

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:51/94

DATE OF DECISION: 10.8.2000

Shri Govind Baburao Bhosale

Applicant.

None for the applicant.

Advocate for

Applicant.

Versus

The General Manager, Central Railway and others. 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?

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

(3) Library.

B.N.B

(B.N.BAHADUR)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:51.94

THURSDAY the 10th day of AUGUST 2000

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

Hon'ble Shri S.L. Jain, Member (J)

Govind Baburao Bhosale
residing at Kamala Nehru
Baug, opp. R.T.O. Office
Pune.

...Applicant.

V/s

1. The General Manager
Central Railway,
Bkombay V.T.
2. The Chief Mechanical
Engineer, Central Railway,
Bombay V.T.
3. The Area Superintendent
Central Railway, Pune.Respondents.

By Advocate Shri S.C.Dhawan.

ORDER (ORAL)

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

This is an application made by Govind Baburao Bhosale seeking the relief from this Tribunal for quashing and setting aside the order of dismissal of the applicant passed by ADRM (O) Bombay VT and confirmed by CRSE in appeal. The applicant prays for re-instatement and consequential benefits. At the outset we note that neither the applicant nor his counsel are present today. Shri S.C. Dhawan counsel for the respondents is present. We proceed to decide this case on merits on the basis of the pleadings and the written arguments already submitted by the applicant personally and taken on record on an earlier ocassion. There is more than enough justification for our proceeding to decide the case on merit, specially as written arguments have



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already been filed by the applicant; also in view of the fact that the application was once dismissed in default and later restored.

2. The case of the applicant is that he was working as Khalasi-helper, and residing on the property bearing No. 30/1, Walesly Road, Pune since 20 years. The applicant avers that the said property is neither owned by Railway nor possessed by them, and that, in fact, he is in adverse possession of the property which is owned by State Government of Maharashtra. Thus he claims that the Railways have no claim to this land, and their action in proceeding against him and imposing of penalty of removal is wrong, arbitrary, malafide and un-just.

3. The applicant describes various detailed facts relating to the property, which need not be recounted here and also takes the grounds that the Departmental enquiry is vitiated since proper procedure was not followed and violative of the principles of natural justice. Subsequently, he states that he was not allowed an opportunity of cross examination of witnesses, and that he is not aware of his signature being obtained on the documents supplied to him. He also states that "he is not aware as to when the E.O's report was supplied to the applicant". Another point made by the applicant is that he never admitted the charges as stated in para 2 of the dismissal order (dated 18.1.1993.)

4. The Respondents have filed a reply in the case, resisting the claims of the applicant. The point is made that the land in question is Railway land, and the applicant has unauthorisedly occupied it. It is stated that a regular enquiry was conducted and opportunity was given to the applicant to



defend himself, inspection of documents. All procedures was followed and copy of Enquiry Officer's report was served on applicant on 28.7.1992. No representation was filed against it. Accordingly, the order have been passed after full compliance of rules and law.

5. We have seen all papers in the case and have carefully read the application and the written statement of arguments filed by the applicant. We have also perused the original record of enquiry proceedings produced before us during the arguments.

6. The main stand taken in the written argument of the applicant is that even if the alleged unlawful occupation of Railway property is proved, it does not amount to mis-conduct and hence the punishment awarded is illegal. It is argued by the applicant that this is a case of civil litigation. Thus he contends that the decision taken both by Disciplinary Authority and the authority which has disposed of the Appeal are illegal. Further that a very severe punishment has been imposed.

7. The learned Counsel for the Respondents, Shri S.C. Dhawan argued the case on behalf of the Respondents. He took us over the facts of the case and also referred to original record which we have seen. The learned counsel stated that the Tahsildar of Pune has clearly stated that the land in question is Railway land (Exhibit I in reply) and argued that the Railway servant is guilty of mis-conduct in trying to illegally occupy Railway property. Such conduct is indeed mis-conduct and deserves severe punishment.

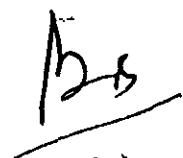
8. In the first place, we find that the applicant has himself stated that this disputed property of land belongs to Maharashtra Governement and that he is adverse possession.

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He further states that it is not Railway property and even if it was proved that he is in illegal possession, this cannot amount to mis-conduct. We must clearly state that this is an argument which cannot impress anyone and cannot be accepted. In the first place, the Tahsilar Pune states that the property is Railway property. In any case, we cannot agree to the contention that even if it is proved that the applicant is in illegal possession of Railway property such action cannot be construed to mis-conduct. Illegal occupation of the property of one's own employer, and that too an employee who holds public property, cannot be said to be anything but mis-conduct. In fact it is grave mis-conduct.

8. We now proceed to examine whether there has been any flaw in the conduct of the Department Enquiry, on any of the points alleged by the applicant. These basically relate to the allegations that principles of natural justice have not been followed. It is seen that the charge sheet have been served upon him and this is clear from the original record produced. In fact, translation of charge sheet asked for have also been provided to the applicant, and thus the allegation on this count against the respondents cannot be sustained. Further, opportunity has been provided to him for cross examination etc. as per the Rules of enquiry, where he was present alongwith his Assisting Railway Employee. We have seen the original documents which bear his signature on original file relating to enquiry proceedings vis-a-vis allegations made.

9. Another contention made by the Applicant is that he is not aware of service of Enquiry Officer's report. We find that this report has been duly served on him and he is making a vague and off hand allegation alleging that the procedure not been

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

REVIEW PETITION NO.64/2000
IN
ORIGINAL APPLICATION NO.51/94

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

Dt. 7-11-2000

Shri Govind Baburao Bhosale
Pune.

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Applicant

vs.

The General Manager,
Central Railway
Mumbai V.T. & 2 Others.

....

Respondents

ORDER IN REVIEW PETITION BY CIRCULATION

[Per: B.N.Bahadur, M (A)]

This is a Review Petition No.64/2000 filed in respect of
judgment made by us in O.A. No.51/1994 on 10.8.2000.

2. We have carefully perused the judgement and find that
points raised are on the merits of the case and are, therefore in
the nature of an appeal. There is no ground in respect of any
error apparent or of any new fact having come to light. If the
applicant is aggrieved on merits, he can take recourse to remedy
provided by law, but the remedy does not lie ~~in~~ ⁱⁿ ~~to~~ ⁱⁿ ~~a~~ ^{an} Review
Petition. Hence the Review Petition is devoid of merits and is
hereby dismissed.

PLJ/
(S.L.Jain)
Member (J)

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

sj*