

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 676/94 & 439/94

DATE OF DECISION: 24-12-99

Rafi Ahmed Chand Saheb &
M.C. Sindgi _____Applicant.

Shri B. Dattamoorthy _____Advocate for
Applicant.

Versus

Union of India & Others. _____Respondents.

Shri S.C. Dhawan _____Advocate for
Respondent(s)

CORAM

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

Hon'ble Shri B.N. Bahadur, Member (A).

(1) To be referred to the Reporter or not? *No*
(2) Whether it needs to be circulated to *No*
other Benches of the Tribunal?
(3) Library. *Yes.*

B.N. Bahadur

(B.N. Bahadur)
Member (A).

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NOS.676/94 & 439/94
DATED THE 24th DAY OF DECEMBER,99.

CORAM:HON'BLE JUSTICE SHRI R.G.VAIDYANATHA, VICE CHAIRMAN
HON'BLE SHRI B.N.BAHADUR, MEMBER(A)

Rafi Ahmad Chand Saheb,
Ex.Cabin Asstt. Station Master,
R/o.Block No.354,
Domdenagar, Solapur(MS)
Pin Code:413 004.

Applicant in OA-676.94

By Advocate Shri R.D.Deharia

Shri M.C.Sindgi,
working as Asstt. Station Master,
Malthan Railway Station,
under Divl.Railway Manager,
Central Railway, Solapur.

Applicant in OA-439/94

By Advocate Shri B.Dattamoorthy

v/s.

1. Union of India through
The General Manager, HQs Office,
Main Building, Central Railway,
Bombay VT Pin.400 001.
2. Divisional Operating Manager,
Divisional Office, Central Railway,
Solapur(MS) Pin.413 001. Respondents in OA No,676/94 &
439/94.
3. The Chief Operating Manager,
HQs Office, Divisional Office,
Building 1st Floor, Central Railway,
Bombay V.T.Pin.400 001.
4. The Divisional Railway Manager,
Divisional Office, Central Railway,
Solapur(MS) Pin.413 001.
5. Additional Divisional Railway Manager,
Divisional Office, Central Railway,
Solapur (MS) Pin.413 001. Respondents in OA-676/94

By Advocate Shri S.C.Dhawan.

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(ORDER)

(Per Shri B.N.Bahadur, Member(A))

We are dealing herein with two original applications bearing Nos.676/1994 and 439/1994. The incidents in the two cases from which the main causes of action have arisen therein are interconnected. On consideration of this important fact and the total facts and circumstances of the two cases, it is considered better that these OAs be considered and disposed of jointly. We have heard the learned counsels in the two cases separately, though in coordination, and, needless to say that where separate facts exists in the two OAs, or where separate conclusions are found necessary, these will be brought out.

2. To take the facts in the first OA viz.676/94, it is seen that the applicant therein viz. Shri Rafi Ahmed Chand Saheb has brought out the facts as follows:-

3. On 9/2/90, he was on duty at Tikekarwadi Railway Station from 14.00 hours. The outgoing incharge Shri Sindgi, (Applicant in OA-439/94) who was Station Master and Superior of Shri Rafi Ahmed instructed him to collect Rs.15/- from one Shri Munir Abdul Majid Bepari whe he (Bepari) came to collect his Scooter. Shri Sindgi further⁴ informed Shri Rafi that out of this Rs.15/-, Rs.5/- should be given to Shri D. Mahadeo for bringing household effects required by Shri Sindgi. Rafi states that Sindgi had told him that this amount was return of a loan.

4. The Applicant, Shri Rafi Ahmed further states that at about 3 'O' clock, Shri Bepari came for release of Scooter, and after necessary formalities were over, paid him (Rafi Ahmed), the Rs.15/- Rupees which he accepted in good faith. Further he paid five rupees as per instructions to Shri D.Mahadeo and keeping that Rs.10/- to be given to Shri Sindgi. Thereafter, the applicant goes on to say that a dozen people rushed in a raid and confiscated the said Rs.15/- i.e. Rs.10/- from Applicant and Rs.5/- from Mahadev.

5. Applicant goes on to say that he became nervous but explained the matter to the Police Officials, and that there was no reason for him to doubt the instructions given regarding collection of money. He also appealed to the Police Officers to call Shri Sindgi to ascertain facts. This was not agreed to and no mention was either made about this in the Panchnama.

6. The applicant avers that this is a concocted story of raid. Applicant was placed under suspension and chargesheet was issued to him dated 4/10/90 for major penalty. Applicant states that the enquiry was not conducted properly, and followed the concocted story of the police party. There was lack of application of mind by the disciplinary authority. In the appeal filed (A-6), the Appellate Authority has passed orders casually. Being aggrieved by the orders of the Appellate Authority, confirming the orders of removal of service of the applicant, he

submitted a Review Application. However, reviewing authority confirmed the orders of the Appellate Authority without speaking orders.

7. Thus the applicant Shri Rafi Ahmed is before us seeking a relief for quashing the orders of removal of service passed by disciplinary authority and for reinstating him by treating the intervening period as duty and providing all consequential benefits and cost of application.

8. The respondents in the case have filed a reply stating that on 9/2/90, the applicant demanded and accepted a bribe of Rs.15/- from Shri Abdul Majid Bepari for releasing his Scooter which was booked by the said Bepari on an earlier date ex Kuruduwadi. The Applicant was caught red handed and charge sheeted.

9. Respondents have stated further, in their written statement, that applicant had admitted in his written statement before the Police that he had demanded the bribe of Rs.15/- from Shri Bepari. Respondents contend that the defence of the Applicant made now is an afterthought. All similar averments and contentions made in O.A. by applicant are also denied by respondents, except that the dates, etc are agreed without controversy. The trap was laid by the Anticorruption Bureau. Respondents point out that during the DAR enquiry, the applicant

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had not chosen to examine Shri Sindgi as his witness to establish the correctness of his statement. The respondents further move on to give details of the above incidents in their written statement, including details regarding the departmental enquiries. It is stated that no ground that the enquiry officer was not fair etc were taken at the relevant time. The point relating to the Officer issuing the chargesheet has also been dealt with in para-15 of the written statement of respondents.

OA-439/94.

10. Now let us turn to the facts in 439/94. The applicant here is the Station Master, Shri N.C.Sindgi, who states the facts in this application of his to be as follows:-

He was working as Station Master at Railway Station, Tikekarwadi since January, 1985 and had put 22 years of unblemished service. He states that Shri Munir Abdul Mazir Bepari approached him on 9/2/90 seeking delivery of his scooter without producing the Railway Receipt. The applicant refused his request and feeling insulted, Shri Bepali lodged a complaint with anti corruption authorities. Applicant points out that the Inspector anti corruption bureau had clearly stated that no mention of Railway Receipt or its presentation was made by Shri Bepari.

11. Applicant states that charges were made against all three employees in common charge/FIR but the departmental enquiry was

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conducted separately against him (Sindgi). This was contrary to rules which envisage common proceedings and had resulted in non-corroboration of written evidence between him and Shri Rafi Ahmed. It is further averred, that if it is admittedly ab initio, that Shri Bepari did not carry the Railway receipt in the morning, there was no point in the enquiry officer wasting time to come to decide this issue. Shri Sindgi contends that the said Shri Bepari has given different statements regarding his bringing the Railway Receipt as described in para 4.8 of the OA. The charge of demand for illegal gratification has not been proved and the charge memorandum is therefore itself perverse. Applicant denies that he ever demanded any illegal money and contends that the case is made on a false allegation made by Shri Bepari. There is no corroboration of any of the charges during the enquiry.

12. The Applicant, Shri Sindgi also alleges bias against the enquiry officer, Shri Ramteke. Reference is invited to several statements and portions of evidence statements in the enquiry to plead innocence and to contend lack of evidence and infliction of punishment without evidence, reasons or findings.

13. The appeal made by the applicant has been partly allowed. by the Appellate Authority who has reduced the punishment by re-appointment in the service in initial stage of the grade of Rs.1200-2040. This order is also contested by the applicant

~~seeks relief from the Tribunal in substance, as follows.~~

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14. The respondents have filed a written statement in reply stating that the application (O.A. 439/94) is not maintainable in law, since no allegation is made to state that the enquiry against the applicant was not conducted according to law. It is stated that there was a complaint from one Shri Bepari about demand for legal gratification by Applicant. Respondents aver that Shri Bepari would not have insisted on the delivery of the scooter without Railway Receipt and that the entire "story" has been concocted by the applicant in what he has described in para 4.2 of OA. The factual incidents regarding lodging of complaint with the anti-corruption Bureau (ACB) are described in detail in the statement and it is averred that it is apparent that the complainant intentionally stated that he would bring the RR later. Respondents have denied that there has been non-corroboration of evidence.

15. Respondents contend that the enquiry has been conducted as per law by following rules//procedure and by affording full opportunity to the applicant to defend himself. It is also contended that the Applicant is not entitled to re-appreciation of evidence by the Tribunal, since this is what he is attempting to plead for. Further descriptions of the evidence, on certain aspects, have been provided in the written statement, and it is stated that disciplinary authority has applied its mind fully before ordering removal of service. Also, that the Appellate

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Authority has taken a lenient view in ordering the reinstatement with specified punishment. Thus the respondents deny all allegations and ask for the dismissal of the application.

16. We have heard the learned counsels on both sides in both OAs. The case was argued in great detail. The points made by the Counsels in the two OAs are indicated below in gist:-

O.A.No. 676/94

In this OA the learned counsel for applicant made the following points:-

(a) He took us over the salient facts of the case especially at paras 5, 5.2 & 5.3 of O.A. and contended that the entire complaint made related to Shri Sindgi, Station Master.

(b) He drew attention to Annexure A-8 i.e. letter dtd.8.1.94 (P.77) and stated that flaws in procedure have been admitted herein and hence this vitiates the enquiry.

(c) Enquiry Officer failed to make Shri Sindgi a party despite applicant's request.

(d) Evidence at pages 60 be seen.

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(e) The order at A-2 (p-16) dtd.9.9.93 rejecting the appeal made was a tense, non speaking order.

(f) Order of 27.6.81 tendered later, showed that appointing authority was senior to the disciplinary authority and hence the Orders were bad in law.

17. The learned counsel for Respondents made the following points (O.A.676/94).

(a) Regarding the authority/officer awarding punishment, it was stated that the order was changed. The manual showed that there was full powers for Senior Scale Officers for promotion. Attention was invited to para 15 of Respondents' Statement in reply on this point.

(b) The point regarding order rejecting appeal being bad in law was denied and it was contended that the mind of the officer was clearly disclosed in the order.

(c) The order of Disciplinary Officer is also a speaking order.

(d) There was no reason why the applicant had not examined Sindgi in the enquiry and this went against him.

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18. In O.A. 439/94 the gist of the arguments made by Learned Counsel on either side is given below:

Arguments by Counsel for applicant.

(a) It is important that Railway Receipt is; not produced and this showed the mind of the complainant, Shri Berari.

(b) There is only one witness in the case and that is the complainant.

(c) Counsel for applicant took us over some parts of the statements in evidence in the enquiry especially page 4555 to page 50 of the paper book. The fact that was brought out (page 50) that no reference was made to Sindi/Rangraj at the time of trap was contrary to earlier part of evidence (page 45).

(d) The penalty imposed was extending extremely harsh.

Counsel for Respondents

19. a) There could be no other witness who could have possibly been examined, in the facts and circumstances of the case.

(b) Material evidence is on record in the case of and it

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was not a case of no evidence. There is no reason to disbelieve any evidence and motive for complaint could be made as there was no enmity. Thus the complainant went to A.C.B. was not out of any vendetta.

(c) Learned counsel took us over various parts of the evidence and contended that no statements had been dislodged in cross-examination.

(d) The pendency inflicted was not harsh order on appeal makes this clear also.

(e) ^{d.es} The principle regarding "preponderance of probability" in ^{de} was reiterated. Also the point about the limitations of the ^{tribunals} intervening in such matters was discussed.

20. (a) The case of the respondents really implies that that both Sindgi and Rafi are part of a kind of conspiracy where one person had demanded the illegal gratification, and the understanding is that the actual acceptance will be by the other, in a system where duty changes after 2 P.M. as described. In the chronology of events, it is Sindgi who appears first. Let us take up his case. He has denied the charge of asking for the money, and has statedly asked Berari ^{Come later in the afternoon since} has not brought the R.R. THE Point that strikes here is as to why he has asked Rafi, who takes over duty to collect Rs.15/-. The story about the loan appears

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to wear thin, if we are to go by the principles of preponderance of probabilities.

(b) Counsel for Shri Sindgi placed considerable stress on the fact that Bepari had come without RR, and nowhere in the evidence does he come out with a contrary stand. How can he then complain. Further, another point made strenuously was that only one witness i.e. Bepari was produced. To which of the point raised was correct that in the fact and circumstances of the case, there could not have been another.

(c) Now while we have gone through the basic evidence, especially as brought out in arguments, we have gone in our analysis by the law settled by the highest court i.e. we have not gone into it as if an appellate authority, but to see if it was a case of total lack of evidence or of an arbitrary decision or a perverse decision. On careful consideration of all papers, including the original files produced before us, and considering the arguments made, we cannot come to the conclusion that the enquiry or the decision suffers any such infirmity or even that Sindgi's case has any infirmity in regard to principles of natural justice.

21. (a) We do have the limitations of a Tribunal in such matters, and the fact that the matter relates to a departmental enquiry means that ^{means that} ~~strict~~ of the Evidence Act cannot be applied.

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Q It was argued that the penalty imposed on Shri Sindgi has been too harsh. Had, the original penalty been retained in Appeal this aspect could have been perhaps gone into but this has already been deliberated upon by appellate authority who has reduced the penalty of removal from service. Hence this arguments would not survive in view of the fact that appellate authority has taken a decision to scale down the penalty of removal.

We are therefore not convinced that there is any ground for interference in the case of Shri Sindgi, Station Master.

22. Now let us turn to the case in O.A. 439/94 i.e. the case of Rafi Ahmed. If the charge is of one of demand of illegal gratification by Sindgi, here the charge is one of acceptance. If the sequence has to be established, as has been done by Respondents the basic point is that both Sindgi and Rafi Ahmed worked in collusion.

23. Counsel for Shri Rafi Ahmed took his defence on grounds relating to flaws in evidence, as also on defect in procedure, the latter on the point that the authority ordering punishment had no legal authority do so. Taking the second point, the Respondent admits that initially there was a mistake in the order being signed, but this was a mistake which was corrected. This has been explained in detail in the reply statement and in arguments made before us.

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24. It has already been stated that the facts and events in 2 cases are organically linked. This will be clear in the detailed description of the facts and circumstances that have emerged in the papers in the 2 cases. The authorities also have drawn out a link in the misconduct in relation to the demand for bribe by one person and its acceptance by the second person, clearly establishing a link between the two persons by way of an understanding in accepting the illegal gratification. Now it is also seen that the inquiries in the two cases of Shri Sindgi and Shri Rafi Ahmed have been ordered by the same authority and proceedings and examination of the cases has been done with the clear understanding of the inter-relationship of the two cases. The ^{same} appellate authority in the two cases have considered the cases. In the case of Shri Sindgi the appellate authority has reduced the initial punishment of removal from service and ordered the reinstatement of the officer with the reduced punishment of reduction to the initial stage of grade of Rs. ~~1000/-~~ ^{Ans} in which grade the applicant was working. In the case of Shri Rafi Ahmed the matter was taken up by way of appeal by Shri Rafi Ahmed but the same appellate authority has rejected the appeal. Importantly, the punishment has also not been changed and the initial punishment of removal of service inflicted on Shri Rafi Ahmed has been maintained. As stated

above the officer who has taken up the two cases in appeal is the same person/authority and the difference in time in the disposal of the two appeals is barely two months. Now this is an important point which strikes us as incongruous. If there is conspiracy and understanding and the entire act of misconduct is really one operation conducted by two players through a clear understanding, then clearly the punishment cannot be vastly disproportionate.. That the punishments are vastly disproportionate cannot be gainsaid. The gross difference is that one charged official has been retained in service, while the other has been deprived of livelihood. We make all this assessment in the above two cases in full consciousness of the law settled by the highest court, and have therefore not made any effort to assess or reassess the evidence brought before us although strenuously argued on both sides. For instance, in the case of Rafi Ahmed though the charge really is one of acceptance of money, the official has been found guilty of both demanding and accepting it. Admittedly the demand was made by Shri Sindgi. We will also not give much importance to the argument made by learned counsel for Respondent in Rafi Ahmed's case on the technical point about the jurisdiction of the officer who issued certain orders. The respondents has indicated that this was a bonafide mistake which was corrected and this has been explained by them in their written statement in detail. We have also seen the record of original file brought before us by learned counsel for Respondents.

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25. The learned counsel for Rafi Ahmed had, interalia, pleaded that the punishment inflicted on Rafi was very harsh. In view of the reasons we have discussed above in some detail, we definitely see the punishment awarded to Shri Rafi Ahmed to be grossly disproportionate, on the ground of discrimination between the two charged officers. We would therefore have to intervene to the limited extent of down grading his punishment to remove discrimination and bring it to the level similar to the case of Shri Sindgi. However, it is not our intention to show any leniency to Shri Rafi Ahmed either but only justice. We will therefore not grant him any backwages etc.

26. In view of the detailed discussions above we make the following order in the two O.A.s

O.A 439/94

This OA filed by Shri Sindgi is hereby dismissed, with no orders as to costs.

OA 676.94

The order of punishment, as upheld by the appellate order in the case of applicant Shri Rafi Ahmed Chand Sahed, is hereby modified as below : Shri Rafi Ahmed shall be reinstated in service at the same level and scale of pay at which he was removed, but shall be placed on reinstatement at the lowest end of the pay scale on this pay scale. He shall not be entitled to any arrears of pay and allowances for the period during which he was under removal. However this period would count (only) for the purpose of his

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entitlement to pension and all pensionary benefits. Apart from pension and pensionary benefits, no other benefits shall be available as a result of this reinstatement. The respondents shall reinstate Shri Rafi Ahmed latest within from 2 months from the date of receipt a copy of this order. There will be no order as costs.

B.N.Bahadur

(B.N. BAHADUR) 24/12/95

MEMBER (A)

R.G.Vaidyanatha
24/12/95

(R.G. VAIDYANATHA)

VICE-CHAIRMAN