

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

ORIGINAL APPLICATION NO: 91/94

Shri Anil S hantaram Bhandare
Age 32 yrs., Occupation: Nil,
R/o. B.D.D.Chawl No.54,
Room No.78, Worli, Bombay-400018 .. Applicant

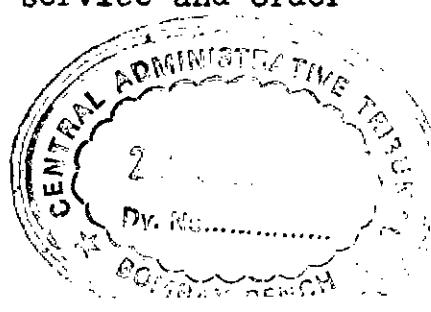
-versus-

1. Union of India
through
General Manager,
Western Railway,
Churchgate, Bombay.
2. Deputy Chief Mechanical
Engineer(M&P)/PL
Chief Works Manager's
Office, Carriage Workshop,
Lower Parel, Bombay-400013. .. Respondents
3. Works Manager(R)PL
Carriage Workshop,
N.M.Joshi Marg,
Lower Parel, Bombay-400013.

MAY IT PLEASE YOUR LORDSHIP

1. Particulars of order against which this application is moved:

The applicant challenges and impugnes
order dated 23-11-91, Ref.No.E.308/CW/
ASB/165 imposing the penalty of
removal from service and order



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bearing No.E.308/CW/ASB/165 dated 8-2-92 confirming order of penalty of removal of the applicant from service by the appellate authority and order dated 27-5-92 bearing reference No.E.308/CW/ASB/165 maintaining the appellate authority's order in review appeal.

Copies of order dated 23.11.91,
8.2.92 and 27-5-92 are annexed
to this application as Annexures
A, B, & C respectively.

2. Jurisdiction:

The applicant declares that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3. Limitation:

The applicant declares that he is challenging the final order dated 27-5-92 and therefore the application ought to have been filed on or before 27-5-93. However, the application is being filed on 23-6-94. Therefore there is a delay of 12 months and 26 days. The applicant is therefore filing an application detailing the cause of delay and praying for condonation of delay.



4. Facts of the case:

The applicant came to be appointed as a Khalasi in the year 1985, bearing ticket No. 8204. Thereafter he was discharging his functions as a Khalasi to the satisfaction of his superiors. As regards his duties and functions there were no complaint from his superiors or any other quarter. He acquired temporary status and thereafter he was regularised as a Khalasi. The applicant was chargesheeted for remaining unauthorisedly absent vide standard form of chargesheet dated 25-10-90 wherein it was alleged that he has remained unauthorisedly absent from duty w.e.f. 21-7-90 thereby he has violated provisions of Rule 3(1)(iii) of Railway Servants Conduct Rules, 1966. Thereafter it is seen that an enquiry in the absence of the applicant was conducted as the enquiry officer noticed that he has been appointed as Inquiry Officer and since communication was forwarded to the applicant informing the date of enquiry and since neither the acknowledgment is received by this office nor undelivered letter another letter was sent by registered post AD. However, again neither the employee reported to this office on 20-7-91, date of enquiry, nor acknowledgment or undelivered letter was received by this office upto 20-7-91 hence the enquiry is conducted ex parte on statement of administrative witnesses are eorded recorded.



Thus without knowledge and without any intimation to the applicant the enquiry officer with undue haste proceeded to conduct the enquiry. In the said enquiry three administrative witnesses were examined and on the basis of this the Inquiry Officer gave his finding to this effect :

"From the record available and the statement of administrative witnesses it is seen that Shri Anil S. Bhandare, Khalasi, Tkt. No. 8204, Khalasi of ACC/PL is a habitual unauthorisedly absent frequent. Hence I found him guilty for the charges framed against him under Rule 3(1)(iii) of the Railway Servants Conduct Rules, 1966"

Copies of enquiry reports and statement of witness is collectively annexed as Annexure 'D'

4.2 The applicant on appraisal of this development of fact was shocked and surprised as on 20-8-91 an order of removal from service was passed by the appellate authority concurring with the finding of the Inquiry Officer. The applicant immediately on 23-9-91 preferred an appeal. Copies of order dated 20-8-91 and appeal dt. 23-9-91 is annexed to this application as Annexure E & F respectively.

4.3 The applicant is at pains to point out at this juncture that though it is alleged that communications were forwarded to him informing the date of enquiry at the

conclusion of the enquiry copy of the enquiry report was not given to the applicant neither was any attempt made on the part of the respondents to accord an opportunity to represent against the findings of the Inquiry Officer before the disciplinary authority come to any conclusion. Further it is pointed out that the applicant was at no point of time given any copies of the documents and materials that were relied upon by the Inquiry Officer. The applicant still in the same flow of things state/that two witnesses came to be examined on 20-7-91 and one other witness was examined on 8-8-91. Therefore it is evident that the proceedings were carried over for more than one day and there is no record to establish that any attempt was made by the Inquiry Officer to communicate the next date i.e. 8-8-91. Therefore the applicant urges that there was a bias which was working in the mind of Inquiry Officer to ~~make~~ somehow fasten the guilt. In effect what the applicant asserts is that even before any conclusions could be drawn it was already established that the applicant has to be punished harshly.

4.4 The applicant states that he belongs to the category of Khalasi. He is a illiterate person and unaware as to rules and regulations, and therefore had pleaded ignorance. Though the stand cannot be given too ~~much~~ ^{much} importance yet the

applicant is at pains to point that the punishment that has been awarded is grossly disproportionate to the charge levelled against him. He was unauthorisedly absent can be denied but he was absent cannot be, and, in order to establish whether his absence was as a cause of some innocent reason was an deliberate attempt to deceive had to be established and for that purpose the applicant's say in the matter was of immense importance and hence the Inquiry Officer's action of acting with such utmost haste speaks volumes about the attitude he harboured against the applicant in the process of dispensing with the justice.

4.5 The applicant in his appeal had urged the appellate authority praying for a chance to serve the respondents in a better way. He was granted a personal hearing by the appellate authority on 8-2-92. The learned appellate authority was pleased to pass an order wherein it is recorded that the applicant has pleaded grounds that he was upset and therefore he could not follow the rules and the reason for upset was family problems and that he was should be apologised for the mistakes. However, the appellate authority confirmed the penalty imposed as he decided that the defence carried no weight and raises no new points. The applicant having run from pillar to post yet in the hope of finding some solace filed a review appeal on 6-4-92

and to his utter dismay vide order dated 27-5-92 the reviewing authority rejected the review appeal and confirmed order dated 20-8-91 and as a consequence of this the applicant has been thrown out of the employment and is on the verge of being led on to the roads leading to destitution and vagrancy. Copy of review appeal dt. 6-4-92 is annexed as Annexure 'G' along with ~~copy of order dt 8/6/93~~

4.6 The applicant thus states that considerable ~~grievous~~ injustice has been perpetuated on the hands of the respondent as a consequence of grave and illegal action entered into by the respondents the applicant finds himself in a plight *wherein it is* very difficult to maintain his body and soul together and therefore in the conspectus of the facts narrated above the applicant urges the Hon'ble Tribunal to intervene and interfere and set at naught the grave illegality in the interest of justice, fair play and good conscious.

5. GROUND:

The applicant challenges the validity, legality and maintainability of the impugned orders on the following amongst other without prejudice to each other:

5.1 The law has already crystallised enunciating the preposition in the matter of imposition of penalty which lays down the procedure namely in the event of

an imposition of penalty by the disciplinary authority an opportunity to represent against the findings of the Inquiry Officer has to be given as a mandatory requirement. In the absence of such an opportunity the entire enquiry vitiates. In the present case the disciplinary authority without according any opportunity to the delinquent to represent against the findings of the Inquiry Officer proceeded to decide the matter and concluded to concur with the findings of the Inquiry Officer. Hence this application deserves to be allowed on this count alone.

5.2 The applicant has been denied his valuable right to examine and test the veracity of the witnesses who have been examined in the enquiry. As a consequence of non communication of the date of enquiry and the Inquiry Officer proceeds to record and establishes the fact that neither the acknowledgment nor the undelivered letter has been returned to the office therefore he proceeded to conduct the enquiry wherein on the contrary he should have concluded that in the absence of any acknowledgment or non delivery of the letter as undelivered tantamounts to the communication not only being ^{not} delivered to the delinquent but lost in transit. Therefore it was patently illegal on the part of the Inquiry Officer to proceed ex parte. Further more it is

stated that it is not the case of the Inquiry Officer that the applicant continuously remained absent on the dates enquiry was fixed. He simply proceeds to record on some flimsy reason and proceeds with the enquiry clearly ^{suggests} ~~states~~ that he is determined to fasten the guilt somehow and he has already pre-decided to punish the applicant. The application deserves to be allowed on this ground.

5.3 The applicant is further at pains to point out that it is not that this enquiry was recorded in one single day it was carried over and the next date happens to be 8-8-91 and yet again it is seen that no attempts were made to communicate to the applicant of the next date of enquiry. Thus the fact stands established that it was pre-decided to conclude that the applicant has to be punished.

5.4 The applicant submits that the punishment awarded to him is shockingly disproportionate to the charges that have been levelled against him. As ^{the charge} it amounts to be absent unauthorisedly, ^{as} the absence is not in conformity with the rules, but in order to establish whether the absence is authorised or unauthorised it is very important that the delinquent be given an opportunity to have his say in the matter. Having proceeded ex parte much credence

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sent
cannot be ~~led~~ to the proceedings as
everything has transpired behind the
back of the applicant and this aspect of
the matter has been ignored not only by
the disciplinary authority but by the
appellate authority as well as the
reviewing authority and thus the entire
action suffers from the vice of utter
non application of mind. Therefore this
application deserves to be allowed on
this ground also.

6. Details of remedies exhausted:

Applicant declares that he has
availed all the departmental remedies
available to him.

7. Matter previously filed:

Applicant declares that he has
not filed any other ~~writ~~ or application
before any other court in India.

8. Reliefs sought:

The applicant most humbly and
respectfully begs to pray as
under:

a. That this Hon'ble Tribunal be
pleased to quash and set
aside the impugned orders
at Annexure 'A' 'B' & 'C'

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- b. direct the respondents to reinstate the applicant with continuity of service, backwages and all other consequential reliefs;
- c. saddle the cost of the application on the respondents;
- d. grant any other relief/reliefs this Hon'ble Tribunal may deem fit under the circumstances.

9. Interim relief:

NIL

10. The application is being filed through an advocate and the applicant wishes an oral hearing at every stage through his advocate.

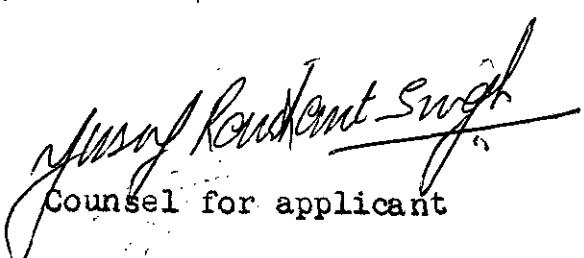
11. Details of postal order:

IPO NO 807 380433
dt 22/6/94 GR@ Bombay

12. List of enclosures:

Annexure A to G

Date: 23/6/94


Counsel for applicant

VERIFICATION:

I, Shri Anil Bhandare, resident of Bombay, do hereby state on solemn affirmation that the contents of paras 1 to 12 of this Original Application are true to the best of my knowledge and belief and have been drafted as per my instructions and the contents have been explained to me in vernacular.

Hence verified and signed at Bombay,
this the 23rd day of June, 1994.

Anil S. Bhandare
(ANIL BHANDARE)
APPLICANT / DEONENT.

Yusuf Ravikant Singh
Yusuf Ravikant Singh
Counsel for the Applicant.