

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

OPEN COURT / PRE DELIVERY JUDGMENT IN OA

1147/93

Hon'ble Vice Chairman / Member (J) / Member (A)
may kindly see the above Judgment for
approval / signature.

V.C. / Member (J) / Member (A) (K/S)

Hon'ble Vice Chairman

Hon'ble Member (J)

Hon'ble Member (A) (K/S)

Agree

M (J) 10/10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1147/93.

Date of Decision: 10/10/93

Shri P. S. Sonkamble,

Applicant.

None.

Advocate for
Applicant.

Versus

Union Of India & Another,

Respondent(s)

Shri S. C. Dhavan,

Advocate for
Respondent(s)

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?


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

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1147/93.

Dated this Fri 10, the 10th day of Oct., 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).
HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Shri P. S. Sonkamble,
C/o. K. R. Jadhav,
4, Mayur, Opp: UCO Bank,
Tilak Nagar,
Dombivali (E)-421 201,
(Thane), Dombivali (E).
(By Advocate - None).

... Applicant

VERSUS

1. The Divisional Railway Manager,
Central Railway (Commercial),
Bombay V.T.

2. The Secretary,
Union Of India,
Ministry Of Transport,
Department of Railways,
New Delhi.

... Respondents.

(By Advocate Shri S.C. Dhawan)

: ORDER :

[PER.: SHRI B.S. HEGDE, MEMBER (J)]

In this O.A. the applicant is seeking notional promotion on the basis of his seniority while in service and continuity in service w.e.f. 16.04.1983 with all consequential benefits.

2. This case has got a chequered history. The case was admitted on 22.11.1993. Mr. Jadhav, Advocate, appeared at the time of admission, thereafter, none appeared on behalf of the applicant. Mr. S.C. Dhawan,

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appeared on behalf of the respondents. When the matter came up for hearing, neither the applicant nor his counsel was present. In this O.A., the applicant is seeking direction to the respondents to implement the judgement of the Tribunal dated 07.10.1991 and grant all consequential benefits.

3. The brief facts of the case are - that the applicant was working as Senior Assistant Coaching Clerk in the scale of Rs. 330-560 and he joined the respondents-department in the year 1953 and worked till April 1983. The applicant was issued with a major penalty charge-sheet on 28.11.1981. The article of charges include misconduct and misappropriation of Railway Revenue of Rs. 86,841/-. As a result of the Departmental enquiry, the Disciplinary Authority i.e. the Divisional Commercial Manager-I, after considering the enquiry officer's report and Enquiry Officer's findings, imposed upon the applicant the penalty of dismissal from service w.e.f. 16.04.1983. Against the said penalty order, the applicant filed an appeal on 22.04.1983. The said appeal was disposed of by the Appellate Authority on 30.01.1984 and upheld the penalty imposed by the Disciplinary Authority. Thereafter, the applicant filed a Civil Suit No. 66 of 1984 before the Court of Civil Judge, Kalyan, and the same came to be transferred to the Tribunal as T.A. No. 411/87.

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4. The applicant in T.A. No. 411/87 sought for reinstatement and continuity in service w.e.f. 16.04.1983. The T.A. was heard by the Tribunal and disposed of vide judgement dated 24.03.1988 directing the Appellate Authority to hold a fresh hearing, give the applicant an opportunity of being heard and pass a speaking order. Pursuant to the direction of the Tribunal, the respondents, after giving personal hearing to the applicant, passed an order on 06.07.1988 upholding the order passed by the Disciplinary Authority. Thereafter, the applicant filed another O.A. No. 103/89 praying for and continuity reinstatement/in service. The said O.A. was disposed of by the Tribunal on 07.10.1991, again by directing the respondents to reconsider his appeal and pass a speaking order in respect of the pleas raised by the applicant. The Appellate Authority, pursuant to the direction of the Tribunal, reconsidered the matter and passed a speaking order vide dated 22.10.1992. The respondents once again upheld the views of the Disciplinary Authority in dismissing the applicant from service. The said order was not challenged further.

5. In the normal circumstances, the applicant would have superannuated from service w.e.f. 01.02.1993. He filed C.P. No. 104/92 which was disposed of by the Tribunal vide order dated 26.06.1992. While dismissing the C.P., the Tribunal directed the respondents to conclude the decision of the appellate authority preferably within a period of two months. Thereafter,

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the Appellate Authority passed a speaking order on 22.10.1992. The applicant thereafter again approached the Tribunal by filing this present O.A. on 20.10.1993. The main grievance of the applicant is, that, he has not been given personal hearing and inspection of documents. However, we find, pursuant to the direction of the Tribunal, the respondents have furnished the required documents for inspection and also given him personal hearing. Further, the contention of the applicant is that the enquiry held by the respondents is perverse and no opportunity was given to the applicant to defend his case. The said contention is not based on ~~material~~ facts. The respondents after considering the various contentions of the applicant and keeping in view the material facts, passed a final order on 22.10.1992 stating that fair and reasonable opportunity was provided to the applicant by the disciplinary authority and Appellate Authority to defend his case. At no point of time during the second enquiry he was deprived of the right to inspect the documents. Accordingly, while dismissing the appeal, the Appellate Authority upheld the decision of the Disciplinary Authority to dismiss the applicant from service w.e.f. 16.04.1983.

6. In the light of the above, in our opinion, the contention raised by the applicant in this O.A. is nothing but repetition, which has already been

considered by the Competent Authority as well as Tribunal. The applicant has made an allegation that he has not been given personal hearing and inspection of documents to defend his case. The respondents in their order dated 22.10.1992 have clearly stated that the applicant was given personal hearing and opportunity to inspect the documents. Further, during the enquiry proceedings, the applicant was given ample opportunity to inspect the documents, which is not denied.

7. On perusal of the pleadings, we find that the contentions raised in the O.A. is nothing but repetition, which has already been considered by the Tribunal earlier, and it is not for the Tribunal to reappraise the decision of the competent authority, who after considering the facts of the case, passed the order. In the instant case, pursuant to the direction of the Tribunal, the Competent Authority have given sufficient opportunity to the applicant to defend his case, despite the same, no additional material has been submitted by the applicant in order to change the views of the Competent Authority. It is true, that the Disciplinary Authority is supposed to arrive at its conclusion/findings on the basis of the evidence recorded in the enquiry. It is also true that the Disciplinary Authority takes into consideration the findings recorded by the Enquiry Officer alongwith the evidence on record. It is a settled Law that ^{the}

Tribunal has only power of judicial review of the administrative action of the ~~respondents on complaints~~ relating to service conditions of employees. It is the exclusive domain of the Disciplinary Authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence has no application for the disciplinary proceedings and the authority is to consider the material on record. In ^{also} Judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial Review is not an appeal from a decision but a review of the manner in which the decision is made. When the conclusion reached by the Authority is based on evidence, the Tribunal is devoid of power to re-appreciate the evidence and would come to its own conclusion on the proof of charge.

8. In the result, we do not see any justification in interfering with the order passed by the Competent Authority and in our opinion, the O.A. filed by the applicant is devoid of merits and the same is accordingly dismissed. No order as to costs.

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


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