Railway. The applicant was Charge-Sheeted on 06.07.1984 and he was exonerated by the Enquiry Officer in 1986 and the proceedings were revised after a lapse of four years by the Respondent No. 2.

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7. The Learned Counsel for the applicant, Shri Ramamurthy, raised several grounds in support of his contention that the impugned orders are not sustainable; such as that the issue of Show Cause Notice without first determining the desirability of starting the proceedings against the applicant, renders the Show Cause notice bad in law. Secondly, the reasons for differing with the report of the Enquiry Officer by the Disciplinary Authority are purely based on personal notions/irregularities. Thirdly, Rule 5(iv) of the Railway Disposal Appeal Rule is analogous to Rule 10 (iv) of the C.C.S. (C.C.A) Rules, 1965. The deemed suspension can be done only on technical quashing of the order by the Court, they cannot resort to Rule 5(iv) of Discipline and Appeal Rules, 1968 for quashing the Respondent's Order on merits. The charge levelled against the applicant is that, he did not account for Rs. 102/- for the said allegations as per the enquiry. The Enquiry Officer held that it will be failure of justice if credence is simply given to one side of the picture that the milk was not purchased by the applicant from Baroda Dairy Milk Bar on 18.07.1983 by 151 Dn ignoring outrightly the other side as to how could be managed the consumption of the milk as per standard scale laid down to meet the catering requirements of passengers of prestigious Rajdhani Express where there is no bar to purchase milk from outside. Accordingly, on the basis of the evidence produced before the Enquiry Officer, the Enquiry Officer exonerated the applicant for which no action has been taken for a period of four years by the Disciplinary Authority.

8. On perusal of the records, we find that the Respondents in fact, alleging in compliance with the Tribunals Order, did not adhere to the directions issued by the Tribunal vide its Order dated 30.09.1991, wherein

no liberty given to the Respondents to proceed further with the enquiry. The direction was to reinstate the applicant in service and to pay consequential benefits. It is only in the belated Review Petition filed by the Respondents they have sought for permission for further enquiry. As stated earlier, the review order passed by the Bench was not the same on which passed the order in O.A., although the same Members were in service at the time of passing the review order, which is contrary to C.A.T. Rules. The Tribunal had observed while disposing of R.P. that in case, the Removal Order was quashed by the Tribunal on technical grounds, in that event only it is open to the Respondents to decide as to whether it is desirable to go ahead with the enquiry proceedings, etc. However, they made it very clear that such a step could be taken only after complying with the order of the Tribunal which was not done in this case. What was alleged against him was that, he did not purchase milk from Baroda Dairy Milk Bar but prepared voucher for Rs. 102, as if he had purchased milk from outside source. The defence of the applicant was that he had purchased the milk from outside as the Baroda Dairy Milk Bar on the station premises was closed by the time he took a decision to buy the milk. It is not the case of the Respondents that there is bar for catering staff to buy milk other than the Baroda Dairy Milk Bar. The detention of the train has not been denied by the Respondents and it is also denied by the applicant that milk supplied by the Baroda Dairy Milk Bar was returned, however, when the train started, it came on evidence that the Baroda Dairy Milk Bar was closed and he had to get the milk from outside source. Several

grounds have been alleged by the Learned Counsel for the applicant in support of his contention that the impugned orders are illegal. In this connection, the Learned Counsel for the applicant, draws our attention to the Supreme Court decision Ghansham Das Srivastava V/s. State of Madhya Pradesh (1971 SLR-239) regarding payment while on suspension and the deliquent employee in not appearing before the Enquiry Officer is justified under the circumstances. The Learned Counsel for the applicant submits that the ratio laid down in that case would squarely apply to the facts of this case. Here also, despite repeated directions by the Tribunal, the applicant has not been paid the subsistence allowance nor the back wages till the removal order is passed. He also relied upon the decision of the Orissa High Court in Manmohan Das V/s. State Of Orissa & Others (1979 LAB I.C. 988) where the Court held that where subsistence allowance is not paid, the ultimate order passed by the Disciplinary Authority is liable to be quashed, etc. He also relied upon the decision of this Bench in O.A. No. 546/91 wherein the Tribunal after hearing the contentions of the parties, quashed the findings holding the applicant guilty and the penalty imposed on him and directed the Respondents to reinstate the applicant within one month of the receipt of the copy of this order. The Learned Counsel for the applicant further draws our attention that the incident in the above case in O.A. No. 546/91 and the present case is one and the same. In the above case, though the Enquiry Officer found him guilty, by quashing the order of removal by the Tribunal, the applicant was reinstated in service and so far as the

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present applicant is concerned, though the applicant was exonerated by the Enquiry Officer, he has been persistently harassed by the Respondent No. 2 and his disagreement with the findings of the Inquiry Officer is based on no evidence.

9. The Learned Counsel for the Respondents, Shri Srinivasan, while denying the allegations, draws our attention in support of his contention, that the deemed suspension is justified in view of the Supreme Court decision in Nelson Motis V/s. Union Of India & Another (1993) 23 Administrative Tribunals Cases 382 and also in S.P. Viswanathan V/s. Union Of India & Others (1992) Supreme Court Cases (L&S) 137 wherein the Court held that Petitioner put under suspension and deemed to be under suspension retrospectively from the date of initial suspension - Held, justified under Rule 5(4) of Railway Servants (Discipline and Appeal) Rules, 1968.

10. In the light of the above, the question for determination is whether the findings of the Disciplinary Authority are warranted by the evidence on the record of the case. The Show Cause notice is bad on two counts : (i) The 2nd Respondent should first comply with the order dated 30.09.1991 and by virtue of R.P. Order dated 30.12.91; secondly, he should first decide whether it is desirable to go ahead with the enquiry proceedings beyond the stage of giving notice to the applicant. He did not comply both the conditions, thus, the Show Cause notice is not in accordance with the Order dated 30.09.1991 in

R.P. 78/91, hence, the Show Cause notice is a malafide one in any case not in accordance with the order passed in R.P. Further, the contention of the Respondents is not tenable saying that the applicant has not exhausted remedial action before approaching the Tribunal. The applicant filed this O.A. on 10.04.1992 against the Show Cause notice, in the meanwhile the Respondent No. 2 passed the Removal Order dated 19.05.1992, thereafter, the applicant sought for amendment of the O.A. which was granted on 15.03.1993 and the O.A. was admitted on 29.04.1993, as stated earlier that the Show Cause notice merged with the Removal Order. We find that the Disciplinary Authority's action against the applicant, after inordinate delay is not justified and the Removal Order passed by the Respondent no. 2 on the basis of the findings of the Enquiry Officer is also not justified and no clinching evidence in support of the Removal Order is available with the Respondents. It is clear from the action of the Respondents that they are bent upon to remove the applicant from service on some flimsy grounds and the decisions arrived at by the Disciplinary Authority is based on surmises and speculative. During hearing, it was brought to our notice that normally, if there is any deficit in cash transactions, the same will be debited to their respective accounts, therefore, why the applicant has been picked up for this harsh treatment, is not made out and especially when there is no bar in buying milk from outside. There is no allegation that though milk was available in the plaftform, despite the same, the applicant purchased from outside. The vouchers supplied during the course of hearing is not forged vouchers. The vouchers submitted by the applicant is as per the norms prescribed

and which has been certified by the Accounts. The mere fact that the matter is reopened after a lapse of four years, indicates that the Respondents are bias against the applicant and therefore, in view of the above, we find that there are substantial grounds in quashing the Removal Order as well as the Show Cause Notice, which ultimately merged with the Removal Order.

11. In the result, the O.A. is allowed and the order of removal dated 19.05.1992 is liable to be quashed and accordingly, the same is quashed and set aside. The charge levelled against the applicant for misappropriation of funds has not been established and thus the Respondents are directed to reinstate the applicant within a period of one month from the date of receipt of the copy of this order. Regarding the payment of wages, it is open to the authorities concerned to consider the circumstances of the present case and take a decision whether the applicant should be given back wages and if so, to what extent after recording reasons for the view that is being taken in consonance with the observation of the Supreme Court in Union Of India V/s. Janakiraman [A.I.R. 1991 S.C. 2010]; rather similar order passed in O.A. 546/91. The O.A. is disposed of with the above directions. No order as to costs.

(M.R. KOLHATKAR)
MEMBER (A).

(B. S. HEGDE)
MEMBER (J).

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