

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 778 of 1994.

Dated this 2nd the day of August, 2000.

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

N. M. Kabir,
Head Train Examiner,
Under CWS, Kalyan,
Central Railway,
Ulhasnagar - 421 002. Applicant.

(By Advocate Shri G. S. Walia)

VERSUS

1. Union of India through
General Manager,
Central Railway,
Bombay V.T.,
Bombay - 400 001.
2. Divisional Railway Manager,
Central Railway,
Bombay Division,
Bombay V.T.,
Bombay - 400 001.
3. Senior Divisional Mechanical
Engineer, Cargo & Wagon,
Central Railway, Bombay
Division, Bombay V.T.,
Bombay - 400 001. ... Respondents.

(By Advocate Shri S. C. Dhavan)

O R D E R

PER : Smt. Lakshmi Swaminathan, Vice-Chairman.

The applicant has filed this application praying for calling ~~for~~ the records of the proceedings held against him and for quashing the impugned punishment orders passed by the disciplinary authority by order dated 10.12.1992 against which his appeal has been rejected by the appellate authority by order dated 20.07.1993 with consequential benefits.

2. The brief relevant facts of the case are that while the applicant was working as Head Train Examiner (hereinafter referred as H.T.E.) at Kalyan in the pay scale of Rs. 1600-2660 he was issued memo of charges dated 5/7.12.1990, which was received by him on 22.12.1990. According to him, he had given a representation dated 28.12.1990 by which he had asked the respondents to furnish him seven relevant documents which was followed by another letter dated 2.4.1992. He has submitted that only two documents out of the list he had asked, were furnished to ~~the~~ him. During the course of hearing, Shri G.S. Walia, learned counsel, had submitted that these two documents were listed at s1.nos. 6 and 7 of the letter dated 28.12.1990. The applicant's main contention is that the memo of charges issued to the applicant dated 5/7.12.1990 was incomplete and no further charge was issued to him or relevant documents supplied, which

were either requested by him or even relied upon by the respondents. The learned counsel has, therefore, contended that the entire departmental enquiry proceedings held against the applicant have been vitiated for non-compliance of the relevant rules, i.e. Rule 9 (15) of the Railway Servants (Discipline & Appeal) Rules, 1968.

3. The respondents in their reply have contraverted the above submissions and we have heard Shri S. C. Dhavan, learned counsel for respondents. They have submitted that the application is not maintainable as the applicant has not come with clean hands, as he has knowingly made a false statement that the copies of relevant documents and list of witnesses were not supplied to him before the start of the enquiry proceedings. Learned counsel has submitted that while the applicant's letter dated 28.12.1990 in reply to the charge sheet has been received by them, they deny receipt of letter dated 02.04.1992 from the applicant requesting for copies of the documents, as alleged by him. They have submitted that by their letter dated 15/18.03.1991, they have mentioned that they will be relying on certain documents mentioned in the letter and will also be examining witnesses, Shri M.R. Kutty, AYM, Kalyan, and that this will form part of annexure to the charge-sheet. Learned counsel has also submitted the relevant departmental file, which has also

been shown to the learned counsel for applicant during the hearing. According to the respondents, by their letter dated 4.4.1991, all relied upon documents which have been mentioned in the charge-sheet, as explained above, were duly furnished to the applicant on 4.4.1991, which has also been acknowledged by the applicant on that date. He had also been asked to show the relevance of other documents, which according to them, he has not done. Learned counsel has, therefore, submitted that there has been no legal infirmity in the departmental proceedings held against the applicant.

4. Shri S. C. Dhavan, learned counsel, has further submitted that the appellate authority's order dated 20.07.1993 has been given after affording personal hearing to the applicant, in which a lenient view has been taken by reducing the period of reversion of two years, which had been given by the disciplinary authority, to one year with cumulative effect. He has submitted that this has been done after taking into consideration the assurance given by the applicant that he has now improved his working at the new post at Kalyan and will not give any cause for complaint. He has submitted that nothing has been stated in the O.A. that this is not the position and as nothing new was pleaded by the applicant, the appellate authority's order is valid.

5. Learned counsel for respondents has relied on the order of the Tribunal in Arvind B. Akashi v/s. Union of India & Another (O.A. No. 998/93). We find that the Tribunal has disposed of this O.A. by order dated 3.12.1993 and not in the year 2000, as submitted by the learned counsel and that order is not relevant in the facts of the present case.

6. Shri G.S. Walia, learned counsel, has also been heard in reply, although no rejoinder has been filed by the applicant after the reply of respondents has been filed on 13.06.1996. He has very vehemently contended that the appellate authority cannot go beyond the evidence adduced in the enquiry, as otherwise, it would be in violation of the provisions of Article 311 (2) of the Constitution. He has, however, not denied the fact that a personal hearing was given to the applicant by the appellate authority in which he has submitted that he was not guilty of the ~~charge~~ ^{charge} ~~and~~. He has reiterated his submission that the relied upon documents had not been furnished to the applicant and the punishment order should, therefore, be quashed and set aside. He has relied on the judgements in State of Orissa v/s. Binapani Dei (AIR 1967 SC 1269), K. N. Prakasan v/s. Union of India & Others [(1992) 20 ATC 676...Bombay Bench] and Committee of Management, Kisan Degree College v/s. Shambhu Saran Pandey & Others [(1995) 29 ATC 123].

7. We have carefully considering the pleadings and submissions made by the learned counsel for the parties and also the record of the departmental enquiry proceedings produced by the respondents.

8. On perusal of the aforesaid records submitted by the learned counsel for respondents, we are satisfied that the applicant has been furnished the relied upon documents by the letter dated 4.4.1991, which he has duly acknowledged ~~the~~ receipt, ^{Hand 13} when reliance had been placed by the learned counsel for applicant on the fact that in the memo of charges issued to the applicant dated 5/7.12.1990 there were no annexures of the relied upon documents. It is also noted from the relevant documents on record that the applicant himself had asked for remaining five relevant documents on which the respondents have asked him to show the relevance, which has not been done. The learned counsel for applicant has submitted that the applicant is not a highly qualified or legally qualified person to be able to satisfy such a requirement in a very technical sense. While we generally agree with these contentions, however, the applicant is required to show how the documents he is asking for, ^{is} relevant in the circumstances of the case. In the facts and circumstances of the case, we are unable to agree with the contentions of the applicant that the respondents have failed to supply the copies

of relevant documents relied upon by them, ~~either~~ ^{or 18.} requested by him or have also denied inspection of the same, as required under the rules and principles of natural justice. Therefore, this ground taken by the applicant fails and is accordingly rejected.

In Committee of Management, Kisan Degree College v/s. S. S. Pandey (supra), the Supreme Court has held that the respondent, who was given a charge-sheet, had sought for inspection of documents mentioned therein at the earliest and submitted his reply. It was held that the postponement of the opportunity to inspect the document to the time of final hearing was obviously an erroneous procedure and in violation of principles of natural justice. In the present case, it is noted that the respondents have furnished the relied upon documents to the applicant by their letter dated 4.4.1991 and, therefore, the facts in the case of S.S. Pandey will not be applicable to the present case. Prior to that, the respondents have also issued their letter dated 15/18.3.1991 in which they have mentioned that they will be relying on certain documents as well as examining witnesses, which shall form part of the annexures to the charge-sheet. Therefore, in the circumstances of the case, the judgements of the Supreme Court in S.S. Pandey's case (supra) and that of the Tribunal's in K. N. Prakasan's case (supra) will not assist the

applicant. Therefore, in the facts and circumstances of the case and taking into account the judgement of the Supreme Court in State Bank of Patiala & Others V/s. S.K. Sharma (JT 1996 (3) SC 722) and State Bank of Tamil Nadu V/s. Thiru K. V. Perumal (JT 1996 (6) SC 604), we are unable to agree with the contention of the learned counsel for applicant that there has been any violation of procedural provisions in this case or any prejudice caused to the delinquent to justify any interference on this ground.

9. Regarding the other contention of Shri G.S. Walia, learned counsel, no exception can be taken to his contention that only evidence adduced during the enquiry can be relied upon by the competent authority while awarding a punishment. He had contended that the applicant had nowhere agreed that he was guilty of the charge for which the departmental enquiry proceedings ~~was~~ being held. However, it is also relevant to note that nothing has been mentioned in the O.A., as mentioned in the appellate authority's order dated 20.7.1993, that taking into account the applicant's assurance that he has improved his working at the new place of posting at Kalyan, a lenient view is taken in the matter.

10. We have also considered the other contentions raised by the learned counsel for applicant but do not find any merit in the same.

11. It is settled law that in disciplinary matters and punishment, the Tribunal cannot interfere with the findings of the competent authorities where they are not arbitrary or utterly perverse. In the present enquiry, we are unable to come to the conclusion that the same has not been held in accordance with the relevant rules and the principles of natural justice to warrant any interference with the penalty imposed on the applicant by the competent ~~or~~ ^{or} appellate authority. The O.A. is, therefore, dismissed. No order as to costs.

Shanta Shastri

(Smt. SHANTA SHASTRY)
MEMBER (A).

Lakshmi Swaminathan

(Smt. LAKSHMI SWAMINATHAN)
VICE-CHAIRMAN (J).

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