

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1318/95

DATE OF DECISION: *June*  
*Wednesday* The *7th* Day of *May* 2000

Shri I.H.Shaikh Applicant

Shri S.P.Kulkarni Advocate for  
Applicant.

Versus

Union of India/General Manager, Central Railway .. Respondents

Shri V.S. Masurkar, 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.

*Yes*

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

*7/*

sj\*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1318/95 *JUNE*  
*Wednesday* the *7th* day of ~~May~~ 2000  
*Bnb*

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

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

1. I.H.Shaikh )  
of Bombay, )  
No.K-56, Railway Chawl, )  
Kurla East, )  
Mumbai 400 070. ).. Applicant

(By Shri S.P.Kulkarni, Advocate)

Vs.

2. The Union of India through the  
General Manager, Central Railway  
Bombay V.T.  
Mumbai. .. Respondent

(By Shri V.S.Masurkar, Advocate)

O R D E R

[Per B.N. Bahadur, Member (J)]

The Applicant Shri I.N.Shaikh challenges, through this OA, the Impugned order dated 17/6/94 made by Divisional Commercial Manager, Solapur. Through this order, the penalty of removal from service has been imposed on Applicant. The Applicant comes up before us seeking relief, in substance, for the quashing of the order of 17/6/94 referred to above, as also the order dated 29/7/1994, through which Applicant was placed under suspension, and also a letter dated 10/10/1995 disposing of the appeal of the Applicant against the order of the Disciplinary Authority.

2. The facts of the case, as put forth by the Applicant, are that on 26/9/91, he was issued a chargesheet alleging certain

*Bns*

misconduct. These charges referred to collection of certain sums of money by the Applicant from passengers, without giving receipts. Thereafter, a regular departmental enquiry was initiated, and it is the contention of the Applicant that the Enquiry Officer has given a biased report. The Applicant alleges that none of the so called victims of the fraud committed by the Applicant have been examined, and that this has been done purposely, since these victims mainly the passengers would not have given evidence to suit the disciplinary authority. Thus, the Applicant prays that the Enquiry is conducted as a part of victimisation.

3. It must be mentioned here that a part of the application, relief was also sought as an injunction to the effect that Applicant and his family are not evicted from Government accommodation allotted to him. This point was however not pressed at the time of oral arguments by the Learned Counsel for the Applicant, as it has perhaps become infructuous.

4. The respondents in the case have filed a written reply wherein they have first stated that the document at page 18 (Exhibit E) is a false document. The applicant has in fact, been removed from service by order dated 17.6.1994. And, therefore, the question of suspending him on 29.7.1994 cannot arise. On the main point relating to the punishment and alleged flaws in the departmental enquiry, it is stated that Orders have been passed as per Rules, and the charges were proved in the departmental enquiry. All allegations of bias have been denied, and it is stated that opportunity has been given to the applicant to defend

...3

128  
...

himself. It is averred in the written statement that the fact that the concerned Railway Passengers have<sup>x</sup> chosen not to appear cannot be the ground for the acquittal of the applicant, since the presence of the passengers cannot be enforced as witnesses. It is stated that no representation has been made in this regard before the Enquiry was closed.

5. We have heard learned counsels on both sides. Learned counsel for applicant took the stand that the enquiry report was a biased report, and findings were arrived at not on the basis of evidence, but on alleged non-cooperation by the applicant. The important stand taken by the learned counsel was that none of the passengers were examined as witnesses, and the applicant was thus denied the opportunity of cross-examining them. It was alleged that this was done purposely, in view of bias. Continuing of the same point, the learned counsel argued that in view of this infirmity, this is a case of no evidence against the applicant, since no other independent evidence exists. Indeed, this was the main plank of the case, as argued by learned counsel for the applicant.

6. The counsel for the applicant sought support from the judgement reported in AISLJ 1999 (2) 138 in the case of Karmarkar decided by Guwahati Bench of this Tribunal, as also of the Judgement in O.A. 317/90, decided by Ahmedabad Bench of the Tribunal. He also sought support from the case of Kuldeep Singh vs. Commr. of Police, reported at 1999 SCC L&S 429.

7. Learned counsel for Applicant stated that he was not pressing relief sought at sub paras (e) and (f) para 8. While concluding



his argument, it was also urged that the punishment was disproportionately high.

8. Arguing the case on behalf of Respondents, their Learned Counsel stated that notices were issued to all passengers and there was no way in which their attendance would have been enforced, since they could not be compelled to depose in an Enquiry. He contended that summons were issued, as can be seen for example at Annexure 4, wherein the persons at Sr. No. 7 to 12 are passengers. He also pointedly referred to the fact that statement of ticket holding passengers viz. Sudhir Shah and K.K.Kutty were recorded and these are part of the lists of documents relied upon and supplied to the applicant, as can be seen from annexure 3. He argued that the applicant was thus aware of this position throughout, right from the start of the Enquiry.

9. Learned Counsel for Respondents further contended that this was a case where all due procedure has been followed. Applicant's statements were recorded on the spot, and has been signed by two passengers. No representation was made on receipt of EO.s report. The learned counsel sought support the case 1998 SCC L&S 1722 to make the point that there was enough evidence otherwise to have come to the conclusion reached by Enquiry Officer.

10. The main question that is before us is to determine whether the fact that the railway passengers have not been called as



witnesses at the time of departmental enquiry proceedings vitiates the enquiry process, in the background of the facts and circumstances of the case, the arguments made, and the case law cited. It is seen that the first point regarding bias cannot be sustained, as what has been brought forth are vague allegations, that have not been substantiated, specially since since the Inquiry procedure have been followed. (We have also seen the Office file that has been produced before us in original at the time of arguments). We also note that care has been taken to record statements of two witnesses, at least, on the spot. As argued by counsel for respondent, annexure 3 also shows that copies of these have been supplied to the applicant, at the beginning of the enquiry. No objections on this count was raised then.

11. We have considered the three judgements cited by the learned counsel for the applicant. Indeed in Kuldeep Singh's case, what is decided is that Tribunal's can interfere in cases of "no evidence". The other case of S.C. Sharma decided by the Ahmedabad Bench, will need to be considered in the light of decision in O.A. 814/92 decided by this Bench on 19.3.1999, of which judgement we have taken notice. (This will be done in later paras.) The case of Karmarkar decided by Gauhati Bench is not relevant to the point at issue.

12. Now in the case of one L.S. Chauhan decided on 19.3.1999 (O.A. 814/92) by this Bench of the Tribunal, a Railway Train Ticket Examiner had been punished after enquiry. One of the issues therein related to the point that three passengers who were made prosecution witnesses were not examined by Enquiry



and the revised chart prepared by the applicant, we do not find either the said Ticket No. or the PNR No. and the names of the said persons. Similarly in Ex.P-4 only 4 out of 22 persons have signed the list prepared on the spot by Senior T.T. It is also observed that the coaches S-3 and S-4 were manned by the applicant between BBVT and PA and later on by another person Shri D.L. Siraswara. In fact Shri Siraswara says that he was to work between Solapur and Raichur and another T.T. had manned the coach between Pune and Solapur. There is nothing on record, to come to finding as to who manned the coach between Pune and Solapur.

14. It is also relevant to see that the Applicant has endorsed on the revised chart that an amount is to be collected from the passengers <sup>except</sup> at ~~at~~ Sr.No.71. This does create a doubt in favour of the Applicant. The non examination of some of the passengers thus creates a doubt. But as stated already it cannot be said on this basis, that this is a case of no evidence. It is equally true that there had been some statements recorded on the spot both in respect of passengers and Railway Officials and there is no reason to say that all evidence adduced has to be doubted.

15. It is also important to note that, in any case, Charge 3 against the Applicant has been proved and there is evidence of witnesses S/Shri H.B. Bajpai, B.A. Pathak, H.S. Harwalkar and S.K.Lad. Charge No.3 stands established in any case on the basis of testimony of these witnesses. There is, ~~thus~~, some weight in the dependence placed by counsel for respondents on the case of J. Srinivasan, (1998) SCC L&S 1722 to the effect that if delinquent's misbehaviour could be established on the basis of other evidence, including evidence of co worker, the Tribunal should not interfere with findings of Departmental Enquiries.

16. On the basis of above discussion, it is clear that the non examination of passengers will ipso facto not vitiate the enquiry. There is other evidence to come to the conclusions which the enquiry officer and Disciplinary Authority have come to. We have the limitation as per law settled by the Supreme Court, and the relevant case law cited above, that Tribunals cannot reappreciate or assess evidence and should not interfere exception in cases of no evidence. As discussed, it is difficult to come to the conclusion that this is a case of no evidence. And hence it has to be concluded that no interference in this case is merited.

17. We have also considered the arguments made to the effect that punishment awarded was disproportionately high. Considering that this is a case where the allegations relating to integrity have been proved through a regular enquiry, we are unable to see how the punishment can be termed as disproportionate and cannot come to the help of the applicant in this regard either.

18. In view of the above discussions, this Application is hereby dismissed with no orders as to costs.

*(S.L.Jain)*  
(S.L.Jain)

Member (J)

sj\*

*B.N. Bahadur*  
(B.N. Bahadur)  
Member (A) 07-06-2000