

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1006 /97

Date of Decision: 6.5.2002

S. R. Mishra

Applicant.

Shri J. V. Gaugal

Advocate for
Applicant.

Versus

UOI & m-

Respondent(s)

Shri V. S. Masurkar

Advocate for
Respondent(s)

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?

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(B. N. Bahadur)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Coram: Hon'ble Mr.B.N.Bahadur - Member (A)
Hon'ble Mr.S.L.Jain - Member (J)

O.A.1006 OF 1997

S.R.Mishra,
Sr.TTE/CCG,
DCTI/GTR Bombay Central,
Western Railway,
Mumbai.

(By Advocate Shri D.V.Gangal) - Applicant

Versus

1. Union of India
through the General Manager,
Western Railway, Head Office,
Churchgate,
Mumbai.
2. A.D.R.M. (T),
Mumbai Division (BCT),
Western Railway,
Bombay Central.
3. Sr. Divisional Commercial Mananger,
DRM's Office,
Mumbai Division, BCT, Western Railway,
Bombay Central.
4. Divisional Commercial Manager (Ctg) BCT,
DRM's Office, Mumbai Division, BCT,
Western Railway,
Bombay Central.
(By Advocate Shri V.S.Masurkar) - Respondents

O R D E R

By Hon'ble Mr.B.N.Bahadur, Member (A) -

The applicant in this case is aggrieved by the penalty imposed upon him, after departmental enquiry, by the Disciplinary Authority and upheld by the Appellate Authority and in turn by the Revisional Authority. The respective impugned orders are at Exhibits - A- 1, A-2 and A-3 in the Paper Book. The penalty imposed is reduction to the next two stages in the time scale of pay for a period of two years, with the effect of postponing

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future increments. The applicant prays for quashing and setting aside of these orders and grant of consequential benefits as listed in Para 8 (b) and 8 (c) of OA.

2. The facts, as brought out by the applicant, are that he was served with a charge sheet dated 3.1.1991 and that he was charged with accepting a demand of Rs.250/- from a party by allowing them to pass through the gate without charging excess fare ticket, the details of which are in the charge sheet. The applicant further describes the process of enquiry stating that he denied the charges. After full enquiry, the Enquiry Officer had exonerated him from the charges by arriving at a finding that the charges were not proved, and providing reasons therefor. It is the grievance made by the applicant that the decision of the Disciplinary Authority is not adequate and proper and that he was not provided with an opportunity which is required to be provided to him when the Disciplinary Authority differs the Enquiry Officer, and that such opportunity has to be provided prior to the passing of penalty orders. Details in regard to the facts, rules etc. are then recounted by the applicant further in the OA, and certain grounds taken which, amongst others, were argued by the learned counsel. These will be discussed ahead.

3. The respondents have filed a written statement of reply, resisting the claims made by the applicant, and making the point that the action taken against the applicant was strictly in accordance with the Railway Servants (Discipline & Appeal) Rules, 1968. It is stated that the full reasons have been provided by



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the Disciplinary Authority and also that of Appellate and Revisional authorities have properly considered the matter before deciding thereon. Limitations of the Tribunal in judicial review of such matters are sought to be brought out, by the citing of the case law.

4. The point that the OA is hit by law of limitation is also made. The respondents state that it is within the rules for the Disciplinary Authority to disagree with the Enquiry Officer, by stating reasons, and this was done in August, 1993 and that the rules of April, 1996 can have no retrospective application.

5. We have heard the learned counsel of both sides namely Shri D.V.Gangal for the applicant, and Shri V.S.Masurkar who appeared for the respondents. Learned counsel, Shri Gangal, reiterated the facts of the case and first made the point that the appreciation of evidence as made especially at page 75 of the Paper Book was not at all tenable and was in fact perverse. He referred to the explanation relating to the excess cash and ~~seized~~ ^{seized} stated that nothing was ~~seized~~ by the Vigilance staff, and hence there was no wrong doing. Continuing on the point of evidence, learned counsel stated that much reliance was placed on the statement of one Lakhan and that Lakhan's statement could not be believed especially when Lakhan was not examined in the enquiry. He was provided notice to appear by keeping the enquiry at Ahmedabad. Hence there was no test of cross-examination which



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implied that Lakhan's statement cannot be admitted in evidence. No one had seen the actual handing over of Cash and the applicant has been unduly charged.

6. The learned counsel then took the point regarding the dissenting note not being provided and sought support from the ratio decided by the Hon'ble Supreme Court in the well-known case of **Punjab National Bank & others Vs. Kunj Behari Misra**, 1998 (2) (SC) SLJ 117. The learned counsel took us over to page 33 i.e. the order of penalty stating that no charge was proved and that the amount of Rs.501/- was fully explained by the Enquiry Officer which showed that no bribe was taken. It was argued that there was no proper discussion by the CO. The learned counsel drew support from the following case law - (a) **Dr.D.P.S.Luthra Vs. Union of India & others**, (1988) 8 ATC 815; (b) **Managing Director, U.P.Warehousing Corporation Vs. V.N.Vajpayee**, 1980 SCC (L&S) 453; (c) **Sarla Devi (Smt.) Vs. Commissioner of Police, New Delhi** (1992) 21 ATC 326.

7. The learned counsel argued that the Appellate and Revisionary authorities order were non-speaking in nature, and that the applicant deserves to be exonerated on merits.

8. Arguing the case for the respondents, their learned counsel Shri Masurkar, first argued that the case of **Kunj Behari Misra (supra)** was prospective in its application. He drew support from Para 9 of his written statement and made the point that the case of **Kunj Behari Misra (supra)** was decided on 19.8.1998 and that it was nobody's case that all cases decided prior to this date should be re-opened or assessed in consonance



with the ratio decided therein. He argued that this present case was decided on a date prior to Kunj Behari Misra's case.

9. Learned counsel for Respondents sought support from the case of **Ganga Ram Moolchandani Vs. State of Rajasthan & others**, 2001 SCC (L&S) 928 in the matter of prospective effect of rulings. He referred to Paras 19, 20 and 24 of this judgment. Learned counsel made the point that even by providing the report by the Enquiry Officer without dissenting note, the purpose has been achieved. Coming to the evidence, the learned counsel for the respondents drew our attention to Annexure-II of the charge sheet taking the argument that the ticket was not an open ticket. There was a PNR number and as such it was a ticket having specific ticket number, specific train number and of a specific person. He argued that the stand taken by the applicant that this ticket could be used to travel by another train in the contingencies of the present situation was therefore not valid for such a ticket and that the stand of the applicant on this point was not correct.

10. The learned counsel stated that about Lakhan not being produced during the enquiry, the Railways had made all attempts possible by serving him with a notice and had complied with due process of law. In fact, they had kept the enquiry at Ahmedabad also and that nothing further could lie in their power. The learned counsel further raised the point that the fact that the applicant had declared his personal amount as Rs.108/- was a



point that went against him. He made the point that only a minimum punishment has been provided and all contentions examined fully in appeal and revision. In a brief re-argument learned counsel Shri Gangal sought to refer to the case law in the matter of *Narayan Misra Vs. State of Orissa*, 1969 SLR (SC) 657 stating that his grounds are on the point of principles of natural justice and hence the argument of prospective application would not be valid.

11. We first take up the issue about the non-provision of the note of intended dissent on the part of the disciplinary authority in terms of the ratio decided in the case of *Kunj Behari Misra* (supra), i.e. dissent copy was not provided before the order was passed by the disciplinary authority. The stand taken by the respondents is that this case of *Kunj Behari Misra* (supra) was decided subsequent to decision in present case and it cannot be the intention that decided cases were to be re-opened. Also the government instructions in the matter Exhibit R-1 are of 1996. Disciplinary Authority decided this case on 31.8.1993. There is however the earlier case cited before us as decided by the Hon'ble Supreme Court in the matter of *Narayan Mishra* (supra) where, indeed, this issue has been decided clearly. This point was raised in Para 5 of the appeal dated 15.10.1993 (Exhibit A-6) preferred by Applicant; it is not been dealt with by the



appellate authority. We could have agreed that no detailed reiteration was necessary on the part of the appellate authority if he was in agreement with the disciplinary authority. But here, a flaw on the part of the disciplinary authority has been raised before Appellate Authority specifically, and it should have been examined and commented upon by the appellate authority. Since the matter of Narayan Mishra (supra) is already before us, we find it difficult to accept the stand of the respondents, in that the instructions of 1996 or Misra's case are of later date.

12. Under the circumstances, we are of the view that this legal flaw on which a very specific judgment guides us (Narayan Mishra) the flaw will have to be remedied. True, the matter is old, but there appears no other remedy. At this stage the view of the disciplinary authority has become available to the applicant through the impugned order of penalty and hence it will be a futile exercise to remit the matter to the disciplinary authority again. The better course of action would be to remit the matter to the appellate authority who is hereby directed to consider the Appeal afresh and make a detailed speaking order. He should also consider the grounds taken in this O.A. at Para 5 (Pages 19 to 27 of this OA).

13. In the consequence, we make the following orders/directions. The orders issued by the appellate authority dated 22.2.1995 and revisional authority dated 27.11.1996 are hereby quashed and set aside. Appellate authority is directed to

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reconsider the matter in the light of directions contained in Para 11 above, and issue a detailed speaking order within three months from the date of receipt of a copy of this order. All issues on merit have been left open. There will be no orders as to costs.

S.L.Jain
(S.L.Jain)
Member (J)

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

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