

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1253/95

DATE OF DECISION: 20/7/2000

Shri B.S.Rath _____ Applicant.

Shri Sunil.S.Dighe _____ Advocate for
Applicant.

Versus

Union of India & 3 Ors. _____ Respondents.

Shri A.L.Kasturey _____ Advocate for
Respondents.

CORAM:

Hon'ble Shri A.V.Haridasan, Vice Chairman
Hon'ble Shri Govindan.S.Thampi, Member(A)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to
other Benches of the Tribunal?
3. Library.

GOVINDAN.S.TAMPI
MEMBER(A)

abp

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO:1253/95
DATED THE 20 DAY OF JULY, 2000.

CORAM:HON.SHRI A.V.HARIDASAN, VICE CHAIRMAN.
HON.SHRI GOVINDAN.S.TAMPI, MEMBER(A).

B.S.Rath,
4,B Ganesh Bhuvan,
Senapati Bapat Marg,
Mahim, Mumbai-400 016.

... Applicant.

(By Advocate Shri S.D.Dighe)

V/s.

1. Union of India
through
The General Manager,
Western Railway,
Churchgate,
Mumbai - 400 020.
2. The Divisional Railway Manager,
Bombay Division,
Western Railway,
Bombay Central,
Bombay - 400 020.
3. B.D.Mudgil,
Additional Divisional Railway Manager,
Bombay Division,
Western Railways,
Bombay Central,
Bombay - 400 008.
4. Senior Divisional Electrical Engineer(Sub)
Bombay Division,
Western Railway,
Bombay Central,
Bombay - 400 008.

... Respondents.

(By Advocate Shri A.L.Kasturey)

...2.

O.A.1253/95

O R D E R

(Per Shri Govindan.S.Tampi, Member(A))

Shri B.S.Rath, has filed the Original Application No.1253/95 against the order dated 19.5.1995/14.6.1995 confirming the penalty of reduction by one stage directed by the Disciplinary Authority.

2. The Applicant, a permanent motorman with Western Railway, as well as Divisional President of All India Railway Employees Federation, was chargesheeted on 23.8.1993/20.9.1993 for imposition of minor penalty for causing detention to train, unnecessarily and unjustifiably and in violation of instruction No.6 of CPTM printed on time table No.58 and thus having acted in a manner unbecoming of a government servant, contravening Rule 3(i)(iii) of the Railway Service (Conduct) Rules, 1966. It was alleged that on 5.11.92, the applicant had stopped train No.718 UP at Bandra station, stating that there were cockroaches in his cabin. He desired the services of a train Examiner to deal with this problem and declined to take the services of two Khalasis which were allowed. This has led to the detention of the train for twenty minutes and led to other inconveniences, as per the allegations. In his reply dated Nil, the applicant alleged that the enquiry was conducted by DEE, with a biased mind, that he was kept waiting for two days after the enquiry, that he was not shown joint inspection report, the proceedings were conducted in an unfair manner and that he should be permitted to examine the witnesses whose statements were recorded on enquiry. He was

...3.

thereafter on 11.11.93 given the copy of the fact finding report from the DRM's office, which he replied on 22.11.1993 wherein he denied the charges and requested interview along with his defence assistance. Subsequently on 17.6.94 he was informed by the Sr.DEE(Sub)/BCT that the penalty of reduction by one stage on pay Rs.2825/- for a period of one year without cumulative effect was being imposed on him. His appeal dated nil was rejected by Addl. DRM, the appellate authority, holding that the disciplinary authority had acted correctly.

3. The applicant contends that the penal proceedings were initiated, conducted and finalised in a biased and prejudiced manner and that his action with regard to the stoppage of the train was motivated by the safety of the passengers who would have been put to difficulties if the motorman's attention was diverted by the cockroaches. Respondents point out that the action taken by the Department was correct and that proceedings were not faulty.

4. Heard Counsels for both parties. Shri S.D.Dighe, the learned counsel for the applicant dwelt at length on the pleadings by the applicant. He also pointed out that the proceedings were finalised without having a regular enquiry and hearing to the delinquent dofficial who had asked for it. The proceedings were also initiated, in that the penalty which in fact was imposed, was in fact more than one stage. Shri Kasturey arguing for the respondents stated that the act of the applicant

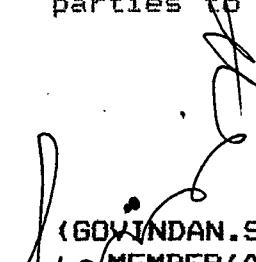
in stopping the train on that day amounted to misconduct for which he has been properly penalised, but by a minor penalty and the same did not warrant any interference.

5. We have considered the matter. In view of one specific aspect brought out on records and during the arguments, we feel that we do not have to digress much on the aspect of the applicant's conduct amounting to misconduct. It is a matter clearly brought on record, that the applicant had after receipt of the chargesheet dated 23.8.93/20.9.93 along with the fact finding report, challenged the same as biased and sought permission for cross examining those, whose statements had been recorded in the enquiry. Though this letter has been received, as brought out in respondents' communication, among others dated 17.6.94, penalty has been imposed on the applicant without reference to it. It is this original order of the disciplinary authority which has been upheld in appeal and which is before us.

6. Learned counsel of the applicant argued that when the applicant had denied the imputations, contended that the imputations were made falsely in a biased manner and requested for holding of an enquiry giving him an opportunity to cross examine the witnesses, the disciplinary authority should have considered the request and after applying his mind to the facts and circumstances and decided whether an enquiry is necessary or not in terms of the circular of the Railway Board No.I(D&A) 86-RG6-E dated 11.2.1986 (SC-48/86). This having been not done,

the order of penalty is unsustainable, argued the learned counsel. The contention taken by the applicant is well taken. Though the discretion to hold an enquiry or not to, rests with the disciplinary authority, it was incumbent on the disciplinary authority on the request of the applicant to have considered whether it was necessary to hold an enquiry or not and to take a decision. Such a decision has not obviously been taken in this case. Therefore the proceedings resulting in award of the penalty on the applicant is vitiated and therefore the order of penalty and the appellate order deserve to be set aside.

7. In the result the applicant gains and the impugned appellate order dated 19.5.95 confirming the penalty of reduction in his pay by one stage, imposed by the disciplinary authority is vacated with consequential relief to him. Both parties to bear their own costs.


(GOVINDAN.S.TAMPI)
MEMBER(A)

abp.


(A.V.HARIDASAN)
VICE CHAIRMAN