

CE.LTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 455/92

Transfer Application No.

Date of Decision

31/12/92

Maheshchandra Kailashprasad Sharma Petitioner/s

Shri M.S.Ramamurthy

Advocate for
the Petitioners

Versus

Union of India & 2 Ors.

Respondent/s

Shri A.L.Kasturey.

Advocate for
the Respondents

CORAM :

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

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 ?

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

of charges.

"Statement of imputation of misconduct
or misbehaviour

During the course of check of 10 days consumption statement of GDA Unit by Accounts Inspection GDA for the period from 27.8.78 to 30.4.79 and 11.10.79 to 30.4.80 it was noticed that a debit of Rs.5,902.92pb comes recoverable from you on account of excess consumption of materials vide this office letter No.A5/108/10 dated 30.7.80. You were served with show cause notice as to why this amount should not be recovered from your salary but despite issue of reminders you did not care to reply.

2. Similarly during joint stock verification by CAI and CTRI GDA on 31.7.80 the shortages of materials valued Rs.3,293.96p were found when compared to book balance and stock balance and the said debit of Rs.3,293.95p is also recoverable from you.

For this debit also you were given one opportunity to offer your remarks vide this office letter No.c45/108/10/GDA dated 21.11.1980 followed by several reminders but you failed to comply with them.

In view of the above you are held responsible in this case for total debits of Rs.9,796.88 towards the cost of shortages and excess consumption of raw material and thereby misappropriation of Railway Revenue and also for serious misconduct shown for towards records DCTRI BRC by not accepting letters in this connection when he was specially deputed for this job."

The list of documents comprised of office letter dated 27/11/80. There is no list of witnesses. According to the applicant he was never informed about any enquiry proceeding which was started in pursuance of the issue of Charge sheet as regards place and time of enquiry including examining of witnesses. Instead he received notice of imposition of penalty dated 12/12/89 with enquiry officer's report and finding of enquiry proceeding imposing penalty of removal from service. The applicant filed an appeal on 30/6/90

My

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My

(10)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.455/92

Maheshchandra Kailashprasad Sharma ... Applicant

V/s.

1. Union of India,
through the General Manager,
Western Railway, Churchgate,
Bombay - 400 020.
2. Chief Commercial Superintendent
Western Railway,
Churchgate,
Bombay - 400 020.
3. Chief Commercial Superintendent,
(Catering) Western Railway,
Churchgate, Bombay - 400 020. ... Respondents.

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

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

APPEARANCE:

Shri M.S.Ramamurthy, Counsel
for Applicant.

Shri A.L.Kasturey, Counsel
for Respondents.

JUDGEMENT:

DATED : 31/12/91

X Per Shri M.R.Kolhatkar, Member (A) X

In this OA under section 19 of the Administrative Tribunals Act, the prayer is to set aside the order of imposition of penalty of removal from service dated 12/12/89 and the Appellate Order dated 22/3/91 and to reinstate the applicant with all consequential benefits.

The facts are as follows:-

1. The Applicant was working as catering Manager at Godhra, Gujarat from the year 1978. A Charge-sheet dated 30/3/81 was issued by Senior Divisional Commercial Superintendent, Baroda charging him with "careless and negligent working and misappropriation of Railway revenue." The statement of imputation appearing at page-17 is reproduced below to appreciate the nature of charges.

"Statement of imputation of misconduct
or misbehaviour

(12)

against the order of removal from service but the same was rejected on 22/3/91.

2. The first contention of the applicant is that the enquiry proceedings were initiated vindictively because of animosity borne by Shri D.I.Shaikh, ^{the} catering inspector was posted to Godhra from Jaipur, Rajasthan and was assisted by Shri N.L.Vora, catering accounts inspector. It is because the applicant did not assist them in their illegal activities, that the whole enquiry was initiated. The applicant also stated that although there was no list of witnesses, these two persons were actually examined as witnesses and they were inimical witnesses and disqualified in law for being examined as witnesses, because the applicant had filed a Plaintiff in the Special Civil Suit No.63 of 1986 against these people. These two persons in their turn had filed a false complaint against the applicant and although the Trial Court held the applicant guilty, in Appeal being Criminal Appeal No.29 of 1983, the Hon'ble Sessions Judge of Panchmahals at Godhra set aside the said conviction and acquitted the applicant.

3. The respondents have contended that the charges levelled against the applicant are for the period between August, 78 to April, 80 and Shri D.I.Shaikh ^{as} ^{inspector} was posted in 1980 to Godhra/catering/and therefore did not change the position of charges.

Whatever is stated by applicant about Civil suit and Criminal case are irrelevant matters.

4. We are inclined to agree that the charges are related to the period prior to the posting of Shri D.I.Shaikh and therefore the Departmental Enquiry cannot be said to have been ~~initiated~~ on the ground of bias. However, we note that there was no list of

witnesses sent by the respondents and yet Shri Shaikh and Shri Vora were examined as witnesses. The respondents have not been able to explain satisfactorily as to why the applicant was not informed regarding the list of witnesses.

5. Secondly, the applicant contends that the only document on which the respondents relied was the letter dt. 27/11/80 but a copy of this letter was not actually enclosed with the charge-sheet. He also points out that while the imputation order refers to misappropriation of ~~an~~ amount of 9,796.88, letter dated 27/11/80 refers ^{an} to/amount of Rs.9,196.88.

6. Regarding the failure of the respondents to file a copy of the document relied upon along with the charge-sheet, the counsel for respondents has invited our attention to Railway Servants Note below Rules 19(7) (Discipline & Appeal) Rules 1968. This note says

"If copies of documents have not been delivered to the Railway Servant along with the articles of charge and if he desires to inspect the same for the preparation of his defence, he may do so, within ten days from the date of receipt of the articles of charge to him and complete inspection within ten days thereafter and shall state whether he desires to be heard in person."

The Counsel for respondents therefore argues that the failure to send a copy of the document is not fatal to the charge-sheet and that there has been compliance/ with procedure laid down in the note to rule(7). So far as the discrepancies in the amount mentioned in the letter dated 27/11/80 and the imputation attached to charge-sheet is concerned, he states that it is a typing mistake.

7. According to us the discrepancy though it shows by itself the carelessness, . . . is not fatal to the enquiry. Similarly, the failure to enclose the documents alongwith the letter dated 27/11/80 is also not fatal to the enquiry in terms of Railway Servants(Discipline and Appeal) Rules.

8. The Applicant then contends that original enquiry officer of Baroda Division was appointed but he did not proceed with the enquiry. During the pendency of the disciplinary case, the applicant was transferred to Bombay and a new enquiry officer Shri M.L.Narula, Assistant Commercial Superintendent(Catering)-I was appointed which is not permissible under Railway Servants (Discipline and Appeal) Rules, 1968.

9. The respondents contend that the change of the Enquiry Officer was ^{stated} necessary to avoid loss to Government exchequer by paying TA/DA to Enquiry Officer and other staff, Shri Narula was senior to the delinquent employee and could function as Enquiry Officer. The applicant was given intimation about the appointment of Enquiry Officer, which was acknowledged by him on 7/9/84.

10. According to us the applicant has not been able to point out the rules under which appointment of another enquiry officer is precluded. We, therefore, do not find that the enquiry is vitiated on this account.

11. The applicant then contends that the charges related to work at Godhra units, the records were in Godhra, therefore it was against the Principles of Natural Justice that the enquiry should have been conducted at Bombay.

We do not find any substance in this contention.

12. The applicant next contends that the enquiry was conducted *ex parte* in violation of the Principles of natural justice. He also wanted inspection of several records but the copies of the documents were not furnished by the respondents.

13. According to the respondents, the enquiry was conducted *ex parte* because inspite of notices sent successively namely earlier enquiry officer had fixed enquiry ~~had fixed~~ ~~enquiry~~ on 23/11/81, 15/1/82, 2/3/82, 27/7/82, 23/9/82, 29/11/82 and 21/12/82 and the later enquiry officer had fixed enquiry on 3/8/83, 15/9/83 and 30/10/83 but applicant did not care to attend the enquiry. Regarding inspection of documents, the applicant was asked under letter dated 10/12/82 to inspect the relevant documents which he acknowledged but he did not turn up to take inspection.

14. The applicant next contends that the charges against the applicant including the statement of imputation of misconduct are totally vague and devoid of relevant and material particulars. In regard to the alleged misconduct shown against DCTRI, BRC, no particulars or relevant facts have been set out. The only instance of misconduct was his not accepting a letter addressed to him, but nothing was stated regarding this misbehaviour in the statement of imputation. According to the applicant, ⁱⁿ the list of documents, the [,] consumption statement or report of Accounts

Inspection, Joint Stock verification, model schedule of consumption or any complaint of misconduct against DCTRI are not relied upon.

15. The respondents contend that the charges framed against the applicant are specific and clear. Before the issue of charge memo, the applicant was issued a show cause notice on 30/7/80 and thus the applicant was aware about charges. A copy of show cause notice however has not been put on record.

16. According to us there is substance in the contention of the applicant that sufficient material was not included in the charge-sheet nor the relevant documents enclosed therewith. and in general no proper enquiry was conducted into the charges.

17. It is next contended by the applicant that the report of the Enquiry Officer is totally vague and does not deal with any evidence brought on record in support of the charges levelled. This is denied by the respondents.

18. On perusal of the findings of the enquiry report, we are inclined to agree that the report of the enquiry officer ~~was~~ vague and does not deal with any evidence brought on record.

19. The applicant next contends that the reports and findings of the Enquiry are dated 15/9/84 whereas the order of removal by Respondent No.3 is dated 12/12/89 i.e. after a period of 5 years and 3 months. According to the applicant the circumstance makes the removal order an after-thought, and for collateral purposes. No explanation is brought out for the delay in issue of order of removal or any other communication for the inordinate delay in acting on the report.

20. The respondents' reply to this is not at all satisfactory. It is stated that the Enquiry Report was misplaced in the office in the old record and after tracing the same from old record further action has been processed and the official who caused the delay has already retired from service.

21. In our view this explanation is most unsatisfactory and gives credence to the allegations of the applicant that the removal order was an after-thought, for a collateral purpose.

22. The applicant next contends that the order of the Disciplinary Authority is a non-speaking order passed mechanically without application of mind. This order reads as below:-

"You are hereby informed that the following penalty has been awarded to you:

"Removal from service - reasons given over leaf."

You are required to acknowledge receipt of this notice on the form subjoined."

The reasons given over-leaf are as below:-

"The charges against Shri Sharma are of a very serious nature. He has been held guilty of misappropriation of Railway Revenue of a huge amount. Not only this he has also been held guilty of misbehaviour with CAI and CTRI. Looking to the gravity of charges, it is felt that Shri Sharma is not fit to be retained in Railway service. The penalty of removal of service be imposed on him."

The respondents have denied that the order is passed mechanically.

23. We are inclined to agree with the applicant that the order of Disciplinary Authority is a

mechanical order and except for mentioning gravity of charges, it arbitrarily holds the applicant not fit to be retained in Railway service by imposition of such a drastic penalty. The Counsel for applicant has contended at the argument stage that there is a distinction between commercial debit and misappropriation and the issue ought to have been

~~RG~~ discreetly enquired into as to why the shortage which was located during the course of work of applicant at Godhra could not be dealt with as a matter of commercial debit for which the normal course of action would be by way of recovery from salary rather than resorting to disciplinary proceedings as for a major penalty which involves mens rea to defraud, etc.

24. The applicant has next contended that the Appellate Authority has also passed a mechanical order without application of mind. The order of Appellate Authority is dated 22/3/91 and is reproduced below:-

"You met me on 11.3.1991 and showed the papers regarding case going in Godhara Court.

I find that you have correctly been held responsible in this case for the charges of careless and negligent working and misappropriation of Railway revenues. I find that the findings of Disciplinary Authority are warranted by evidence on record and the punishment imposed is adequate. The orders should therefore stand."

The respondents have stated that personal hearing was given on 26/2/91 and 11/3/91 but the applicant did not give any convincing argument during

personal hearing and his appeal is rejected after applying mind by Appellate Authority. This contention of the respondents does not carry conviction because Appellate Order does not show evidence of having gone into specific ~~particular~~ ^{points} raised in appeal.

25. At the argument stage, the applicant relied on the case of Himangshu KR. Acharjya v/s. Union of India and others which is a case decided by Calcutta Bench of CAT and reported at (1992) 19 ATC 438. In this case the Tribunal held that in awarding a major penalty like removal, the disciplinary authority should apply its mind and pass a reasoned order justifying the penalty, otherwise, omission to do so would vitiate the order of penalty. The Tribunal also held that the order passed by Appellate Authority was not in accordance with the Rule 22 of Railway servants (Discipline and Appeal) Rules, 1968 and hence held the same to be vitiated. Further the Tribunal held that witnesses were examined but their names were not mentioned in the charge-sheet. Before examining them, the enquiry officer had not given sufficient time or opportunity to the delinquent for cross-examination of those witnesses. The Tribunal, therefore, held that the enquiry proceedings could not be sustained.

26. The Counsel for respondents, on the other hand, relied on the case of "State of Andhra Pradesh and others v/s. Shree Rama Rao" reported at AIR 1963 Supreme Court 1723. In this case, the Supreme Court has laid down that it is not the function of the forum of judicial review to review the evidence

and to arrive at an independent finding on the evidence. The Supreme Court also observed however that if there is a failure to follow rules of natural justice or violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous, then the High Court may interfere with the finding of the departmental authority. In this case, according to us, the enquiry had not been conducted according to the procedure prescribed by the Railway Servants (Discipline and Appeal) Rules. The charges as well as the findings are vague, the list of documents was not detailed enough, the list of witnesses was not furnished though the witnesses came to be examined. The Enquiry Report is vague and the orders of the Disciplinary Authority and Appellate Authority have been passed mechanically without application of mind. Most importantly, there has been a delay of more than 5 years in acting on the report of the Enquiry Officer which leads us to believe that the whole enquiry was resurrected for collateral purpose.

27. In our view, therefore, not only in terms of the case of Himangshu KR. Acharjya v/s. Union of India and others but also in terms of State of Andhra Pradesh v/s. Sree Rama Rao judgement, the departmental enquiry conducted against the applicant and the penalty imposed and the appeal refused are vitiated and cannot be sustained. We therefore allow the OA and quash and set aside the order of penalty dated 12.12.89 and the Appellate Order dated 23.3.91 and direct the respondents to reinstate the applicant with all consequential benefits. We are

not inclined to give liberty to the respondents to conduct a fresh enquiry as the instant case relates to the period 1978 to 1980 i.e., more than 15 years past. Since the question of Government Revenue is also involved, the respondents are at liberty to take action of recovering shortages, if any, from the applicant in accordance with the rules after following the prescribed procedure in this regard. There would be no orders as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

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

abp.