

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1032/93

DATE OF DECISION:

Friday this the 18th Day of August, 2000

Shri A.M. Kanpurwala, Applicant
(By Shri P.G. Zare, Advocate)

Versus

Shri Union of India & Ors. Respondents
(By Shri. S.C. Dhawan, Advocate)

CORAM

Hon'ble Shri B.N.Bahadur, Member (A)
Hon'ble Shri S.L.Jain, Member (J)

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

(2) Whether it needs to be circulated to
other Benches of the Tribunal? No

(3) Library. No

B.N. Bahadur
Member (A)

sj*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

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Friday this the 18th TH DAY OF AUGUST, 2000.

CORAM:

HON'BLE SHRI B.N.BAHADUR, MEMBER (A)
HON'BLE SHRI S.L.JAIN, MEMBER (J)

Shri A.M. Kanpurwala,
Chief Permanent Way Inspector (BG)
Akola, resident of Akola
Maharashtra. Applicant

(Applicant by Shri G.K.Masand, Advocate with Mr. P.G.Zare
Advocate)

vs.

1. Union of India through the General Manager,
Central Railway, Mumbai V.T., Mumbai.
2. Senior Divisional (Railway) Engineer (CO),
Central Railway, Bhusawal Respondents.

(By Shri S.C.Dahwan, Advocate)

O R D E R

[Per: B.N.Bahadur, Member (A)]

This is an Application made by Shri A.N. Kanpurwala, then Permanent Way Inspector (PWI), Akola, seeking the quashing and setting aside of the penalty imposed on him by impugned order dated 14.9.1992. The facts of the case, as brought forth by the Applicant, are that he was issued a Chargesheet dated 25.4.1992 (Ex.1), charging him with substandard maintenance of tracks, leading to derailment of 8 wagons, as per details described. An Inquiry was conducted against the Applicant, and the he came to be imposed with the penalty of reduction to lower stage in time scale for two years, with cumulative effect. The

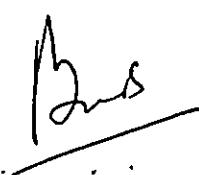
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first ground of grievance of the Applicant is that this was done without supply of Inquiry Report to him, and that this is against the Rules. He made an Appeal, after which the copies of the E.O. report was supplied to the him, but without setting aside the penalty order.

2. The Applicant goes on to allege that he found flaws in the E.O.s report in that the evidence of one Shri Venugopal was taken behind the Applicant's back, in violation of the principles of natural justice. Although this was brought to the notice of the authority in Appeal, applicants pleadings were not considered even at this stage. It is with these grievances that the Applicant is before us, seeking the relief as described above.

3. There is a reply filed on behalf of the Respondents, resisting the claims made in the Application, and stating that the Applicant was found responsible for the sub-standard maintenance of the track and permanent ways, when the derailment took place on 1.3.1992. It is averred that this was the conclusion of a fact finding enquiry report, on which basis the Applicant was served with the Chargesheet for major penalty. Parawise replies have thereafter been given in the written statements of Respondents, and it is averred that the Applicant refused to examine himself in the proceedings or to make a statement regarding the charges. He however, submitted his arguments.

4. The Respondents in their statement further admit that the copy of the Enquiry Report was furnished to Applicant only in January 1993 i.e. after the order imposing penalty, but deny that the evidence of Shri Venugopal was taken behind the back of the Applicant. The justification and circumstances of



, Venugopal's evidence are described in para 9 of the Written Statement. It is further denied that the points raised before Appellate Authority ^{had} ~~we're~~ not considered. In fact, a personal hearing was given to the Applicant. The Respondents state that the penalty on the applicant is imposed as per Rules and there is no violation of Article 311 (2) of the Constitution of India. Thus, Respondents pray for the dismissal of the Application.

5. We have heard learned Counsel for the Applicants as also learned Counsel for the Respondents, both of whom argued their case in great detail.

6. The learned Counsel for the Applicant first made the point about non-supply of the inquiry report and contended that this was a serious flaw, in that the Rules were flouted, and is also a short coming with reference to the settled law in this regard. He referred to the Appeal made by Applicant on 5th October, 1992 (Page 58) and the fact that the copy of the Report was served on the Applicant only thereafter. Even then the order of penalty was neither withdrawn nor held in abeyance. At the hearing given to Applicant by the Appellate authority the Applicant made these points, but they have not been covered in the appellate order.

7. The second major contention relates to the evidence of Shri Venugopal which, the learned Counsel for the Applicant argued, was taken behind his back. Thus the Enquiry was vitiated. This aspect has been mentioned above.

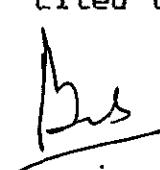
8. Learned Counsel for the Applicant further referred to the evidence of Shri Vivek Kumar and contended that this was ignored and went into some details on this aspect. He further alleged that the order of the Appellate Authority was very ^{cryptic}, gave

no reason and only stated the conclusions. Learned Counsel relied on a letter of the Govt. of India (page 90-91 of paper book) to argue that such a cryptic order showed non-application of mind. The learned Counsel for the Applicant cited the case Kuldeep Singh vs. Commissioner of Police and Ors. (1999) SCC L&S 429.

9. Arguing the case on behalf of Respondents their Learned Counsel Shri S.C.Dhawan, stated that the Applicant had been found guilty in a regular Inquiry and that there were no procedural defects in regard to the supply of papers. He took support from two cases decided by the Supreme Court and argued that it would be essential for the Tribunal to judicially examine as to whether any prejudice was caused to the case of the Applicant by non-supply of the Report. He depended on the case of S.K.Singh vs. Central Bank of India [1997 SCC L&S 40] and [✓] the case of Union Bank of India vs. V. Mohan [1998 SCC L&S 1129].

10. Regarding Shri Venugopal's evidence being taken, Learned Counsel argued that no examination of Venugopal was made as witness, but it was only a case of corroboration by him because the Applicant had examined Vivek Kumar. He took us over page 52, then argued that the reasoning for corroboration by Shri Venugopal has been described in the Inquiry Officer's report.

This was all that was done by E.O. Sri Dhawan cited the case of K.C. Tandon's vs. UOI AIR 1974 SC 1589 and contended that the ratio in Tandon's case would apply, and this one defect, if such, cannot vitiate the Inquiry as other evidence on record was sufficient, as can be seen in the detailed discussions made by E.O. in his report, specially at page 57. Shri Dhawan then cited the case decided by the Karnataka High Court (1998) (1) CLR



1280 para 11 with reference to the point made about Vivek Kumar's evidence. Shri Dhawan made the point that Shri Venugopal's evidence was taken only in the interest of justice, and in fact in fairness to the Applicant himself.

11. Rearguing briefly on the point of the two Supreme Court judgements referred to, Learned Counsel for Applicant stated that these were cases where the employees were working with Banks and were not the employees of Govt. of India. Hence the ratio was non relevant here.

12. At the outset, it is clear that the basic issue on which the Inquiry is being challenged by the Applicant is that there are serious flaws in the procedure laid down for conduct of Inquiries and that therefore, there has been violation of the principles of natural justice. Importantly, three points are made to substantiate this, as already discussed above. To recaputulate, these are (a): Non supply of E.O.'s report to applicant at the correct time, (b): Taking of Venugopal's evidence behind applicant's back and (c) non consideration of evidence of Shri Vivek Kumar. We shall, therfore, proceed to examine this case pointedly with reference to these three grounds. Indeed, these are the grounds sought to be met during arguments by learned Counsel for Respondents also.

13. The first point (relating to non supply of the E.O.'s report to the Applicant on time) is clear and admitted on facts. This is clearly a flaw in the procedure and that too, of a material nature, and covered by the important judgement of the Apex Court in Ramzamkhan's case. In defence, Learned Counsel had cited the two cases of Bank employees referred to above. We have seen both these cases cited viz. those of Shri V.Mohan and Shri S.K.Singh, where the specific point decided is that in both cases



, it could not be shown that prejudice was caused through the fact of the copy of the report of E.O. not being supplied. In our case, the learned Counsel for Applicant has strenuously taken this ground to be prejudicial, and on the facts and circumstances of the case, also, we are not convinced that no prejudice is caused to the Applicant by the fact that the Enquiry Report was not supplied in time. All this, quite apart from the fact that in both the cases cited, the employees were Bank employees and not employees of the Union Govt. The importance of the ratio settled in the case of Mohammed Ramzamkhan will hold sway in the case before us.

14. We now proceed to examine the point about Venugopal's evidence. We find that their reply in this point the respondents state (at para 9 of their written statement) as follows:

"The Respondents state that the applicant had produced a document which was marked as Ex.P.6 by the Enquiry Officer which was alleged by the applicant to have been recorded by the Sr. DEN (Co)/BSL Mr. Venugopal. The said document was unsigned and unendorsed and would have been of no avail or help to the applicant.

The Enquiry Officer in order to help the applicant requested the said Shri Venugopal to confirm to clarify the same whether the said document was recorded by him as alleged by the applicant. The statement clarification of the said Shri Venugopal when received was marked as Ex.P.8 in the enquiry proceedings and the applicant was aware of the same but raised no objection before the enquiry officer."

15. The above argument about need for clarification is acceptable, but what is not understandable is why an opportunity could not be given to the Applicant for Cross Examination, even though the necessity for examination of Shri Venugopal came to be found necessary at a later stage. Herein lies the legal weakness

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and the strength in the argument of the Applicant that Venugopal's statement has been recorded "behind his back". We find this to be a flaw in the procedure of Inquiry and indeed something which is against the principles of natural justice. This is something that would need rectification.

16. In regard to the evidence of Vivek Kumar, we find that it is not entirely true that his evidence has not been discussed in the E.O's report. It has indeed been discussed. Whether it is to the satisfaction of the Applicant or otherwise, is not something we will go deep into, as reassessment of evidence is outside our purview.

17. In view of the discussions above, we do find that the Applicant's grievance about violation of principles of natural justice on the points described above has merit. It would, therefore, be justifiable to quash the Order imposing penalty and the order passed in Appeal. *As* ~~However~~, *we* cannot agree with the Counsel for Respondent who cited the case of *K.C.Tandon* on the point that other evidence is enough on its own to sustain the orders. Or that the examination of Venugopal was made in the interest of the Applicant himself. The flaws in procedures are serious enough, as discussed above. We do note, nevertheless, that the incident, on which basis Inquiry was started viz. derailment of some wagons, is a serious matter, and would not play down the gravity of such a thing. We are equally convinced that if anyone is responsible for any negligence or any other lack of duty it is indeed in public interest that anyone guilty to be *As* dealt with as per law. We cannot therefore, ~~not~~ contemplate closing down of this Inquiry.

18. In view of detailed discussions above, this O.A. is disposed of with the following orders/directions.:

B.S

a) The order No.BSL/W/STF/NPDA/AMK dtd. 8/14.9.92 imposing penalty on the Applicant is hereby quashed and set aside. So also, the order No.BSL/W/STF/NPDA/AMK dated 7.7.1993 deciding the Appeal of the Applicant made ~~of~~ is also quashed and set aside.

b) The respondents are at liberty to continue the Inquiry from the following stage, and after following the directions given below:-

i) *Shri Venugopal be examined in presence of the applicant and an opportunity for cross-examination of Shri Venugopal be afforded to the applicant. If this is not possible, for any reason, then, the Statement of Shri Venugopal will be discarded as evidence.*

ii) *After taking action as (i) above, the disciplinary authority shall reconsider the entire case and made fresh speaking orders.*

c) There will no orders as to costs.

J
(S.L.Jain)
Member (J)
sj*

R.N.Bahadur

(R.N.Bahadur)
Member (A)
18/8/2000