

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 1085/94

7th June
DATE OF DECISION: / /2000

_____Shri Ashok Shahaji Hivrale _____. Applicant.

_____Shri S.V.Marne _____Advocate for
_____Applicant.

Versus

_____Union of India & Anr. _____Respondents.

_____Shri S.C.Dhawan _____Advocate for
_____Respondents.

CORAM:

Hon'ble Shri B.N.Bahadur, Member(A).
Hon'ble Shri S.L.Jain, Member(J)

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

S.L.JAIN
(S.L.JAIN)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION: 1085/94
DATED THE 7th DAY OF JUNE, 2000

CORAM: HON'BLE SHRI B.N.BAHADUR, MEMBER(A)
HON'BLE SHRI S.L.JAIN, MEMBER(J)

Shri Ashok Shahaji Hirvale
Switchman, Jalgaon,
Central Railway, residing at
C/o: Railway Quarter No.
RB-II/630(B), Railway North
Colony, Bhusawal,
Distt.Jalgaon. ... Applicant.

By Advocate Shri S.V.Marne

V/s.

1. The Union of India
through the General
Manager, Central Railway,
Bombay V.T., Bombay-1.
2. The Additional Divisional
Railway manager,
Central Railway,
Bhusawal. ... Respondents.

By Advocate Shri S.C.Dhawan.

(ORDER)

Per Shri S.L.Jain, Member(J)

This is an Application under section 19 of the
Administrative Tribunals Act 1985, to quash and set
aside the punishment orders Annexure a.1, A.3 and A.4 and
Chargesheet Annexure 6, with a declaration that the
applicant is entitled to be promoted as Goods Guard by
opening the sealed cover in respect of LDC Examination
and promote him or alternatively if the DPC has
considered the chargesheet issued to the applicant
direction to the Respondents to reconsider the case by

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holding Review DPC as the Applicant has already cleared the written test for the same, declaration that the suspension of the applicant is illegal should be quashed and set aside with consequential benefit of arrears.

2. The applicant was working at Kherwadi Railway Station from July, 1992 as a Switchman in the Operation cabin A&B, on 25/10/1992 he was working in cabin A from 16 hours to 24 hours. A chargesheet dated 28/10/92 s.f. 11 for minor penalty was issued to the applicant in respect of point 15.A of the main line connecting down loop line which was in respect of 25/10/1992. The said chargesheet was issued by A.O.M. (G) BSL which was withdrawn on 3/11/1992 vide Annexure A.8 by the same authority. The Chargesheet dated 28/10/92 which was in respect of minor penalty (SF.11) a new chargesheet Annexure A.7 was issued to the applicant on 3/11/1992 for Major penalty (SF.5). The said chargesheet was withdrawn on 14/12/1992 vide order Annexure A.5 by BSL. On 14/12/1993 the third Chargesheet Annexure A6 was issued by DSO BSL (SF.5). After conducting the enquiry in respect of the 3rd chargesheet, the applicant was penalised vide Annexure A.4. The appeal against the same was dismissed on 7th June 1994 vide Annexure A3. The Reviewing Authority reviewed the matter *suo moto*, after issue of a notice dated 13/7/1994, Annexure A-2 for enhancement of the penalty, order on review was passed on 16/9/1994 Annexure A.1.

3. Applicant has during the course of arguments challenged the said penalty orders on the ground that the authority issuing the chargesheet was not competent to issue the same and an order cancelling the chargesheet dated 28/10/1992 vide order dated 3/11/1992 vide Annexure

A.8, chargesheet dated 3/11/1992 cancelling the same vide order dated 14/12/1992 vide Annexure A.5 has not specified ^{that} the cancellation is subject to issue of a fresh chargesheet or reserving right for issue of a fresh chargesheet hence fresh charge ^{sheet} cannot be issued.

4. The rest of the allegations regarding violation of procedure and suspension being illegal has not been argued during the course of arguments.

5. The Respondents have resisted the claim of the applicant firstly; on the ground that the applicant has not exhausted the remedies under the service rules as he has not filed any appeal against the order dated 116/9/1994 though entitled to file the same, hence the application is premature and liable to be dismissed. The grounds raised by the applicant are also resisted by the respondents and prayed for dismissal of the OA along with cost.

6. The first and second charge sheet was cancelled on 3/11/1992, vide Annexure a.8 and 14/12/1992 vide Annexure a.5 by ADM (G), GSL, DSO respectively. On perusal of Annexure A.8 and A.5 it is clear that no right is reserved for issuing the fresh chargesheet.

7. The Learned Counsel for the applicant relied on order passed by this bench, in OA.No.695/92 on 16/7/1993 in case of K.Rammamurthy vs. Union of India and Ors. which laid down the proposition that unless there is a power in the disciplinary authority by virtue of the rules or Administrative instructions to give another

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chargesheet, on the same facts, after withdrawing the first one the second chargesheet will be entirely without jurisdiction.

8. The Learned Counsel for the Respondents argued that if the second chargesheet was issued by ADM (G) BSL and it was withdrawn by DSO ESL, if the authority does not have power to issue the chargesheet, its cancellation is without jurisdiction. The arguments proceeds further and he argues that the chargesheet issued on 3/11/1992 Annexure A.7 survives on the reason that DSO who has cancelled it, has no power to cancel the same. In our considered opinion, this is not the defence raised by the respondents and the applicant has not been penalised on the basis of chargesheet Annexure A.7. Hence on the said argument no finding deserves to be recorded.

9. Admittedly the applicant who is the Switchman belongs to operation side/cadre. The learned counsel of the applicant relied on an order passed by CAT, Mumbai Bench Circuit at Nagpur in DA 324/94 decided on 18/6/99 in case of B.P.Gorale vs. D.r.M. and Ors which lays down the proposition that if the chargesheet is issued by an authority not competent to impose the penalty, the enquiry is vitiated. He further argued that Operation side/Cadre and Safety side/cadre are headed by two different departmental heads and hence the chargesheet issued by authorities on the safety side and the penalty awarded in

the said charge sheet is without jurisdiction.

10. The learned counsel for the respondents, relied on the Circular No.RB/82/97 New Delhi 4/8/1997 and on the basis of the said circular he argued that the existing practice was the subject of review hence it should be deemed that the said practice was authorised, on the basis of said circular in para-2 which is as under:-

"Arising out of discussion with AIRF in the PNN Meetings, the Board have reviewed the existing practice of Safety Officers simultaneously exercising disciplinary powers in respect of Operating Staff who are under the administrative control of Operating Managers."

We are of the considered opinion that the said argument holds no water for the reason that in the said Circular the earlier circulars of 28/7/1962 and 16/10/1973 are also referred. The occasion to issue the said circular was contravening the said order, the practice to be followed was again reiterated.

11. The learned counsel for the applicant relied on Page-6 of the Railway Servants (Discipline and Appeals) Rules 1968 and argued that if the applicant was from operation side the authority competent to issue and enquire into the matter was only Sr.DOMs/DOMs. The said contention of the learned counsel for applicant is based on earlier circular dated 10/1/1979 No.E(DRM)78 RG 6-15 which is as under:-

"2. The matter has been carefully considered by the Board and in consultation with their legal adviser,

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it is clarified that a Railway servant essentially belongs to only one Department even though in the course of the performance of his day-to-day duties, he may violate certain rules/regulations administered by some other Department. The Assistant Station Masters and the Station Masters belong to the Operating Department even though they may have to perform the duties pertaining to the Commercial Department also from time to time. The Disciplinary Authorities, in their cases, would thus belong only to the Operating Department and none else. If any other practice is being followed, that is irregular and should be stopped forthwith. Disciplinary action should be initiated and finalised by the authorities under whose administrative control the delinquent employee may be working as any other procedure would not be in keeping with the instructions referred to Para - 1 above."

In view of the said contention of the learned counsel for the applicant and in view of the order in OA No.324/94 referred above, it is hereby held that the chargesheet was issued by an authority not competent to impose the penalty. In the result, the penalty order deserves to be quashed.

12. It is also argued by the learned counsel for the applicant that the applicant was considered for the promotion to the post of Guard Grade C, his name was kept in the sealed cover, again the applicant appeared for the selection for the purpose of Goods Guard, declared successful and was empanelled by panel dated 11/8/1987, he underwent training successfully, he was declared passed in the JTS vide result dated 20/7/1998. It is also stated that the applicant appeared for the selection to the post of Assistant Station Master, declared successful in the selection, empanelled by panel dated

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4/9/98, in pursuance of his empanelment he was sent for training at the Zonal Training Institute Bhusaval, he underwent the training and was declared successful on 13/1/1999, received the posting order but declined to join the same.

13. Regarding the post of Assistant Station Master, the applicant himself has declined to join the same hence no order in this respect deserved to be passed.

14. For the first time, the applicant was considered for the post of Guard Grade C and his name was kept in the sealed cover which is in the year 1994. The said panel was exhausted after a life of two years. He was also considered for Goods Guard and declared successful on 27/3/1998 in JTS Examination, the said panel is also not in existence as more than two years have elapsed.

15. Further, the empanelment as Goods Guard and for the post of Assistant Station Master are subsequent events and not consequential reliefs based on the earlier cause of action hence in these respects, no consideration deserves in favour of the applicant.

16. The learned counsel for the applicant argued that the incident relates to dated 25/10/1992 and no damage has caused to the engine itself. Hence, the case should not be remitted for further enquiry or the respondents should be debarred from holding a fresh enquiry in respect of the said charges. As the penalty order is quashed for the reason that the authority concerned was

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having no authority to issue the charge sheet and penalise the applicant, question of remitting the matter does not arise for consideration as it is to be ordered when some irregularity in the procedure to be followed is noticed.

17. It is for the respondents to consider whether after issue of a fresh chargesheet or on the basis of chargesheet Annexure A7 they want to proceed further. This is not the subject matter of the O.A. Hence, we refrain ourselves from recording any opinion on the subject.

18. In the result, O.A. deserves to be allowed and is allowed, the Penalty orders Annexure A.1, A.3 and A.4, the chargesheet Annexure A.6 of 14/12/1992, as being issued by an incompetent authority is quashed and set aside. The Applicant is not entitled to any relief in respect of the suspension and the declaration for promotion to the post of Goods Guard, as the panel does not survive. No order as to costs.

S.L.Jain
(S.L.JAIN)
MEMBER(J)

B.N.Bahadur

(B.N.BAHADUR)
MEMBER(A)

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