

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 1276/94

26-10-99  
Date of Decision:

B.G.Patil

Applicant.

Sh.Karkera for Shri M.B.Karnik

Advocate for  
Applicant.

Versus

G.M. C.Rly. Bombay V.T. & Ors.

Respondent(s)

Shri V.S.Masurkar

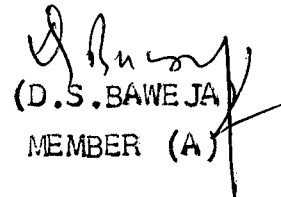
Advocate for  
Respondent(s)

CORAM:

Hon'ble Shri. D.S.Baweja, 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 ✓

  
(D.S.BAWEJA)  
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

OA.NO.1276/94

Dated this the 26 / 4 day of October 1999.

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

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

Bhimrao Girdhar Patil,  
Diesel Assistant, Locoshed,  
Bhusawal, Dist. Bhusawal.

... Applicant

By Advocate Shri S.S.Karkera  
for Shri M.S.Karnik

V/S.

1. The General Manager,  
Central Railway,  
Bombay V.T.
2. The Divisional Railway Manager,  
Central Railway, Bhusawal.
3. The Divisional Railway Manager (P)  
Central Railway, Bhusawal.
4. Sr.D.E.E. (TRO), Bhusawal,  
Office of Sr.D.E.E.(TRO),  
Bhusawal.
5. The Asstt. Mechanical Engineer(P),  
Bhusawal, Dist. Bhusawal.

... Respondents

By Advocate Shri V.S.Masurkar

O R D E R

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

The applicant through this OA. has sought the quashing of the order dated 24.11.1992 imposing punishment of reduction to lower stage for a period of 3 years with cumulative effect and order dated 26.8.1993, through which the appeal has been rejected.



2. The applicant while working as Diesel Assistant at Bhusawal, Central Railway was served with a chargesheet dated 1.4.1992 for major penalty with a charge of serious misconduct and disobedience of orders to go on line duty. For submitting his defence against the chargesheet, the applicant needed certain documents and made a request for the same as per his letter dated 7.4.1992. Thereafter, the inquiry officer was nominated. The applicant also appointed his defence assistant and advised the name to the inquiry officer. During the inquiry, the applicant made a request to furnish the copy of the fact finding inquiry conducted by one Shri N.K.Singh as the same was necessary to his written brief. However, as per the letter dated 16.9.1992 his request was rejected stating that the applicant is not entitled to get the copy of the fact finding inquiry and the applicant was also directed to submit the written statement against the inquiry report failing which ex-parte decision shall be taken. The inquiry officer held the applicant guilty of the charges. The disciplinary authority based on the findings of the inquiry officer, as per the order dated 24.11.1992 imposed the punishment of reduction to a lower stage in the same time scale from Rs.1010 to Rs.970/- for a period of 3 years with cumulative effect. The applicant made an appeal against the same on 1.2.1993 which stood rejected as per the order dated 26.8.1993. Thereafter, the applicant has filed the present OA. on 2.8.1993 challenging the impugned orders.

Q

3. The applicant has assailed the impugned orders pointing out the following infirmities :-

(a) Non supply of the fact finding inquiry report of Shri N.K.Singh and thereby denying the reasonable opportunity to defend his case.

(b) The disciplinary authority's order is non speaking and he has not applied his independent mind to come to the conclusion that charges are proved.

(c) The appellate authority's order also is non speaking. It also suffers from another vice that the appellate authority has held him guilty of a different charge not included in the chargesheet.

4. The respondents while opposing the application through the written statement have submitted that the disciplinary proceedings have been conducted as per the Railway Servants (Discipline and Appeal) Rules and the applicant has been given reasonable opportunity to defend his case. As regards the supply of fact finding inquiry report of Shri N.K.Singh, the respondents contend that it was not furnished to the applicant when demanded as the same was not relevant on the ground that no reliance on the same was made in the chargesheet. The applicant was advised accordingly and thereafter he participated in the proceedings and therefore cannot take a plea of non supply of the report now when the proceedings are completed and punishment imposed.



5. The applicant has not filed any rejoinder reply for the written statement.

6. We have heard the arguments of Shri S.S.Karkera for Shri M.S.Karnik and Shri V.S.Masurkar, the learned counsel for the applicant and the respondents respectively. The respondents have made available the disciplinary proceedings file which has been carefully perused.

7. From the averments made in the OA., we note that the main case of the applicant in challenging the impugned order is based on the ground of non supply of the copy of the report of the fact finding inquiry conducted by Shri N.K.Singh when demanded and this has deprived the applicant of the reasonable opportunity of making effective defence of his case. The respondents have contested this ground submitting that the fact finding inquiry report has not been relied upon in the chargesheet and was therefore not relevant. From the record, we note that on receipt of the chargesheet, the applicant as per his letter dated 7.4.1992, demanded some documents for submitting his defence. This list did not include the fact finding inquiry report. These documents were supplied to the applicant under letter dated 15.4.1992. Thereafter, the applicant participated in the inquiry. It is during the inquiry only that the applicant sought the copy of the fact finding inquiry report to enable him to submit his defence brief when the inquiry was concluded. In the back ground of this fact situation, the allegation of denial of

reasonable opportunity due to non supply of the fact finding inquiry report has to be seen. We note that the fact finding inquiry report has not been relied upon in the charge sheet. This is neither a listed documents nor it has been referred to in framing of the charges. In view of this, we fail to appreciate as to how the applicant has been denied the reasonable opportunity to defend his case. In this connection, we refer to the judgement of the Hon'ble Supreme Court in the case of Ajay Kumar Nigam vs. State of M.P. & Ors. (1997 (1) ATJ 373) and cited by the counsel for the respondents. Their Lordships have observed as under :-

" .... The preliminary report is only to decide and assess whether it would be necessary to take any disciplinary action against the delinquent officer and it does not form the foundation for passing the order of dismissal against the employee."


Thus, failure to supply a copy of the fact finding enquiry report which is not foundation of disciplinary proceedings does not vitiate the proceedings.

8. Even for a moment the contention of the applicant is accepted that he has been denied reasonable opportunity to defend his case in the absence of the fact finding inquiry report, then the applicant has to demonstrate as to how the prejudice has been caused. As already brought out, the applicant has asked for the report in the last question of his statement on the conclusion of the inquiry. Except making a demand of this report, the applicant has not brought out as to how the report was necessary for his effective defence. Further, after his request was

②

rejected by letter dated 16.9.1992, the applicant again represented on 22.9.1992 for the supply of the copy of the report. In this letter also the applicant has not amplified the reasons and the necessity of the report for defending his case which could be considered by the Disciplinary authority to review its decision. Even in the OA. apart from just making an averment the applicant has not brought out as to how in the absence of report, his case has been prejudiced. The applicant has not even contested the submissions of the respondents in the written statement detailing reasons as to why the report was not relevant. Thus, the applicant has failed to establish the relevance of fact finding inquiry report in defending his case. We refer here the judgements of the Hon'ble Supreme Court in the case of State of Tamil Nadu vs. Thiru K.V.Perumal & Ors., JT 1996 (6) SC 604, State Bank of Patiala vs. S.K.Sharma, JT 1996 (3) SC 722 ~~and~~ <sup>✓</sup> relied upon by the respondents. In these judgements, it is held that it is the duty of the delinquent to point out as to how each and every document is relevant to the charges and how the non supply has prejudiced the case of the delinquent employee. In the light of these deliberations, we are unable to find any merit in this ground of the applicant.

9. The second ground is that the order of the disciplinary authority is non speaking and shows non application of mind independently. On going through the order dated 24.11.1992, we find that this ground has no substance. The disciplinary authority has accepted the findings of the inquiry officer and it

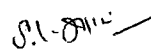


...7/-

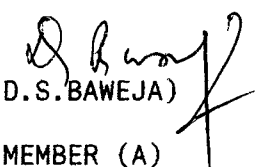
was not necessary for him to record the reasons again to arrive at the same findings.

10. The last ground is that appellate order is also non speaking and based on the findings of guilt not included in the chargesheet. On careful perusal of the appellate order dated 26.8.1991, we are unable to subscribe to the contention of the applicant. The observations of the appellate authority are with reference to the charges and do not indicate findings on any other guilt that what is included in the chargesheet. This ground therefore is without merit.

11. In the result of the above, we find that none of the infirmities pointed out by the applicant are sustainable. The OA. therefore lacks merits and is accordingly dismissed with no order as to costs.

  
(S.L. JAIN)

MEMBER (J)

  
(D.S. BAWEJA)

MEMBER (A)

mrj.