

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No.495/94

Tuesday, this the 25th day of April, 2000.

Benjamin G. Macwan

Applicant

Shri R. Ramesh

Advocate for the
Applicant.

Vs.

Union of India & 3 Others

Respondents

Shri V.S. Masurkar

Advocate for the
Respondents.

Coram : Hon'ble Shri Justice Ashok C. Agarwal, Chairman.
Hon'ble Shri D.S. Baweja, Member (A).

- (i) To be referred to the reporter or not? ✓
- (ii) Whether it needs to be circulated to other Benches ✓
the Tribunal.
- (iii) Library. ✓

(D.S. Baweja
Member (A))

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.495/94.

Tuesday, this the 25th day of April, 2000.

Coram : Hon'ble Shri Justice Ashok Agarwal, Chairman,
Hon'ble Shri D.S. Baweja, Member (A).

Benjamin G. Macwan,
Office of the Sr.Divisional
Electrical Engineer (Power),
Western Railway, Bombay Central,
Bombay - 400 008.
(By Advocate Shri R.Ramesh)

.. Applicant.

Vs.

1. Union of India,
through the General
Manager, Western Railway,
Churchgate,
Bombay - 400 020.
2. Senior Divisional
Electrical Engineer (P),
Western Railway, Bombay
Central, Bombay - 400 008.
3. Additional Divisional
Railway Manager (T),
Western Railway, Bombay
Central, Bombay - 400 008.
4. Chief Engineer,
Western Railway, Churchgate,
Bombay - 400 020.
(By Advocate Mr.V.S. Masurkar)

.. Respondents.

O R D E R (Oral)

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

The applicant who was working as Time Keeper

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under PWI at Vapi, Western Railway was issued with a charge sheet dt. 11.11.86 containing two charges, one of taking money from the casual labourers as illegal gratification and the other of obtaining thumb impressions from the labourers on blank sheets for making false complaints against PWIs/UVD & VPI. An enquiry was conducted and the Enquiry Officer submitted his report with the findings that there is no documentary proof to show that the applicant has accepted illegal gratification of Rs.25/- from each labourer and as regards the charge of obtaining thumb impressions on the blank sheets, there is documentary proof that the thumb impressions were taken on five blank sheets leaving some space on top. Based on this enquiry report, the applicant was imposed a penalty of dismissal from service as per order dt.4.6.1987. This was confirmed by the Appellate Authority by order dt.10.11.1987. The applicant challenged these orders through OA No.671/87 before the Ahmedabad Bench of the Tribunal. The said OA was decided on 19.3.1991 and the impugned orders were quashed on the ground that the copy of the enquiry report was not furnished to the applicant. Liberty however was granted to proceed further from the stage of supply of copy of the report of the Enquiry Officer. Accordingly the department proceeded further by furnishing the copy of the enquiry report to the applicant. The applicant submitted his representation against the report.

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Thereafter, the disciplinary authority passed order dated 24.9.91 imposing punishment of dismissal from service. The appeal of the applicant has been considered by the appellate authority as per order dt. 3/4.3.1993 and punishment order of dismissal from service has been modified to that of reduction to the lowest (minimum) of the grade in the same time scale for a period of two years with the effect of postponing the future increments. The applicant filed a revision application against the same which has been rejected as per the order dt. 9.9.1993. Feeling aggrieved by these orders, the applicant has filed the present OA seeking quashing of the order dt. 3/4.3.1993 of the appellate authority and the order dt. 9.9.1993 of the revisional authority.

2. The applicant was reinstated in service w.e.f. 8.6.1987 with deemed suspension and thereafter after issuing a show cause notice, the period of deemed suspension from 8.6.1983 to 11.3.1993 has been treated as period not spent on duty as per order dated 13.4.1993. The applicant has challenged this order also, seeking a relief, that the entire period should be treated as period spent on duty and he should be paid full emoluments for the said period.

3. The applicant has attacked the impugned orders on the following grounds :

- (a) The order of the appellate authority is bad in law because after recording that

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the Enquiry Officer has not found the applicant guilty of the charges, no punishment could be imposed by him without recording his findings as regard to proving of the charges based on the evidence on record.

- (b) The order of the revisional authority is also bad in law, as the revisional authority has recorded his own findings after analysing the evidence on record and held that the applicant was indulging in money lending, which is not appearing in the charge sheet.

4. The respondents have filed a written statement opposing the application. The respondents while contesting the grounds taken in the OA have submitted that the disciplinary proceedings have been conducted as per rules and the penalty has been imposed based on the evidence on record.

5. We have heard the arguments of Shri R. Ramesh, the learned counsel for the applicant and Mr.V.S. Masurkar, the learned counsel for the respondents.

6. After going through the findings of the Enquiry Officer, the orders of the Disciplinary Authority, Appellate Authority and the Revisional Authority, we find merit in the contention of the applicant. It is noted from the findings of the enquiry officer on record at

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Annexure - I (pg.57) that he has not recorded any reasons to support his findings in the Enquiry Report. It is noted that ten witnesses were examined, but while recording findings, the evidence recorded has not been discussed. In case of Charge No.1 viz. accepting illegal gratification, the enquiry officer submits that the same is not proved as there is no documentary proof for the same. But, at the same time, he has recorded that based on the statements of various witnesses, it can be safely inferred that money was collected at the instance of delinquent employee from various casual labourers. It is further noted that the Enquiry Officer has recorded this conclusion not based on the evidence on the record, but based on his own opinion / knowledge as to what is happening in the department in connection with collection of m-oney from the labourers. Similarly, in respect of the second charge, the Enquiry Officer has not discussed the evidence on the record to support his finding that this charge is proved.

7. Now, coming to the order of the disciplinary authority brought on record at Annexure - N (pg.77), it is noted that the disciplinary authority had given a personal hearing to the applicant. The disciplinary authority in his order has not made any reference^{in 5} whether he accepts the findings of the enquiry officer or not. As indicated above, the findings of the Enquiry Officer are vague. He has simply stated that the applicant has

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indulged in collection of illegal gratification and obtained signatures on the blank sheets without indicating whether the same flow out of the findings of the Enquiry Officer. The disciplinary authority has also not referred to the points raised in the representation of the applicant and what was represented during the personal hearing. The order of the disciplinary authority shows lack of application of mind and order seems to have been passed with *preconception*

8. Referring to the order dated 3/4.3.93, it is noted that the Appellate Authority has observed that the enquiry officer has not held the applicant guilty of the charges. It will be relevant here to reproduce the observations of the appellate authority with regard to the findings of the Enquiry Officer :

"The Enquiry Officer has not held you guilty of the charges. I find that the enquiry officer's findings are not correctly drawn out in this report. No conclusions have been drawn and the findings are not clear."

It was seen that inspite of the appellate authority having noted that the findings have not been correctly drawn by the enquiry officer and the charges are also not proved as per the findings, while modifying the punishment of dismissal from service to that of reduction to the lowest of the grade in the same time scale, the appellate authority has not recorded as to what should be correct

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findings based on the evidence on record ^{and} to what extent the charges are proved to justify the modified penalty imposed by him. Once the appellate authority had noted that the charges are not proved and the findings are not drawn properly by the enquiry officer, the appellate authority should have recorded his own reasons as to the extent the charges are proved based on the evidence on the record and thereafter decided the quantum of punishment to be imposed. In the absence of any such finding, it is difficult to uphold ^{that the order} ^{by the} appellate authority has been passed with due application of the mind.

9. The order of the revisional authority has altogether gone in a different direction. The revisional authority while confirming the modified punishment imposed by the appellate authority has recorded his own findings by analysing the evidence on record and concluding ^{that} the applicant was indulging in money lending which is conduct unbecoming of a ^{Rail} way servant. This charge was nowhere in the charge sheet. Thus this order is also arbitrary and is passed without application of mind. This order is also therefore bad in law.

10. From the above observations with regard to the findings of the enquiry officer and the orders of the disciplinary, appellate and revisional authorities, we have no hesitation to come to the conclusion that these orders are bad in law and ^{are} not sustainable as they have

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been passed without application of mind with reference to the material on record. These orders, therefore deserve to be quashed.

11. It is noted that the charge sheet was first issued in 1986 and the present OA seeking relief is filed in 1994. In case, the orders of the disciplinary or appellate and revisional authorities are quashed, the normal course of direction would be to remand the matter back to the appellate authority to pass fresh order. However in the present case, in view of fact that the disciplinary proceedings are pending since 1986, the present OA is second round of litigation, and all the authorities concerned having failed to apply their mind properly, we restrain ourselves from remanding the matter to the competent authority for fresh ^{consideration} ~~consultation~~ of the matter and ^{instead} we quash the impugned orders.

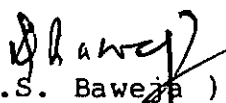
12. The applicant apart from seeking the quashing of the impugned punishment orders has prayed for several other reliefs. The first group of reliefs concern treating of the period of deemed suspension from 8.6.1987 to 30.4.1993 as 'spent on duty' instead of 'not spent' on duty as per the impugned orders dated 3/4.3.1993 and 9.9.1993 be quashed and set aside. Since we have held above that the impugned punishment orders are not sustainable, ^{and} the same deserve to be quashed, we are of the view that it is not necessary to go into the merits of this relief. Once the punishment orders are quashed,

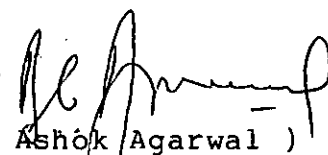
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the period from 8.6.1987 to 11.3.1993 is to be treated as period "spent on duty". However, keeping in view the facts and circumstances of the case it is laid down that the applicant will not be entitled for payment of full salary and allowances for the said period. This period, however will be treated as the period "spent on duty" for all other purposes.

13. As regards other reliefs viz. promotion to the post of Chief Clerk, posting at a particular station or section after being reinstated in service, we note that the same do not flow out of the main reliefs. The applicant has sought multiple reliefs in the same OA and as per rules, claiming multiple reliefs on the same OA is not permissible. Accordingly we are not going into merits of the same.

14. In the result, the OA is allowed by quashing the impugned orders dt. 3/4.3.1993 of the Appellate Authority and 9.9.1993 of the revisional authority. The period of deemed suspension, from 8.6.1987 to 11.3.1993 will ^{be} treated as the period "spent on duty" as per the observations made earlier in para 12. No order as to costs.


(D.S. Baweja)
Member (A)


(Ashok Agarwal)
Chairman.

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