

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 225/93

Transfer Application No:

DATE OF DECISION: 19.7.1995

Shri S.K.Yadav Petitioner

Shri V.M.Kulkarni Advocate for the Petitioners

Versus

D.R.M. C.Rly. Nagpur & Ors. Respondent

Ms.ANita Shinde Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri P.P.Srivastava, Member (A)

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?


(P.P.SRIVASTAVA)

MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY
CAMP : NAGPUR

OA.NO. 225/93

Shri Shivpyare Kailash Yadav ... Applicant
V/S.
Divisional Railway Manager,
Central Railway, Nagpur & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri V.M.Kulkarni
Advocate
for the Applicant

Ms.Anita Shinde
Advocate
for the Respondents

ORAL JUDGEMENT Dated: 19.7.1995
(PER: M.S.Deshpande, Vice Chairman)

By this application the applicant challenges
the finding of guilty ~~and~~punishment ~~of~~ reduction to
a lower stage in the same time scale.

2. The applicant was the Assistant Guard of Andhra
Pradesh Express which left Nagpur on 30.7.1987. There
was 16 cartons loaded in front Brake Van of the train.
The applicant who was to be relieved at Ballarshah was
relieved by one Shri S.Ramulu. One Shri Gurushankaran
who was the Chief Personnel Officer, South Central Railway
was travelling in the A.C.First Class Compartment came out
and stood at platform. He found the applicant and Ramulu
in suspicious action, and the applicant putting back something
which was taken out from carton ~~from his own~~ black bag into
the carton. The said C.P.O. reported the incident by way
of his statement dated 30.7.1987 and a charge-sheet containing
four charges was served on the applicant. The applicant

appeared at the enquiry and participated at the enquiry. Only one witness Ramulu was examined and the other witnesses were not examined because they were gone out.

3. Shri V.M.Kulkarni, learned counsel for the applicant urged that this was not a case in which the evidence of Ramulu could have been relied upon for reaching the final stage when the other witnesses were not examined. It appears that a Memo of Appeal raising various points was presented to the Appellate Authority. Those points had bearing on the manner in which the trial was held and the adequacy and sufficiency of evidence. Although the Appellate Authority observed by the order that the case was serious and imposed the penalty stated above, it did not consider the points raised by the applicant seriatim. The appellate authority had given a personal hearing to the applicant.

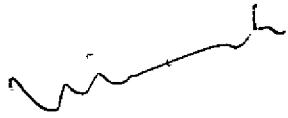
4. Though Shri Kulkarni invited us to examine the evidence with a view to ascertaining whether the finding of guilty is proper, it is well-settled that the question of sufficiency or otherwise of evidence is not a factor which the Tribunal exercising the power under Article 226 of the Constitution shall examine. With regard to the merits of the evidence, it is for the department to go into that aspect. The appellate authority here had not considered the submissions of memo of appeal and the order passed by the appellate authority shows that there was total non-application of mind to the several questions raised by the applicant. The appellate authority's order cannot therefore be sustained.

5. In the result, we set aside the order passed by the appellate authority and direct the appellate authority to give a fresh hearing to the applicant and after considering

every points raised in the memo of appeal decide the appeal by a reasoned order within two months from the date of communication of this order. With this direction the OA, is disposed of.



(P.P.SRIVASTAVA)
MEMBER (A)



(M.S.DESHPANDE)
VICE CHAIRMAN

mrj.