

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 1255/95

Date of Decision : 12th September 2000

P.M.Gharade Applicant.

Shri K.B.Talreja Advocate for the
Applicant.

VERSUS

Union of India & Others, Respondents.

Shri S.C.Dhawan Advocate for the
Respondents.

CORAM :

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

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

- (i) To be referred to the Reporter or not ? yes
- (ii) Whether it needs to be circulated to other No
Benches of the Tribunal ?
- (iii) Library

yes

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

mrj*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 1255/95

the 27th day of SEPTEMBER 2000

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

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

P.M. Gharade
Resident of
Maneara Gaon,
Section 25,
Near Ganpati Temple
Ulhasnagar.

...Applicant.

By Advocate Shri K.B. Talreja.

V/s

1. The Union of India through
The General Manager,
Central Railway,
Bombay V.T., Bombay.
2. The Divisional Railway Manager,
Central Railway, Bombay VT.

...Respondents.

By Advocate Shri S.C. Dhawan.

O R D E R

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

This is an application under Section 19 of the Administrative Tribunals Act 1985 seeking the relief of setting aside the order of the Disciplinary Authority, Appellate Authority and the Reviewing Authority dated 17.5.1990, 17.7.1990 and 15.10.1990 respectively by which the penalty of imposition of compulsory retirement of the applicant is ordered, alongwith the relief of re-instatement in service with continuity and backwages.

2. The applicant who was permanent Railway Employee working in the Commercial Department under Divisional Railway Manager, Central Railway, Bombay was served with major penalty charge sheet issued on 21.4.1989. The enquiry was conducted by the Enquiry Officer nominated from the vigilance department, after enquiry report was submitted to the Disciplinary Authority.

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The Disiplinary Authority agreed with the findings and penalised the applicant with the penalty of removal from service. The applicant's appeal against the said order was dismissed by the Appellate Authority vide order dated 17.7.1990. The applicant filed review application which was decided on 15.10.1990 and the penalty of removal is modified to compulsory retirement with full backwages.

3. The grievance of the applicant is that there were three charges levelled against him. First, he demanded and accepted Rs. 39/- as illegal gratification for booking a motor cycle while functioning as Luggage Clerk in the Luggage Office at Bombay VT on 8.12.1988. Secondly, he had deliberately shown Rs. 10/- short in his Railway Cash to suppress the illegal earnings and thirdly he declared cash of Rs. 25/- as against Rs. 326/found from him.

4. The grievance of the applicant is that Shri Johnson P. Waikar and Narayan Jagannath Pable item Nos 1 and 2 of the list of witnessess in the charge memorandum have been dropped arbitrarily, the Enquiry Officer has failed to apply his mind while conducting the enquiry right from the beginning to the completion of the enquiry as the charge memorandum is issued by the Divisional Commercial Superintendent, Bombay V.T., he was appointed by the same authority while he has mentioned Divisional Manager, Bhusawal, the witnesses named above did not attend the enquiry even though called 6 times and the Enquiry Officer arbitrarily withdrawn the two witnesses, though the Enquiry Officer confirms that the two witness failed to appear, the Transaction of demand has neither been seen nor heard by any witnessess still held the applicant guilty of the above said

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charges. The applicant has brought Rs. 300/- to pay the charges in the Blood bank for his niece. The said fact was not enquired into Removal order does not provide three months statutory notice and had accepted the Enquiry Officer's report without giving any speaking order. The statement recorded during the course of preliminary enquiry cannot be acted upon in the Departmental enquiry. Hence this OA for the above said reliefs.

5. The applicant has filed this OA in this Tribunal on 5.10.1995. On 27.11.1995 the applicant filed an MP 857/95 for condonation of delay in filing the OA. The grounds for condoning the delay is that he has not been paid the retiral benefits, in view of the financial problem as he has a large family and school going children, which are even being looked by his son-in-law.

6. The respondents have resisted the claim on the ground that the application is barred by law of limitation. The OA has been filed in the year 1995 which is against the provisions of Section 21 of Administrative Tribunals Act 1985. The Tribunal cannot sit as an Appellate Authority against the orders of the Disciplinary Authority, Appellate Authority or the Reviewing Authority and arrive to a different conclusion. The applicant had participated in the enquiry alongwith his ARE and he was furnished with the documents. The applicant had not made any grievance about non following of principles of natural justice before the Enquiry Officer or the Competent Authority at the relevant time. The Enquiry Officer submitted his report on 26.2.1990 and the applicant was furnished with a copy of the same on 8.3.1990. The applicant failed to submit any representation against the report of the Enquiry Officer even though sufficient time was given to him. The disciplinary authority accepted the

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Enquiry Officer's report and passed an order of penalty of removal from service with effect from 22.5.1990 or the date on which the order is served on the applicant, whichever is earlier. The applicant had filed appeal dated 2.7.1990 in which the applicant had requested for a compassionate view to be taken. The applicant has also tendered his sincere and unconditional apology for having conducted himself in such a manner as to cause the disciplinary action to be taken against him. He had also requested that he should be kindly forgiven. The Appellate Authority by a speaking order dated 17.7.1990 had dismissed the said appeal and confirmed the order of the disciplinary authority. The Reviewing authority held that though the charges made against the applicant had been proved in the enquiry, took a lenient view and the punishment of removal from service was reduced to that of compulsory retirement with full pensionary benefits. The applicant therefore filed a mercy appeal against the said order and the same was rejected by the Chief Commercial Superintendent and he was informed of the said order by letter dated 19.12.1991.

7. The respondents submits that the booking staffs were demanding and accepting illegal gratification from the passengers, it was decided to hold a surprise check by the vigilance department and for that purpose decoy passengers were sent on 8.12.1988 in 16-24 hours shift. The applicant was functioning as Luggage clerk and on the said date he was working in the shift of 16-24 hours at VT Parcel Booking Office. The applicant had demanded and accepted illegal gratification of Rs. 39/- for booking of motor cycle from one Mr. Johnson Pramod Waikar and Mr. Narayan Jagannath Pable who acted as decoy

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passengers. Vigilance department immediately made a surprise check and apprehended the applicant with the excess money and currency notes given by the said Mr. Waikar to the applicant. The statement of the decoy passengers were duly recorded and also the statement of the applicant recorded alongwith the Panchnama which was duly signed by the applicant and the other witness. On the basis of the said statement, the applicant was issued with a chargesheet SF-5 for major penalty on 21.4.1989.

8. There is no reply to M.P.No.857/95 filed by the applicant for condoning the delay in filing the OA. As stated above in para 5 of this order, the ground for condoning the delay is non payment of retiral benefits when the applicant is to manage his family which consists of school going children also. It is also alleged that his son-in-law used to look after the school going children. In such circumstances, when retiral benefits are not being paid to the applicant, it was not possible for him to pursue the legal remedy without funds. We condone the delay. M.P.No.857/95 is allowed.

9. It is true that Shri Johnson P. Waikar and Narayan Jagannath Pable who were the decoy passengers are not examined during the disciplinary proceedings but the fact remains, as alleged by the applicant himself, that six opportunities were provided to them for their appearance but they failed to appear.

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In such circumstances, it cannot be said that the Disciplinary Authority arbitrarily dropped them.

10. The learned counsel for the respondents relied on 1999 (2) SC SLJ 110, U.P.State Road Transport Corporation & Ors. vs. Musai Ram & Ors., wherein it has been held that it is a matter to be considered by the enquiry officer whether to act/accept or not to act upon/accept the report of ATI. The Court cannot sit in appeal over the findings of enquiry officer. We agree with the said proposition of the law laid down by the Apex Court. He has further argued that on the basis of 1997 (1) A.I. S.L.J. 10, N. Rajarathinam vs. State of Tamil Nadu & Anr. that the Court is not a fact finding body, so long as there was preponderance of probability even on basis of one witness Court cannot interfere. Even in penalty Court shall exercise restraint in interference. We ^{may} agree with the said proposition of law laid down by the Apex Court and proceed to examine the matter in issue keeping in mind the above principles.

11. The learned counsel for the applicant argued that it is a case of no evidence. Hence, this Tribunal has to examine the evidence available on the record. We are aware of this fact that this Tribunal has no jurisdiction to sit as an Appellate Authority against the findings of the departmental authorities (A.I.R. 1995 S.C.561, Govt. of Tamil Nadu & Anr. vs. A. Rajapandian) but when it is alleged that it is a case of no

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evidence, the Tribunal is duty bound to examine the evidence on record and to arrive to a finding that whether the decision of the departmental authorities is perverse or based on no evidence.

12. During the course of departmental enquiry, K.S.Ratnam who was also the Luggage Clerk at the said station and his duty hours were also from 16-24 hours, the same, Shri P.S.Bhamda, H.B.Bajpayee, B.L.Choudhary officials consisting of raiding party were examined. By the evidence of Shri K.S.Ratnam, it is established that raid was executed and when he was called the currency notes were lying on the table and the panchnama was ready for signature. It is true that the currency notes were not taken from the applicant in his presence.

13. The witnesses who conducted the raid stated that the applicant has declared only cash of Rs.25/- while cash amounting to Rs.325/- is found in possession of the applicant. It is further stated that Railway cash was short by Rs.10/-. This is a circumstance which may lead to a fact that either the applicant failed to declare the correct cash and only for this reason the excess cash was available with him or the applicant while receiving the cash from the parties in excess amount, he was putting it in his pocket as a personal cash. In the present case, we are of the considered opinion that the present case is covered by the second circumstance means that excess amount which was received by the applicant from the parties was being placed

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in the pocket as personal cash. The reason behind is that the currency notes which were handed over by the raiding party to the applicant which bears the signature were found in possession of the applicant from personal search.

14. By the evidence of the raiding party, it has been established that on information, the raid was conducted with the assistance of the decoy passengers. Prior to sending of the decoy passengers, it was mentioned in the panchnama that the currency notes were signed and handed over to the decoy passengers.

15. Suffice to say that it is the duty of the applicant to establish the defence raised by him in disciplinary proceedings. The burden lies on the applicant and not on the departmental authorities to negative the same. if the applicant wants to establish that Rs.300/- were his personal amount which he brought to have the report of the blood test, firstly, it is a case where the applicant has falsely declared the amount of Rs.25/-, secondly, he has not established by any evidence that he has brought the said amount to have the blood test report. In the circumstances, the departmental authorities had not erred in arriving to a conclusion that the applicant failed to establish his defence, in a peculiar situation where there is a limit placed on the amount of money that can be carried.

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16. On perusal of the appeal, we find that the applicant had requested for a compassionate view to be taken by tendering his sincere and unconditional apology for having committed mistake which caused disciplinary action to be taken against him with a request that he should be forgiven. It is true that in an appeal memo, he has also agitated the matter on merits. We can consider about the alternative pleas but alternative pleas can be only regarding lenient view be taken if found guilty. As the applicant in clear words has stated that he apologises for having conducted himself in such a manner as to cause a disciplinary action to be taken against him. We are observing it only for the reason that it is an additional fact which we are taking into consideration to arrive to a finding that the applicant is guilty of the charges levelled against him.

17. It is true that the demand has not been established by direct evidence but a consequential fact of acceptance is established when the the currency notes bearing signatures were recovered from the possession of the applicant in personal search. No one shall pay an amount in excess than required until and unless asked for. Assuming it that the decoy passengers have left the amount without being asked for, then the applicant must have returned the same or at least must have not kept the same in his personal cash.

Done

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18. In the result, we do not find any merit in the OA. It is liable to be dismissed and is dismissed accordingly with no order as to costs.

S.L. Jain
(S.L. JAIN)

MEMBER (J)

mrj.

B. N. Bahadur

(B.N. BAHADUR)

MEMBER (A)

27/9/2000