

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(S)

O.A. NO: 418/92

199

T.A. NO:

DATE OF DECISION 7.9.92

M R Borwankar

Petitioner

Mr. L M Nerlekar

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Mr. S.C. Dhawan

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice S K Dhaon, Vice Chairman

The Hon'ble Mr. M Y Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

V.C.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING NO.6
PRESOT ROAD, BOMBAY-1

OA No.418/92

Madhukar Ramchandra Borwankar
Balaji Temple, Tilak Chawk
Kalyan 421301

..Applicant

V/s.

1. Union of India
through General Manager
Central Railway
Bombay V.T.
2. Divisional Elec. Engineer
(Traction) Operating
Central Railway, Bombay VT

..Respondents

Coram: Hon. Shri Justice S K Dhaon, V.C.
Hon. Shri M Y Priolkar, Member (A)

APPEARANCE:

Mr. I M Nerlekar,
Counsel
for the Applicant

Mr. S C Dhawan
Counsel
for the respondents

ORAL JUDGMENT:
(PER: S K Dhaon, Vice Chairman)

DATED: 7.9.92

On 20.10.1987 the applicant was employed as Driver of 129 DN Udyan Express. This train met with an accident at 2200 hours on that date resulting in death of some passengers and also loss to the property of railways worth about Rs. 3 crores. The applicant, along with the ^{were} Station Master concerned, ^{were} put up for trial in the court of Judicial Magistrate First Class, Pune. They were charged under sections 304(a), 279, 337, 338 and 428 of the I.P.C. and Section 101 of the Indian Railways Act.

The Judicial Magistrate on 16.6.1989 acquitted the applicant. He held that it had not been established that the applicant had driven the train on the fateful date either rashly or negligently. The applicant was given a clean acquittal. Thereafter on 24.9.91 the applicant was given a charge sheet to face a departmental inquiry. The legality of the departmental proceedings is being questioned by means of this application under section 19.

The charge in the departmental proceedings as against the applicant is that on 20.10.1987 he was negligent in his work in so far as he entered the up main line without having proper authority and failing to stop the train immediately after realising that the train was travelling on the wrong road i.e., on up main line after starting the train from Palasdhari Home Signal which resulted in head on collision between 129 DN (6529 express) train with 542 UP parcel train on the up main line causing 10 casualties, 18 injuries to the travelling public and also damage to two locomotives and 11 coaches. The gravemt of the charge is that the applicant violated the provisions of FR 2.11-(1)(a), 2.11-(2).3.92 and SR 3.78-2 of G.S. Rules.

The first argument advanced on behalf of the applicant is that, the applicant having been acquitted honourably by the criminal court even in the charge of violating Section 101 of the Indian Railway Act, the subsequent departmental proceedings are merely repetition of the charge which was before the criminal court and therefore propriety demands that the departmental proceedings should not be permitted to go on. We may note that S.101 has three ingredients viz., (a) disobedience of any general rule made, sanctioned, published or notified under the Railway Act; or (b) disobeying any rule or order which is no inconsistent with any such general rule which such servants are bound by terms of the employment to obey and of which he had notice; or (c) by rash or negligent act or commission. It appears to us that the applicant was called upon to face a criminal trial with respect to ingredient (c) of S.101 of the Indian Railways Act. As already indicated, the thrust of the charge in the departmental proceedings is that the applicant had knowingly acted in violation of certain rules of which he had due notice. Therefore, it cannot be said that the charge which the applicant is now facing in the departmental proceedings is identical to the one which he was called upon to face in

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the criminal proceedings. A some-what similar controversy came up before this Tribunal in the case of OA No. 206/87 before a Division Bench of which one of us Hon. Shri M Y Priolkar was a Member. This Tribunal on 2.5.91 took the view that inspite of an acquittal of a Government servant in a criminal court, departmental proceedings for violation of departmental rules could be initiated. This decision, in our opinion, is apposite.

Learned counsel for the applicant has relied upon the decision of the Supreme Court in the case of Corporation of Nagpur City v. Ramachandra, 1982(1) LLN page 277. In this case, it is emphasised that even though there is no legal bar to a departmental proceedings being initiated after an acquittal in a criminal case propriety demands that such proceedings should not be reinitiated. There can be no quarrel with this proposition. That was a case where departmental proceedings _____ commenced on precisely the same violation which was the subject a matter of criminal trial. Here, we have pointed out that the departmental proceedings are going on on the ground that the applicant had acted in violation of certain statutory rules.

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The second submission advanced in support of this application is that proceedings should not be allowed to go on as they have commenced after an inordinate delay. Emphasis is laid on the fact that the accident is of the year 1987 and the applicant had been acquitted in the year 1989 and the departmental proceedings commenced in June 1991. The explanation offered in the reply on behalf of the respondents is that the departmental proceedings were initiated within a period of one month of the submission of the report by the Commissioner of Railway Safety. To counteract this argument, it is urged on behalf of the applicant that, in view of paragraph 2(6)(b) of the GSR 587 which runs thus: "If as a result of the police investigation a regular case is lodged in a criminal court by the police, the commissioner of Railway Safety shall discontinue his inquiry", the report could not be submitted by the Commissioner of Railway Safety. We have considered the afore quoted passage from the GSR 587 and in our view it emphasises that, if a regular case commences in a criminal court, the inquiry by the Commissioner, Railway Safety, shall be discontinued. It does not mean that the inquiry is erased. It merely means that the inquiry is temporarily suspended. It clearly means that

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after the conclusion of the criminal proceedings the inquiry can be resumed. In the instant case, we have already stated that the accident is of 20.10.1987 and the criminal case commenced some time in the year 1988. Therefore, it can be presumed that during the intervening period the inquiry must have commenced and the Commissioner of Railway Safety must have taken the necessary steps as required by law. Thereafter, on account of the pendency of the criminal proceedings he must have stayed his hands. Upon the culmination of the criminal proceedings, he, it appears, resumed his proceedings and, therefore, submitted his report. We, therefore, do not find any delay, much less inordinate delay in the initiation of the departmental proceedings. The case of State of Madhya Pradesh V. Beni Singh (1991 SC (L&S) Page 638) has no application to the facts of the instant case. In that case, the departmental proceedings had been initiated after a lapse of 12 years from the date of the incident.

The last submission made is that that the applicant is being denied the assistance of a defence assistant, though no such grievance has been made in this application. Yet Shri Dhawan

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learned counsel for the respondents assures us that the applicant will be permitted to have an assistant of his choice as permissible under the law.

This application fails and is dismissed.


(M Y Priolkar)
Member ()A


(S K Dhaon)
Vice/Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PREScot ROAD; BOMBAY 1

RP NO.1/93 IN O A NO.418/92

Madhukar Ramchandra Borwankar
Balaji Temple
Tilak Chowk
Kalyan 301

Applicant

v/s

Union of India
through General Manager
Central Railway
Bombay and another

Respondents

Coram: Hon. Shri Justice S K Dhaon, Vice Chairman
Hon. Shri M Y Priolkar, Member (A)

TRIBUNAL'S ORDR:
(Per: S K Dhaon, Vice Chairman)

DATED: 15.1.1993

This is an application seeking the review of our judgment and order dated 7.9.92 passed in OA No. 418/92.

The ~~principa~~ prayer made in the Original Application was that the chargesheet dated 24.9.91 issued to the applicant may be quashed in view of the honourable acquittal of the applicant by a competent criminal court on charges similar and identical to those which was the subject matter of the departmental proceedings. The second ground for attacking the legality of the departmental proceedings was the alleged inordinate delay in the initiation of the proceedings.

We had passed a detailed order on 7.9.92. We had noted that the applicant along with the station master concerned were put up for trial before the Judicial Magistrate First Class, Pune to face charges under Sections 304(A), 279, 337, 338, 428 of the Indian Penal Code and Section 101 of the Indian Railways Act. In our

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judgment we had considered the charges leveled against the applicant in the departmental proceedings and had recorded our finding that Section 101 of the Indian Railways Act covered three situations, namely those contained in sub-sections (a), (b) and (c). We had also recorded our finding that in the criminal proceedings the applicant ~~who~~ had been subjected to a charge which fell under sub-section (c) of Section 101 of the Railways Act. We had also recorded our finding that in the departmental proceedings the charges could fall under Section 101 (a) and (b). We, therefore, refrained from quashing the departmental proceedings.

We have gone through the contents of the review application. The thrust of the allegation is that our judgment proceeds on an assumption and presumption that in the criminal proceedings the charge against the applicant ~~was~~ is confined to Section 101(c) of the Indian Railways Act apart from some other provisions of the Indian Penal Code. It may be that we might have erred in giving our judgment. However, an erroneous judgment cannot be reviewed by the ~~deciding~~ ^{existing} power under Order 47, Rule 1 of the Civil Procedure Code.

We are disposing of this application by adopting the process of circulation which is permissible under the Rules.

The application is rejected.


(M Y Priolkar)
Member (A)


(S K Dhaon)
Vice Chairman