

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH: MUMBAI.

ORIGINAL APPLICATION NO. 36/95

Date of Decision: 29.7.2005

Md. Usman A. Bari Applicant

Shri Ramesh Ramamurthy Advocate for Applicant/s

Versus

Union of India & Ors. Respondents

Shri V.S. Mathur Advocate for Respondents

CORAM

HON'BLE SHRI Anand Kumar Bhatt

Member (A)

HON'BLE SHRI MUZAFFAR HUSAIN.

MEMBER (J)

1. To be referred to the Report or not
BOMBAY BENCH: MUMBAI.
2. Whether it needs to be circulated to other
Benches of the Tribunal?
3. Library. ✓

Muzaffar Husain
(MUZAFFAR HUSAIN)
MEMBER (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 366/95

THIS THE 29 TH DAY OF JULY, 2005

CORAM: HON'BLE SHRI ANAND KUMAR BHATT. MEMBER (A)
HON'BLE SHRI MUSAFFAR HUSAIN. MEMBER (J)

Mohd. Usman A. Bari,
working as Diesel Assistant,
Sholapur Division,
Central Railway, Sholapur,
Maharashtra.

... Applicant

By Advocate Shri Ramesh Ramamoorthy.

Vs.

Union of India, through
General manager,
Central railway,
Headquarters Office,
Bombay VT, Bombay001.

Chief Operating Manager,
Central Railway,
Headquarters Office,
Bombay VT, Bombay-400 001.

Additional Divisional
Railway Manager, Central
Railway, Sholapur Division,
Sholapur, Maharashtra.

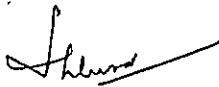
Divisional Mechanical Engineer (P),
Central Railway, Sholapur Division,
Sholapur, Maharashtra. ... Respondents

By Advocate Shri V.S. Masurkar.

O R D E R


Hon'ble Shri Muzaffar Husain. Member (J)

Applicant herein is aggrieved by the order dated



07.3.1994 passed by the Disciplinary Authority imposing the penalty of removal from service. He is also aggrieved by the order dated 21.6.1994 passed by Additional Divisional Railway manager, Solapur acting as Appellate Authority who ordered to reinstate him in a lower grade post of Diesel Assistant. He is also aggrieved by the order dated 13.3.1995 passed by Revisional Authority who restored the penalty awarded by the Disciplinary Authority.

2. The facts of the case briefly enumerated are as follows. The applicant joined the railway service as Class IV employee in steam traction. He got promotion successively as fireman and driver. His promotion as Driver Grade-C was issued on 08.10.1992. Applicant stated that he was issued with charge sheet dated 30.3.1993. Inquiry was conducted and the Inquiry Officer submitted his report and finding by letter dated 03.02.1994, applicant submitted his representation. The Disciplinary Authority by order dated 07.3.1994 imposed the penalty of removal from service on the applicant. The Appellate Authority Divisional Railway Manager Solapur acting however, on consideration of the appeal, reduced the penalty of reversion to lower grade post of Diesel Assistant. The chief Operating Manager, Bombay acting as Revisional Authority after giving notice to the applicant, again restored the penalty imposed by Disciplinary Authority vide



his order dated 13.3.1995. The applicant filed appeal against that order to the General Manager, which is pending.

3. The applicant impugned the order of penalty on the ground that the inquiry is vitiated because of various short comings and also because the order of removal from service by the Disciplinary Authority is not issued by the competent authority. As regards infirmity in the inquiry the applicant stated that all the 25 documents asked for by him vide his letter dated 15.5.1993 were not supplied to him and important witness cited by him as defence was not summoned and his defence brief was not taken into consideration by the Inquiry Officer.

4. The respondents have filed their reply supporting the action taken by them in holding inquiry and imposing penalty of removal from service. It is stated that the applicant was working as a Driver of a Special Goods Train. He irregularly passed signal resulting in a Head-on collision of the train with an empty stationary rake of an Express train at Solapur Station on 16.02.1993. As a result of this accident, two diesel assistants died on the spot and other three railway employees were injured and there was an estimated loss of about two crores. They state that there are no infirmities in the conduct of the inquiry. The applicant was given every opportunity to inspect and take the extracts of the documents he desired



and the applicant and his ARE gave recorded statement that they had examined all the documents to their satisfaction and they did not want any defence witness to be examined. As regards the competency of the authority passing the punishment order, they have stated that as per the Schedule of Powers, on Establishment matters, senior scale officers will be appointing authority for promotion to non gazetted posts upto the grade of Rs.1400-2200. The order of appointment in respect of the applicant was issued by Divisional Personal Officer who is in the senior scale. The Divisional Mechanical Engineer who is not below the rank of senior scale officer was the competent disciplinary authority as the applicant was working as a Goods Driver. In view of these reasons, they submit that the OA is liable to be dismissed.

5. We have heard Shri Ramesh Ramamoorthy for the applicant and Shri V.S. Masurkar learned counsel for the respondents and perused the documents placed on record.

6. Learned counsel for the applicant made out the following points. (1) The Inquiry Officer was under pressure and therefore he could not give independent finding. (2) Inquiry is vitiated as there are various lapses in the inquiry. (3) Notice dated 07.11.1994 issued by Chief Operating Manager, Bombay for the penalty proposed to be enhanced, does not contain reasons. (4) Additional



Divisional Railway Manager has taken a lenient view on humanitarian ground which cannot be the subject matter of review. (5) The order passed by Revisional Authority is non-speaking order. (6) the applicant has been acquitted in the criminal case on the same facts, therefore, he could not be held guilty in the departmental proceedings. (7) The impugned order of removal has been passed by an authority, who is subordinate to the appointing authority and as such the impugned order of removal from service is liable to be quashed and set aside.

7. The first contention advanced by learned for the applicant is that the Inquiry Officer was under pressure and therefore he could not give independent finding. Learned counsel stated that Inquiry Officer was subordinate to the officer who conducted the preliminary inquiry in which the applicant was found guilty. The Inquiry Officer would not take any decision contrary to the report and findings of officers who are higher in rank than him. Therefore, impugned orders were passed by the officer who had either pre-determined mind and who are not independent. The Inquiry officer was also predetermined in finding the applicant guilty and he also did not have any role to play and he felt himself bound by the report given by the senior administrative grade officer. Learned counsel for the respondents on the other hand contended that the charge

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sheet issued to the applicant was framed as per the finding of the inquiry conducted by Senior Administrative Grade Officer. Subsequently, independent inquiry was conducted by issuing memorandum of charges dated 30.3.1993 to the applicant. The applicant was given full opportunity to defend himself during the course of the inquiry. As per the inquiry report and finding submitted by the Inquiry Officer applicant was found guilty. It is also submitted that actual inquiry was conducted based on the preliminary inquiry report and there was no reason for inquiry Officer to be influenced by the preliminary inquiry report of senior officers. We notice that the charge sheet was issued to the applicant vide memorandum dated 30.3.1993. Annexure-III to the memorandum is the list of documents by which the article of charge framed against the applicant are proposed to be sustained viz (1) proceedings of Senior Administrative Officer's Enquiry held at Solapur on 22.2.93 and 23.2.93. It is not disputed that such document was supplied to the applicant and he was given full opportunity to inspect and take extract of the documents he desired before commencement of the inquiry. It is also noticed that the applicant and his ARE gave recorded statement that they have examined all the documents to their satisfaction and they did not want any defence witness to be examined. The applicant was also given full opportunity to cross

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examine the witnesses. There is nothing on record to show that the Inquiry officer was biased against the applicant or he was in any manner influenced by the preliminary inquiry report of the Senior Administrative Grade officer. Preliminary inquiry conducted by Senior Administrative Grade officer in respect of the train accident was the basis of issuing the charge sheet, but the inquiry officer based his finding on the basis of evidence adduced during the inquiry. In the circumstances, it cannot be said that the Inquiry Officer was influenced by the said report. Therefore, the contention advanced by learned counsel for the applicant in this regard has no force.

8. The second contention advanced by learned counsel for the applicant is that the inquiry is vitiated as there are various lapses in the inquiry. Learned counsel for the applicant submitted that all 25 documents asked for by the applicant vide his application dated 15.5.1993 were not supplied to him. The important witness Shri Khaja Husain was not summoned and his defence brief was not taken into consideration by the Inquiry Officer. Learned counsel for the respondents stated that full opportunity was given to applicant to inspect and take extract of the documents and also to defend his case. We have noticed that the Inquiry Officer in his finding has recorded that the delinquent employee was given full opportunity to inspect and take

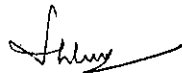
J. Khajuria

extracts of the documents he desired. Before commencement of the inquiry the delinquent employee and his ARE ^{gave} recorded ~~statement~~ statement that they have examined all the documents to their satisfaction and they did not want any defence witness to be examined. Respondents in para 12 of the written statement made averment to this effect, the applicant has not controverted this fact by filing any rejoinder. More over this plea has not been raised before Appellate Authority. As regards the Inquiry officer not considering the defence brief of the applicant, the defence brief has to be submitted during the course of the inquiry by the delinquent employee and it is obligatory on the part of the Inquiry Officer to consider the defence brief submitted by the delinquent employee / ARE. This act on the part of the Inquiry officer does not vitiate the inquiry as the applicant was fully satisfied with the inquiry proceedings and no prejudice has been caused to the applicant. Hon'ble Apex Court in State Bank of Patiala Vs. s.K. Sharma 1996 (1) SCSLJ 441 it has been held that Violation of any and every procedure cannot be said to be automatically vitiate the inquiry held or the order passed. It was further held that "In the case of procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance, be that as it may,

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the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee." More over, we also find that points raised before this Tribunal have not been raised before Appellate Authority and the applicant cannot raise these issues before the Tribunal. Hon'ble Apex Court in Deokinandan Sharma Vs. Union of India 2001 SCC (L&S) 1079 has held that grounds not raised before Disciplinary Authority or Appellate Authority cannot be raised before the Tribunal. Therefore, arguments raised by learned counsel for the applicant that there are procedural lapses in the inquiry has no substance.

9. The third, fourth and fifth contentions advanced by learned counsel for applicant are taken together. Learned counsel contended that notice dated 07.11.1994 issued by Revisional Authority for penalty proposed to be enhanced does not contain reason. It is also contended that the Additional Divisional Railway Manager has taken a lenient view on humanitarian ground which can not be subject matter of review and further contended that notice dated 07.11.1994 issued by Chief Operating Manager, Bombay acting as Revisional Authority for enhancement of penalty reduced by Appellate Authority is non-speaking order. It is noticed that Revisional Authority in para 2 and 3 of the said memorandum recorded reasons and penalty proposed to be



enhanced. In para 5, the applicant was given an opportunity for making representation against the penalty proposed to be enhanced. We also notice that the applicant submitted representation dated 12.12.1994 (Exhibit-J) and the Revisional Authority by order dated 13.3.1995 enhanced the penalty from reduction to that of removal from service. Relevant part of the order reads as under - "I have carefully gone to the disciplinary proceeding against you and I do not agree with the decision of DRM SUR while considering the appeal. It was a clear case of negligence on part of you causing enormous loss of Railway property including two casualties. I therefore agree with the disciplinary authority and decided to enhanced the penalty from reduction to one grade below i.e. Diesel Assistant in Gr. Rs.950-1500 (RPS) at stage of Rs.1250/- p.m. To that of Removal from service." We also notice that the applicant has filed the appeal on 23.5.1995 after filing of this OA on 29.3.1995 to the General Manager against that order, which according to the applicant is pending. But learned counsel for the respondents Shri V.S. Masurkar placed record before us and stated that the appeal preferred by the applicant was rejected by General Manager vide order dated 24.7.1996 and the order communicated by Registered AD which was acknowledged by applicant on 17.8.1996. This fact has not been disputed by the applicant. The applicant



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admittedly has not challenged the order dated 24.7.1996 passed by General Manager rejecting the appeal of the applicant though the order was passed after filing of this OA. The applicant was at liberty to challenge this order by making suitable amendment in the OA, but he has not done so. Thus, the order passed by Revisional Authority cannot be challenged unless the applicant challenges the order of Appellate Authority passed on his appeal filed against the order of Revisional Authority. Thus, arguments advanced by learned counsel for the applicant on these points do not have any force.

10. The sixth point advanced by learned counsel for the applicant is that the applicant has been acquitted in the criminal case on the same facts, therefore, he could not be held guilty in the departmental proceedings. Applicant has also filed judgment in R.C.C. No.1066/95 in case of State of Maharashtra Vs. Mohammad Usman Bari decided on 24.12.1999 to show that he has been acquitted for the offences punishable under section 304(A), 337, 338, 427 of Indian Penal Code and Sections 154, 175 of Indian Railway Act. Learned counsel has also argued that in view of judgment in case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Limited AIR 1999 SC 1416 the applicant is entitled to be reinstated in service with all consequential benefits. Learned counsel for the respondents argued that the



acquittal in criminal case is no ground for exoneration of applicant in departmental proceedings, because the standard of proof in departmental proceedings vis-a-vis criminal trial is different. In departmental proceedings, preponderance of probabilities would be sufficient whereas in criminal case guilt must be proved beyond reasonable doubt. Learned counsel has placed reliance on the following decisions of Apex Court (1) PC Kakkar Vs. Chairman and Managing Director, United Commercial Bank & Others 2003 SCC (L&S) 468. In this case it has been held by Apex Court that acquittal in criminal case based on the same allegation, held, is not per se such a ground - At most it may be a circumstance to be considered while awarding punishment. (2) Management of Krishnakali Tea Estate Vs. Akhil Bhartiya Chah Mazdoor Sangh 2005 (1) AISLJ (SC) 197 In this case, the Apex Court considered the ratio of Capt. M. Paul Anthony's case and also State of Rajasthan Vs. B.K. Meena & Others 1996 (6) SCC 417 and observed in para 22 as under -

Para 22. The Labour Court has in fact perused the order of the Judicial Magistrate and the exhibits produced therein and came to an independent conclusion that the order of the criminal case has no bearing on the proceedings before it which finding of the Labour court, in our opinion, is justified. It may be some use to us to refer at this stage to a judgment of this Court in case of State of Rajasthan, wherein it is held thus - "There is yet another reason. The approach and the objective in the criminal

J. K. Meena

proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal, from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different ..."

(3) Cholan roadways Ltd. Vs. G. Thirugnanasambandam 2005

SCC (L&S) 395 the Apex Court in para 19 held as under -

Para 19 It is further trite that the standard of proof required in a domestic enquiry vis-a-vis a criminal trial is absolutely different. Whereas in the former "preponderance of probability" would suffice; in the latter, "proof beyond all reasonable doubt" is imperative. The Court has further held "Res ipsa loquitur is a well-known principle which is applicable in the instant case. The general purport of the words res ipsa loquitur is that the accident "speaks for itself" or tells its own . There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Once the said doctrine is found to be applicable the burden of proof would shift on the delinquent. In a case of this nature the probative value of the evidence showing the extensive damages caused to the entire left side of the bus; the fact that the bus first hit the branches of a tamarind tree and then stopped at a distance of 81 ft therefrom even after colliding with another bus coming from the front deserved serious consideration at the hands of the Tribunal. The nature of impact clearly demonstrates that the vehicle was being driven rashly or negligently. Moreover, the enquiry

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officer has categorically rejected the defence of the respondent that the bus was being driven at a slow speed. The burden of proof was, therefore, on the respondent to prove that the vehicle was not being driven by him rashly or negligently."

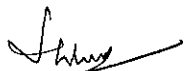
In the light of the decisions of Apex Court quoted above, we have examined the facts of the present case. The applicant was issued memorandum of charge dated 30.3.1993 on the following charges -

"On 16-2-1993, while working as Driver on Up Diesel Goods Train No.18981 ex-Wadi to Solapur, while approaching Solapur you failed to keep the train fully under control and to stop short of Up Home Signal No.1/B of Solapur station which was in 'ON' position. You passed Up Home Signal No.1/B Solapur station and Up Routing signal No.3/B Solapur Station at danger and collided Head-on with two diesel locomotives and empty rake of the train No.1025 Down which was standing on Platform No.1 at Solapur at about 12-15 hours.

You had also failed to restrict the speed of your train to 15 KmPH while approaching Up Home Signal No.1/B of Solapur station. This collision has resulted in instant death of two Diesel Assistants on the spot and derailment of 3 WDM/2 Locos and 25 wagons causing loss of Railway property worth Rs.1,83,01,530 - approximately.

The said Head-ON collision is attributed to careless and negligent working on your part as Goods Driver violating Rules No.3.80 (1)(2) of the G&SR Rules."

The order dated 24.12.1999 passed by JMFC railway Daund in RCC No.1066/95 trial court observed that prosecution failed to establish the guilt of the cause beyond all reasonable doubt. The operative order reads as under -



"The accused Mohammad Usman Bari is hereby acquitted for the offence punishable under Section 304-A, 337, 338 and 427 of the I.P.C. And Sections 154 and 175 of the Indian Railway Act."

In the case on hand we have noticed that the charges as well as the evidence adduced during the departmental proceedings were not the same as in criminal proceedings. The material before the Criminal Court and Inquiry Officer were entirely different. The Inquiry Officer in para 6.xii observed as under -

"In Ans to Q.No.46 DE admitted that Gate distant signal was two yellow, Gate signal one yellow, that means he was aware after sighting Gate distant signal i.e. more than 2500 meters away from Home signal that Up Home was danger and as he was approaching at the speed of 30 to 35 KMPH as per his Ans to Q.No.44, sufficient margin was there for the DE to stop the train at Home Signal. But the collision which had caused derailment of 3 locos and 25 wagons itself speak of the high speed at which his train had collided with 1023 stationary rake on Platform No.1. Gate man Shri Gurappa Allbanna in Ans. To Q. No.QD5 said that the train was running with excessive speed/"

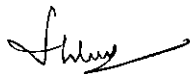
It is seen that applicant, after observing that gate distant signal was two yellow, gate signal was one yellow, he might have restricted the speed of the train as the signals were showing cautious position, but he could not control the speed more than 2500 meters away from the Home signal and passed Up home signal and up routing signal in danger position and collided with two diesel locomotives and empty rake of train standing at platform No.1. From

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findings of Inquiry Officer it is seen that the train was running at excess speed, the burden of proof was therefore on the applicant to prove that the train was not running rashly and negligently. A three Judges Bench of Hon'ble Apex court in case of Depot Manager, A.P. State Road Transport Corporation Vs. Mohd. Yousuf Miya & Others 1997 SCC (L&S) 548 analysed the legal position in great deal and held as follows -

"The purpose of departmental enquiry and prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service."

It is well settled that the approach and objective of criminal proceedings and departmental proceedings are altogether different. The standard of proof required in the departmental proceedings vis-a-vis criminal trial is absolutely different. In departmental proceedings rule of preponderance of probabilities would be sufficient whereas in criminal trial standard of proof beyond all reasonable doubt is imperative. In this case the charge is failure to anticipate the accident. It has nothing to do with the culpability of offence punishable under Sections 304-A, 337, 338, 427 of IPC and Sections 154 and 175 of Indian



Railway Act. In our considered view the fact that the applicant was acquitted in the aforesaid criminal case before JMFC (Railways) Daund by order dated 24.12.1999 is by itself is not a ground for us to hold that the impugned order should be quashed and set aside. We would like to refer the decision of Hon'ble Bombay High Court in MSRTC Vs. MAAA Sheikh 2001 (1) MhLJ 625 wherein it has been clearly and categorically held the decision of a criminal court cannot affect the departmental proceedings and merely because an employee has been acquitted by a criminal court, that by itself cannot absolve an employee from disciplinary action. Indeed, the Hon'ble Supreme Court in Capt. M.Paul Anthony Vs. Bharat Gold Mines Ltd. & another (JT 1999 (2) SC 456) have held that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas, and the standard of proof required in both these proceedings is also different. While in a criminal case the guilt of the accused has to be proved beyond all reasonable doubt, it is sufficient in a disciplinary proceedings if the preponderance of probability points to the misconduct of the delinquent. Thus, the arguments advanced by learned counsel for applicant in this regard is not sustainable.

11. The last contention raised by learned counsel for applicant is that the impugned order of removal from

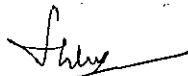


service has been passed by an authority, who is subordinate to the appointing authority and as such the impugned order of removal from service is liable to be quashed and set aside. We notice that the same contention was raised by the applicant in this OA and it was rejected vide order dated 25.6.1999. The applicant filed WP No.3415/2000 before Hon'ble High Court of Judicature at Bombay decided by order dated 25.1.2005. The Hon'ble High Court in para 5 of the order held as under -

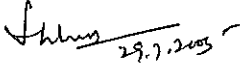
There is no dispute that the order promoting the petitioner to the post of driver, grade C dated 08.10.1992 was issued by the Additional Divisional Railway manager. It was signed on behalf of the Divisional Personnel Officer. The petitioner was working in the mechanical section and, therefore, obviously, the order which was issued by the Divisional Personnel Officer was on the directions of Additional Divisional Railway Manager. In these circumstances, the Tribunal has erroneously concluded that the appointing authority was the Divisional Personnel officer and not the Additional Divisional Railway manager. Consequently, either the Additional Divisional Railway manager or an officer equivalent in rank being the Disciplinary Authority ought to have issued the order of penalty. The order of removal issued by the Senior Divisional Mechanical Engineer who is subordinate to the Additional Divisional Railway Manager cannot be sustained.

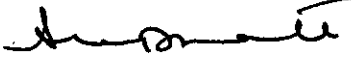
The respondents have not filed any appeal against the findings recorded by Hon'ble High court in para 5 of the order quoted above. In view of the findings recorded by Hon'ble High court. We cannot consider this ground again.

12. For the reasons stated above, we do not find any



reason to interfere with the findings of the Inquiry Officer. In view of the findings recorded by Hon'ble Bombay High Court in para 5 of their order dated 25.1.2005 that Senior Divisional Mechanical Engineer was not competent to pass the order of removal from service on the applicant, the order dated 07.3.1994 passed by Disciplinary Authority and consequently the order dated 21.6.1994 passed by Appellate Authority and the order dated 13.3.1995 passed by Revisional Authority are hereby quashed and set aside. However, liberty is granted to the respondents to proceed in the matter by referring it to the competent authority for appropriate order including the treatment of period from the date of removal from service till the date of retirement, which has already taken place. OA is partly allowed as above. No order as to costs.


(MUZAFFAR HUSAIN)
MEMBER (J)


(ANAND KUMAR BHATT)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI.

R.P. No.: 10/2007 **IN O.A.No.:** 366/95.

Dated this Wednesday the 6th day of June, 2007.

CORAM : Hon'ble Shri A. K. Agarwal, Vice-Chairman.

Hon'ble Shri Muzaffar Husain, Member (J)

Mohd. Usman Abdul Bari ... Applicant
(Review Petitioner)

VERSUS

Union of India & Others ... Respondents.

ORDER

Per : Shri A. K. Agarwal, Vice-Chairman.

This Review Petition has been filed for the review of the order given by the Tribunal on 04.04.2007 while disposing of contempt petition no. 18/2006. The contention of the petitioner is that the Tribunal had dismissed the contempt petition on the ground that substantial compliance of the Tribunal's order dated 29.07.2005 has been done by the respondents. The petitioner has contended that direction given by the Tribunal for referring the matter to competent authority to pass orders in the disciplinary proceedings has not been complied with till date. It is further mentioned that the benefit granted by the respondents to the Review Petitioner like provisional pension, medical benefits, passes, etc. are as per

rules and were not a part of the direction given by the Tribunal in its judgment dated 29.07.2005. In view of above, a prayer has been made by the applicant to review the order dated 04.04.2007 and restore the contempt petition on file.


2. After perusal of the case we observe that while setting aside the order of removal from service of the applicant the respondents were granted liberty to proceed in the matter by referring it to the competent authority for appropriate orders. The respondents have been taking time for implementation of the Tribunal's order and the applicant filed a contempt petition in June 2006. The Tribunal vide its order dated 06.10.2006 granted extension of time to respondents up to 29.01.2007 for the implementation of its direction. On 29.01.2007 when the applicant voiced a grievance about medical facilities and passes the respondents sought time for filing a status report. The learned counsel for respondents submitted that the applicant is entitled for medical benefits and railway passes. Regarding compliance of Tribunal's direction, the respondents had stated that the matter was referred to the Railway Board and after doing the needful the Railway Board has sought the opinion of UPSC. It was mentioned by respondents that since the applicant has superannuated, the advice of UPSC is an essential requirement. The Tribunal, after observing that the respondents have made a substantial progress after referring the matter


to the competent authority, arrived at a conclusion that substantial compliance of Tribunal's direction has been done and dismissed the C.P.

3. Besides facts of the case as mentioned above, we also find that there is no provision of reviewing an order given by the Tribunal while disposing of a contempt petition. The Lucknow Bench of this Tribunal while disposing of Review Petition in the case of Baljeet Singh Vs. Shambhoo Nath Chaturvedi & others [2002 (1) ATJ 657] has held as follows :

"Thus, this Tribunal is governed by the contempt of Courts Act, 1971 and the Contempt of Courts (C.A.T.) Rules, 1992. Under the Contempt of Courts Act, there is no provision to review an order. Thus, though rule 7 of C.A.T. (Procedure) Rules, 1987 provides for review but the Contempt of Courts (C.A.T.) Rules, 1992 does not provide procedure for review of an order passed on a Contempt Petition."

4. In view of the above, we are of the opinion that the Review Petition filed by the applicant has no merit and further, there is no legal provision for the review of an order passed on a contempt petition. As a result, the Review Petition No. 10/2007 is dismissed by circulation.


(MUZAFFAR HUSAIN)
MEMBER (J)


(A. K. AGARWAL)
VICE-CHAIRMAN.