

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 232 of 1997.

Dated this Wednesday, the 8th day of August, 2001.

Pramod Narhar Sonar, Applicant.

Shri N. C. Saini, Advocate for the
Applicant.

VERSUS

Union of India & Another, Respondents.

Shri R. R. Shetty, Advocate for
Respondents.

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

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).

OS*

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

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

Pramod Narhar Sonar,
Enquiry-cum-Reservation Clerk,
Thane Central Railway,
Resident of 95/14,
Ganesh Nagar Co.op. Hsg. Society,
At Manda, Titwala, Tal. Kalyan,
Dist. Thane.

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Applicant.

(By Advocate Shri N. C. Saini)

VERSUS

1. Union of India through
General Manager,
Central Railway,
C.S.T. Mumbai 400 001.

2. Divisional Railway Manager,
Mumbai Division,
C.S.T. Mumbai - 400 001.

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Respondents.

(By Advocate Shri R. R. Shetty)

ORDER

PER : Shri S. L. Jain, Member (J).

This is an application under Section 19 of the Administrative Tribunals Act, 1985 to quash the order dated 17.07.1996 with a direction to allow the applicant to earn the

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increment as much as normal practice in the grade of Rs. 1400-2300 as due on 01.05.1996 and payment of the same alongwith interest.

2. The applicant was working as Enquiry-cum-Reservation Clerk in the grade of Rs. 1400-2300 at Thane Railway Station of Mumbai Division of Central Railway. He was served with a charge-sheet No. BB/C/DAR/Minor/20/95 dated 28/31.8.1995 by Assistant Commercial Manager (Reservation), Mumbai. The applicant submitted the reply to the same. The Disciplinary Authority, i.e. the Divisional Commercial Manager (D.C.M.)-II, being not satisfied with the applicant's representation/reply, held him guilty and penalised with the penalty of with-holding the increment from Rs. 1520/- to Rs. 1540/- in the grade of Rs. 1400-2300 due from 01.05.1996 for a period of three years which will not affect the applicant's future increment. The applicant, against the imposition of said penalty, appealed to the appellate authority i.e. Sr. Divisional Commercial Manager, Mumbai C.S.T. on 01.02.1996, which was rejected vide order dated 14.05.1996. The applicant preferred a review petition on 18.06.1996 to the Additional Divisional Railway Manager (O), C.S.T., Mumbai, which was also rejected vide letter No. MB/C/DAR/Minor120/95 dated 12.07.1996. Hence, the present O.A.

2. The grievance of the applicant is that he has denied the charges levelled against him, The Disciplinary Authority, Appellate Authority and Reviewing Authority have not applied

their mind while disposing of the representation/reply, appeal/review of the applicant. The penalty imposed is harsh and unjust. The applicant has raised the question that as the passengers were moving in one direction by one train and had filled the forms jointly, this does not make the booking illegal. As in the Booking Counter there is always a queue and the other persons just behind the person tendering the requisition, did not raise any objection; this suggests that no such incident has taken place. The suspicion cannot take the ^{place of} proof.

3. The claim of the applicant is resisted by the respondents and alleged that the applicant was charged with accepting more than one requisition form from the same passenger being Form Nos. 19 to 24 for the same train with six names in each form. The representation was duly considered by the Disciplinary Authority, Appointing Authority and Reviewing Authority. The penalty imposed is neither harsh nor unjust, hence prayed for dismissal of the O.A. alongwith cost.

4. The applicant has submitted his explanation vide letter dated 20.09.1995 (Annexure A-3). A perusal of the same makes it clear that the applicant has not requested for a detailed/oral enquiry. The Learned Counsel for the applicant tried to argue that the charge-sheet is vague. Suffice to say that the said question was even not raised by the applicant in his

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representation dated 20.09.1995. The said question was even not pressed in the memo of appeal and in review application. Hence, the applicant cannot be permitted to raise such a new plea during the course of judicial review.

5. The Learned Counsel for the applicant also argued that the applicant was not permitted the inspection of documents asked for. We have carefully perused the records and are of the opinion that no such grievance was ever made by the applicant. Even the said plea is not raised in the O.A. Hence, it is an after-thought defence, which cannot be considered.

6. The respondents have submitted the file of disciplinary proceedings. A perusal of the same makes it clear that the requisition forms for reservation, 6 in number, are filled up by one person, which is apparent, on perusal of the handwriting and address of the person concerned, which is Omni Trade, Emca Sadan, Prabhadevi, Bombay-25, telephone number 203 9122.

7. The defence raised by the applicant that if the person tendering the requisition form tenders more than one form, the next person in queue would not tolerate and object to it, resulting in public disturbance, which has not happened. By the said defence we are not satisfied. The reason is, many things happen irregularly or illegally and the public tolerates it because of the circumstances prevailing at such places. The

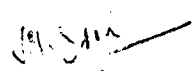
persons standing in queue are not from one locality, so it is always a matter who has to lead and object to such irregularity. No one wants to take the risk. Different persons act differently in one and the same situation. Hence, we are not satisfied with the said defence.


8. The applicant was served with a minor penalty charge-sheet dated 28/31.3.1995. He never demanded for inspection of documents. On the other hand, admits the acceptance of said requisition forms, issue of tickets and never requested for detailed enquiry. The act of the applicant certainly amounts to acceptance of more than one requisition form from one person at a time. The reason is apparent that he has received all the requisition slips one after another. The perusal of the requisition forms suggest and it strikes to a man of ordinary prudence, that only one person is seeking requisition for all, some of them are - Sharma, Tendoo, Mahajan, (in one requisition form), Sharma, Arora, Khare, Shankar, Damle (in another form), Chauhan, Ghosal, Kushwaha, etc. (in another form), Mishra, Singh, Shaw (in another form), Mohanty, Gupta, Goyal, Acharya, Srivastava (in another form), Sahoo, Choudhar, Patel, Singhal, Patnaik (in another form). All such persons cannot be the persons of one family. In absence of demand for oral enquiry, we are not inclined to accept that more than one person have tendered the said forms.

[Signature]

[Signature] ... 6

9. His grievance that the penalty is harsh and unjust holds no water, as it is entirely within the discretion of the authorities, as it does not shocks the conscious of the Tribunal and is also not illegal one but lenient one. In the result, the O.A. deserves to be dismissed and is dismissed with cost amounting to Rs. 1,000/- (Rupees : One Thousand only) payable by the applicant to the respondents within three months from the date of receipt of the copy of the order.


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


(B. N. BAHADUR)
MEMBER (A).