IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 964/94

Date of Decision: 18-9-98

A.G.Sakat .. Applicant

Shri K.B.Talreja .. Advocate for Applicant

-versus-

Union of India & Ors. .. Respondent(s)

Shri V.S.Masurkar .. Advocate for Respondent(s)

CORAM:

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

The Hon'ble Shri D.S.Baweja, Member (A)

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

(2) Whether it needs to be circulated to other Benches of the Tribunal ? ✗

(D.S.BAWEJA)
MEMBER (A)

(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH , MUMBAI

OA.NO. 964/94

Pronounced this the 18th day of September 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Baweja, Member (A)

Arun Gangaram Sakat,
Ex-Khalasi, Carriage Supdt.'s
Office, Central Railway,
Dadar.

By Advocate Shri K.B.Talreja ... Applicant

V/S.

1. Union of India through
The General Manager,
C.Rly, Bombay V.T., Bombay.

2. The Divisional Rly.Manager,
C.Rly., Bombay V.T., Bombay.

3. The Divisional Mechanical
Engineer, C.Rly., Bombay V.T.
Bombay.

By Advocate Shri V.S.Masurkar, ... Respondents
C.G.S.C.

O R D E R

(Per: Shri D.S.Baweja, Member (A)

This application has been filed seeking relief of quashing the order imposing punishment of removal and directing the respondents to reinstate the applicant in service with payment of backwages from the date of removal till the date of reinstatement.

2. The applicant while working as a Khalasi under Carriage Superintendent, Central Railway, Dadar was issued a chargesheet for major penalty on 27.2.1985. The enquiry was conducted. Based on the findings of the enquiry officer, the disciplinary authority as per

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order dated 20.1.1994 imposed the punishment of removal from service. The applicant as per his letter dated 31.1.1994 had requested to supply the copy of the chargesheet along with the 5 documents to enable him to submit his appeal against the punishment order. However, these documents were not furnished by the respondents and the applicant filed an appeal on 9.2.1994. The applicant also sent a statutory notice under Section 80 CPC on 6.6.1994 but at the time of filing the OA. on 27.7.1994, the appeal of the applicant had been not disposed of.

3. The applicant has challenged the impugned punishment order on several grounds stating that there is a violation of principles of natural justice and he had been denied the reasonable opportunity of defending his case. He has also brought out several other infirmities.

4. The respondents have filed the written reply. The respondents have submitted that the applicant has been provided reasonable opportunity and there is no violation of principles of natural justice. The appeal filed by the applicant has been already disposed of as per order dated 25.7.1994. The applicant has thereafter filed revision petition on 31.8.1994 which is pending for disposal. Respondents contend that the disciplinary proceedings had been conducted as per the provisions of Railway Servants (Discipline & Appeal) Rules,1968 and none of the grounds taken by the applicant are sustainable. The respondents therefore plead that the application is devoid of merits and the same deserves to be dismissed.

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5. The applicant has not filed any rejoinder reply.

6. We have heard Shri K.B.Talreja, learned counsel for the applicant and Shri V.S.Masurkar, learned counsel for the respondents. The respondents have made available the file containing the papers connected with the disciplinary proceedings for perusal of the Bench.

7. The applicant in the original application has avered that his appeal dated 9.2.1994 had been not disposed of at the time of filing the OA. although the appellate authority had given him personal hearing on 12.4.1994 along with his defence counsel. Respondents however, in the written statement have stated that the appeal has already been disposed of as per the order dated 25.7.1994, i.e. before filing of the OA. on 27.7.1994. The counsel for the applicant during oral submissions though in the beginning maintained that the appeal is still pending but subsequently on drawing his attention to written statement of the respondents, he admitted of having received the order dated 25.7.1994 of the appellate authority. It was also confirmed by the counsel for the applicant that revision application filed on 31.8.1994 is pending for disposal as brought out by the respondents in the written syatement. Respondents have brought out that the revision petition is pending for disposal on account of pendency of the OA. which had been admitted on 5.9.1994. Though the revision application is still pending, but we are of the view that it will not be appropriate considering the facts and circumstances of the present case to remand the matter to the revision authority for the disposal of the revision application. This view is

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based on the facts that the matter is old, the chargesheet had been issued in 1985 and the present OA. had also been pending for more than 4 years, we are therefore disposing of the present OA. on merits instead of remanding the matter to the revisional authority.

8. As stated earlier, the applicant has assailed the impugned order on several grounds. These grounds shall be considered one by one to identify if any of the grounds vitiate the punishment order.

9. The first ground taken by the applicant is that the copy of the chargesheet was not given to him. In the OA., the applicant has averred that the applicant was handicapped in filing his appeal as copy of the chargesheet had not been received by him. This ground was also emphatically advanced during the oral submissions. However, keeping in view what is stated by the respondents in the written statement and emerging on perusal of the disciplinary proceedings file, this ground of the applicant is not borne by the facts. In the disciplinary proceedings file, it is noted that the copy of the chargesheet had been received by the applicant on 8.3.1985. Subsequently, he submitted reply to the same as per his letter dated 27.3.1985 wherein he demanded certain additional documents for submitting his defence reply. With this position emerging from the record, it is to be inferred that the applicant while making submissions in the OA. has made an effort by raising this plea to make out a case that he had been denied reasonable opportunity to defend his case.

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10. The second ground taken by the applicant is that relied upon documents had not been made available to the applicant. His request for additional documents had been also not accepted. The applicant has not brought out what additional documents he had asked for in the OA. However, in the disciplinary proceedings file, it is noted that as per his letter dated 27.3.85, the applicant had asked for 3 documents in addition to the listed documents in the chargesheet. As regards listed documents, it is noted that the same were inspected by the applicant as per the letter dated 7.5.1985 and he has given acknowledgement for the same. For the 3 additional documents, the competent authority had considered his request and he was advised as per letter dated 7.5.1985 that the documents asked for were not considered relevant to the disciplinary action initiated against the applicant. It is further noted that the applicant thereafter participated in the enquiry in the absence of these documents. The applicant therefore cannot now take a plea that he had been handicapped in defending his case due to non-supply of these documents. It is further noticed that even in the OA. the applicant has not brought out as to how these documents are relevant and how his case is prejudiced. In view of these observations, we are unable to appreciate any merit in this ground.

11. The Third ground advanced by the applicant is that the enquiry had been not conducted as per the procedure laid down in the Railway Servants (Discipline & Appeal) Rules. The applicant has not indicated in the OA. as to how there is a violation of the discipline and

appeal rules. However, one of the averment made is that the witnesses were not examined in the presence of the applicant and some of the witnesses who were required to be examined had not been examined. On perusal of the enquiry report brought on record by the applicant /as well as/ in the disciplinary proceedings file, we notice that no witness was examined. In view of this, the statement made by the applicant is not sustainable. From the charge, it is noted that the charge is based mainly on the documentary evidence. As regards the contention of the applicant that the appointing supervisor who had verified his casual labour card had not been examined by the enquiry officer, we have gone through the disciplinary proceedings file and find that no such request for calling the concerned supervisor as a witness had been made by the applicant. If the applicant considered that the recording of the statement of the supervisor who is stated to have appointed the applicant as a casual labour was material, then such a request could have been made by him. In the absence of any such request being made, the applicant cannot take this ground to assail the punishment order. In fact, on going through the defence statement submitted by the applicant after the copy of enquiry report was furnished to him, there is no such ground raised by the applicant before the disciplinary authority.

12. The fourth ground is that the letter dated 17.1.85 was resulted as document relied upon in the chargesheet but subsequently, this has been substituted by the letter dated 16.10.1993 and a copy of the same was not furnished to the applicant. This ground is not tenable considering

the facts on record. It is noted from the disciplinary proceedings file that the enquiry was earlier completed and a copy of the enquiry report was also furnished to the applicant on 1.2.90. The applicant, however, represented for re-enquiry and his request was allowed by the disciplinary authority. Accordingly, the enquiry was conducted afresh by nominating the other enquiry officer. At the time of ordering a fresh enquiry, the respondents as per the letter dated 26.10.1993 addressed to the applicant had advised him that the relied upon documents shall be of casual labour card and the letter dated 16.10.1993 instead of 17.10.1985. From the letter dated 26.10.1993, it appears that the copy of the letter was also given to the applicant. However, even if the contention of the applicant is accepted that he had not been furnished the copy of the letter dated 16.10.1993, the applicant has not brought out whether he made any request for furnishing the copy of this letter. In the absence of any such statement, it is to be inferred that the applicant was aware of his letter and this ground is now taken only an after thought. In view of this, this ground is also lacking merit.

13. The fifth ground is that no statutory notice had been served on the applicant before removing him from service and punishment order had been given effect without waiting for the decision on the appeal. The applicant has not cited any rule under which this statement had been made by the applicant. The respondents have denied this contention of the applicant stating there is no such rule as per which the implementation of the punishment order has to wait for disposal of the

appeal. We have also gone through the Railway Servants (Discipline & Appeal) Rules and do not find any provisions according to which the statutory notice is required other than the punishment order and implementation of the punishment order has to wait till the disposal of the appeal. This ground of challenge is therefore without any basis.

14. The sixth and last ground taken by the applicant is that the punishment order suffers from vice as the designation of the officer who has imposed the punishment is not indicated in the punishment order. In view of this, the applicant contendsthat it cannot be ascertained that the applicant has been removed from service by the competent authority. On going through the typed office copy of the disciplinary authority's order on record, we note that the designation of the disciplinary authority has been indicated by hand as A.M.E.(I). In view of this, it is not clear that as to how the applicant has made a statement that the designation of the officer who has imposed the punishment is not indicated in the punishment order. Even, accepting that the designation of the officer is not indicated in the copy of the letter furnished to the applicant, we do not find any reason that the order is vitiated because the name of the officer who has signed the letter is indicated in the order. Once the name of the officer is indicated, it is not difficult to establish his designation. The applicant fairly conceded that he had checked up the designation subsequently and

the punishment order has been imposed by the Assistant Mechnical Engineer and he was competent to impose the punishment. In view of this, this ground does not survive.

15. The applicant has advanced several averments to bring out that the findings of the enquiry officer are not supported by the evidence on the record. He submits that the thumb impression on the casual labour card had not been got verified and the entries in the casual labour card had been made by the Time Keeper who should have been examined as a witness. We are not impressed by these averments of the applicant as they only plead that the Tribunal should re-appreciate the evidence. On going through the findings in the enquiry report, we find that the findings are supported by the evidence brought on record, and it is not a case of no evidence. In case of judicial review, as held by the Supreme Court in several judgements, the Court/Tribunal cannot embark upon the appreciation of the evidence and reach on its own conclusion on the sufficiency of the evidence or on the correctness of the conclusion which is based on the same evidence. In view of this, we are unable to find force in the pleadings made calling for re-appreciation of the evidence.

16. The learned counsel for the respondents during the arguments relied upon the judgement of the Hon'ble Supreme Court in the case of Union of India vs. M.Bhaskarn, 1996 (1) SC SLJ 1. We have carefully considered this judgement. In this case, the petitioners were removed from service after following

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the disciplinary proceedings on the charges of seeking employment on the basis of forged and bogus casual labour card. The petitioners had challenged the punishment orders on the plea that the respondents had appointed the petitioner based on the casual labour cards and having continued for several years and the respondents are estopped from throwing them from service after several years. The Hon'ble Supreme Court rejected this plea of the petitioners stating that by mere passage of time, the fraudulent practice would not get any sanctity. The Hon'ble Supreme Court held that the appointment order based on bogus and forged casual labour card could be legitimately treated as voidable at the option of the employer and can be recalled by the employer. In the present case, though the matter relates to securing of employment on the basis of bogus casual labour card but the issue under challenge is different. The applicant has challenged the punishment order itself and not on the ground of estoppel restraining the respondents from terminating the employment after several years. Therefore, the cited judgement does not directly apply to the present case

17. It is settled down by the Hon'ble Supreme Court in the catina of judgements that in the cases of disciplinary proceedings when challenged, the High Court/Tribunal does not exercise the powers of appellate court/authority. The jurisdiction of the Court/Tribunal in such cases is very limited. The judicial interference may be called for where it is found that the domestic enquiry is vitiated because of non-observance of the principles of natural justice, denial of reasonable opportunity, findings are based on no evidence and

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or the punishment is totally disproportionate to the proved misconduct of the applicant. The various grounds raised by the applicant in assailing the punishment order have been deliberated above and as per our findings recorded, none of the grounds has any merit. We, therefore, find no infirmity which would vitiate the punishment order and calling for judicial interference.

18. Incidently, it is observed that the appellate authority has passed his order before filing of the present OA., though the applicant in the OA. has stated that his appeal was pending at the time of filing the OA. Even on disclosure of this fact with regard to disposal of the appeal in the written statement, the applicant has not taken any action to impugn the appellate order. Since we do not find any ground for quashing the punishment order, this infirmity is not very material to the issue on merits.

19. In the light of the above discussion, we do not find any merit in the OA. and the same is accordingly dismissed. No order as to costs.

(D.S.BAWEJA)
MEMBER (A)

18.9.98
(R.G.VAIDYANATHA)
VICE CHAIRMAN

mrj.