

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: MUMBAI

OA No.880/1994

Mumbai this the 19th day of July, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)  
Hon'ble Smt. Shanta Shastry, Member (A)

1. Ahuja Tikam Shewaram,  
Adult Indian Inhabitant,  
resident of 6, Sai Kripa Apartment,  
near Barrack No. 190,  
Ulhasnagar-421001

(By Advocate Shri M.S. Ramamurthy )

..Applicant

VERSUS

1. The General Manager,  
Central Railway, Bombay VT.
2. The Senior Divisional Commercial  
Superintendent (Manager), Central  
Railway, Bombay VT.
3. The Divisional Commercial  
Superintendent (Manager), Central  
Railway, Bombay VT.

(By Advocate Shri S.C. Dhawan )

..Respondents

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

This is the second round of litigation filed by the applicant in which he has challenged the impugned order passed by the appellate authority dated 29.3.1994. This order has been passed following the judgement of the Tribunal dated 14.12.1993 in OA 927/1988.

2. In the aforesaid order of the Tribunal dated 14.12.1993, it was observed, inter-alia, that no

personal hearing was given to the applicant by the appellate authority who had made a "short shrift of the matter" and the earlier order passed by the appellate authority was stated to show total non application of mind and a very casual approach. In the circumstances, the Tribunal had also observed that none of the issues raised by the applicant have been considered by the appellate authority. Accordingly, the appellate authority order dated 9.4.1986 was quashed and set aside with a direction to the appellate authority to give <sup>as per</sup> personal hearing to the applicant and pass a speaking order dealing with the points in seriatim which may be raised by the applicant at the time of personal hearing. The applicant has submitted his appeal on 21.3.1986.

3. In terms of the aforesaid earlier order of the Tribunal in OA 927/1988, the appellate authority has passed the order dated 29.3.1994, which has been impugned in the present application. Shri M.S.Ramamurthy, learned counsel for the applicant has raised a number of objections for challenging the validity of the punishment orders passed by the respondents. One of the objections raised is that the charge for which the applicant had been found guilty by the disciplinary authority in his order dated 12.2.1986, which has been upheld by the appellate authority is totally different from the charges levelled against him by the Memo.dated 8/

18.4.1984. He has, therefore, submitted that the respondents cannot come to the conclusion of finding on a different charge on the basis of which they could punish the applicant. Secondly, learned counsel has submitted that the appellate authority in the order dated 29.3.1994 has not dealt with the contentions of the applicant taken in his appeal or at the time of personal hearing as directed by the Tribunal in its order dated 14.12.1993.

4. Another ground taken by the learned counsel is that in the appellate authority's order he has come to the conclusion on facts that the applicant ought to have objected to the appointment of Shri M.K.Katrajan,CBS BB VT Bombay, as Enquiry Officer during the enquiry either prior to or at least during the enquiry which according to him, has not been done. Learned counsel has brought to <sup>Ys</sup> our attention to the letter written by the applicant dated 12.1.1985 protesting to the appointment of this officer as Enquiry Officer in the departmental proceedings initiated against him by Memo.dated 18.4.1984. This letter is admittedly addressed to <sup>the Ys</sup> Divisional Commercial Superintendent,( DCM) Central Railway, Bombay VT , and has been given in the office of Chief Goods Supervisor, Central Railway, Thane where according to the learned counsel, the applicant was posted at that time.

5. We have seen the reply filed by the respondents and have also heard Shri S.C.Dhawan, learned counsel for the respondents who has submitted that there is in fact no merit in the above submissions made by the applicant's counsel. He has submitted that the finding of the disciplinary authority in his order does not in any way show that there is contradiction between the charge memo. and his findings. He has also submitted that there is ample proof which was placed before the Inquiry Officer on the basis of which the Inquiry Officer and the disciplinary authority could have come to their conclusion which they have done. According to him, the disciplinary authority in his order has stated that he has agreed with the findings of the Inquiry Officer and was of the view that exemplary punishment should be imposed as the applicant was proved to be involved in fraud leading to loss of Railway revenue. According to him, therefore, in the circumstances, if the disciplinary authority had stated in the next sentence that "even if it is not possible to prove that you had yourself altered the dates on the tickets, you are supposed to check the endorsement and verify the correctness...." would make no difference . He has also submitted that there is evidence available on record for the conclusions arrived at by the respondents to give the punishment against the applicant and the Tribunal ought not to interfere or re-appraise the evidence and come to a contrary conclusion.

6. On the second issue raised by the applicant's counsel, learned counsel for the respondents has submitted that the appellate authority's order is a reasoned and speaking order who has, in fact, considered all the relevant facts raised by the applicant. He has also stressed on the fact that in terms of the Tribunal's order dated 14.12.1993, the applicant had been given personal hearing. He has, therefore, submitted that there is no infirmity in the appellate authority's order and has refuted the submissions made by Shri M.S.Ramamurthy, learned counsel.

7. With regard to the letter dated 12.1.1985, which has been annexed by the applicant to the OA, regarding his protest against the appointment of Shri M.S.Katrajan as Enquiry Officer, Learned counsel for the respondents submits that the applicant has deliberately not written this letter to the concerned official, namely, either the Enquiry officer or the disciplinary authority. He has submitted that it has been given to the office of the Chief Goods Supervisor, CR, Thane but that was not sufficient. According to him the applicant had also not raised this point during the enquiry. In the circumstances of the case, learned counsel for the respondents has submitted that the OA may be dismissed as there is no merit in the submissions made by the learned counsel for the parties.

8. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

9. In order to consider the first objection taken by learned counsel for the applicant, it would be necessary to see the statement of article of charges levelled against the applicant by memo. dated 18.4.1984 (annexure 1). The relevant portion of the Memo. reads as follows:-

" That the said Shri T.S.Ahuja ECRC VT while working as ECRC at Bombay VT during January 83 on window No.71 & 50 committed a serious misconduct in that-

Shri Ahuja has granted refunds on 60 tickets on various dates in January 83 to the passengers who had surrendered their tickets for cancellation. Out of 60 tickets, 46 tickets having confirmed reservations but, Shri Ahuja had shown them as RAC tickets. Balance 14 tickets, he had altered the date of journey on tickets and thus shown an amount of Rs.95.50 in TA statement as cancellations charges collected. But, actually an amount of Rs.1,234/- was due as cancellation charges in this case."

In the statement of imputation in support of the above article of charges it has been stated that while the applicant was working as Enquiry-cum-Reservation Clerk(ECRC) he had refunded 60 tickets on various dates to the passengers who had surrendered their tickets for cancellation. Out of 60 tickets, 46 tickets having confirmed reservations were shown as RAC in the TA statement and arranged refund as per statement enclosed.

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10. In the disciplinary authority order dated 12.2.1986 which has been upheld by the appellate authority by order dated 29.3.1994 to compulsory retire the applicant, paragraph 2 of that letter reads as follows;

" I have carefully gone through the enquiry report and its proceedings and I accept the findings of the enquiry officer. The delinquent employee is liable for exemplary punishment as he is proved to be involved in fraud, leading to loss of railway avenue. Even if it is not possible to prove that you had yourself altered the dates on the tickets, you are supposed to check the endorsement and verify the correctness when the tickets tendered to him for refund had alterations. Considering the above facts, I have decided to impose upon you the penalty of compulsory retirement from railway service. Therefore, you are compulsory retired from railway service in the existing grade and pay with immediate effect."

*(emphasis added).*

We have read and re-read the aforesaid relevant portions of the charge and the conclusions of the disciplinary authority. We find force in the submissions made by Shri M.S.Ramamurthy, learned counsel that the charge levelled against the applicant and what has been held proved by the disciplinary authority are different. The contention of Shri S.C.Dhawan, learned counsel for the respondents is that because the appellate authority has stated that he agrees with the findings of the Enquiry Officer who had held the charges proved on documentary and oral evidence and even if the disciplinary authority had added <sup>the</sup> sentence

8/

as underlined above regarding not being able to prove that the applicant himself altered the dates on the tickets, that would not make any difference, cannot be accepted. In the Memo. of charges issued against the applicant, the respondents have clearly stated that the applicant had altered the dates of journey inasmuch as, out of 60 tickets, 46 tickets have confirmed reservations while the applicant had shown them as RAC tickets and in the balance 14 tickets, he had altered the date of journey on the tickets. In the circumstances of the case, the conclusion of the disciplinary authority to the effect that "even if it is not possible to prove that the applicant had himself altered the dates on the tickets", he had decided to impose the penalty of compulsory retirement on the allegations in the memo. of charges, cannot be supported. Therefore, in the facts and circumstances of the case, we find force in the submissions made by the learned counsel for the applicant that what has been held proved by the competent authority against the applicant, on the basis of which punishment has been imposed are different from the charges levelled against him, as stated in paragraph 2 of the disciplinary authority's order. We are fully aware that in exercise of the power of judicial review, this Tribunal cannot substitute its finding for that of the competent authority or reappraise the facts and evidence placed before the competent authority to come to another

13

conclusion as if it is acting as an appellate authority. It is also settled law that if there has been an enquiry consistent with the rules and in accordance with the principle of natural justice, normally we should not interfere in the matter. ( see the judgements of the Hon'ble Supreme Court in UOI Vs. Parmananda (AIR 1989 SC 1185) and Govt. of Tamil Nadu Vs. A. Rajapandian (AIR 1995 SC 561). However, in this case, the competent authority has apparently come to the conclusion it did, based on certain allegations against the applicant which are stated to be proved which are somewhat different from the allegations in the charges. Based on such findings the respondents have proceeded to give the punishment of compulsory retirement on the applicant, which cannot, therefore, be sustained in law.

11. As mentioned above, the appellate authority's order has been passed in pursuance of the Tribunal's order dated 14.12.1993. While passing this order the appellate authority was required to consider the various grounds taken by the applicant in his appeal. From a perusal of this order, it is seen that he has not done so, which, therefore, is not only contrary to the directions of the Tribunal in the earlier application filed by the applicant but also in violation of the relevant provisions of Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968. It is also relevant to note

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that the appellate authority does not appear to have applied his mind to the submissions in the appeal. In this order, the appellate authority has also referred to the three objections raised by the learned counsel for the applicant, namely, that he should have taken the objection regarding appointment of Shri M.K.Katralan as Enquiry Officer at the appropriate time. We are not impressed by the contentions of the learned counsel for the respondents regarding the fact that the applicant could have addressed this letter to the disciplinary authority or the enquiry officer. It is not denied by the respondents that the applicant was working at that relevant time in 1985 in the office of Chief Goods Supervisor, CR Thane, which had received this letter and they ought to have forwarded the same to the DCS(CR), VT Bombay, to whom the letter was addressed. The reply of the respondents to the averments made by the applicant in the OA with regard to the statements in this letter is also vague. Therefore, in the facts of this case, we are unable to agree with the contentions of the learned counsel for the respondents that neither during the pendency of the enquiry or after appointment of the said officer as E.O., the applicant had not raised this objection to his appointment. It is also relevant to mention that in the appeal filed by the applicant, as pointed out by the learned counsel for the applicant, he had also referred to these facts. Therefore, in the

18

facts and circumstances of the case, we are also unable to agree with the contentions of the learned counsel for the respondents that the appellate authority while passing his order dated 29.3.94 has either applied his mind to the grounds taken by the applicant in his appeal or followed the relevant Railway (D&A) Rules.

12. We have been informed that during the pendency of the OA, the applicant has retired from service w.e.f. 30.6.1994 after attaining the age of superannuation. Considering also the fact that the Tribunal had already passed the order dated 14.12.1993 in OA 927/1998 in which because of the lacunae in the order passed by the appellate authority, another opportunity had been granted to the respondents to fully comply with the relevant law and rules and the principles of natural justice, we do not consider it necessary to give them any further opportunity to respondents to do so. In other words, needless to say, the respondents should have followed the directions of the Tribunal in the aforesaid OA and the relevant rules and procedure, which we find <sup>not as</sup> they have done in the present case.

*Yours*  
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13. In the result for the reasons given above, the OA succeeds and is allowed with the following directions:-

(i) The disciplinary authority's order dated 12.2.1986 and the appellate authority's order dated 29.3.1994 are quashed and set aside;

(ii) Accordingly, the applicant shall be entitled to pay and allowances and other retiral benefits in accordance with ~~the~~ law and rules. Necessary action in this regard shall be taken within three months from the date of receipt of a copy of this order.

No order as to costs.

*Shanta S*

(Smt. Shanta Shastry)  
Member(A)

*Lakshmi Swaminathan*

(Smt. Lakshmi Swaminathan )  
Vice Chairman (J)

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