

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:136/98

FRIDAY the 8th day of MARCH 2002

CORAM: Hon'ble Shri Gopal Singh, Member (A)

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

Alik Kumar Samaddar
Kalimata Housing Society
Bengali Sangh Room No. 800,
CRA Estate, Ambernath.

...Applicant.

By Advocate Shri C.M. Jha.

V/s

1. Union of India through
General Manager,
Central Railway
Chhatrapati Shivaji terminus
Mumbai.
2. Senior Commercial Manager
(General) Chief Commercial
Manager, Head Quarter Office
Central Railway C.S.T.
Mumbai.
3. Dy. Chif Commercial Manager
Head Quarter's Office,
Central Railway,
Chhatrapati Shivaji Terminus,
Mumbai.

...Respondents.

By Advocate Shri Suresh Kumar.

ORDER (ORAL)

{Per S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act 1985 to quash the order of Disciplinary Authority imposing the penalty of removal dated 17.10.1997 and Appellate order dated 24.12.1997 confirming the order passed by the Disciplinary Authority.

S.L.Jain

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2. The brief facts of the case are that the applicant claims that he was appointed on daily wages as a typist at Parel workshop, thereafter to regularise his service, he was sent for Medical examination, having been declared Medically fit in category C -2 by Central Railway vide Medical Certificate No. 293921 dated 10.10.1991 (Exhibit C), his services were regularised by the Chief Works Manager, Parel. Thereafter he was transferred by order dated 16.10.1992 ^h and marked as Exhibit D. The applicant was served with charge sheet. The Enquiry Officer was appointed. After completion of enquiry the Enquiry Officer submitted the report, accepting the same, the Disciplinary Authority passed the order dated 17.10.1997. The applicant preferred an appeal against the said order which was rejected by the Appellate Authority by order dated 24.12.1997.

3. The learned counsel for the applicant argued that in the order dated 17.10.1997 the Disciplinary Authority has not imposed the punishment but has only proposed to impose the punishment and as such the order of the Disciplinary Authority as well as the order of the Appellate Authority deserves to be quashed. Apparently it appears that the Disciplinary Authority ^{it} was proposed to impose on the applicant the penalty of removal from service with immediate effect. Thereafter it is also mentioned that the applicant is hereby given an opportunity to prefer an appeal to Dy. Chief Commercial Manager (G) within the period

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of 45 days of the receipt of the order. The applicant preferred an appeal against the said order treating the said proposal to be a punishment (OA page 76). Thus both the parties treated the said order as an order imposing the penalty of removal. Hence the applicant is in no way prejudiced by such an error or omission.

4. The learned counsel for the applicant argued that the Disciplinary Authority as well as Appellate Authority has not passed a reasoned order. He has pointed out that the order of the Appellate Authority is cryptic in nature. In this respect (1994) 27 ATC 834 State Bank of India, Bhopal V/s S.S. Koshal is referred. Suffice to say that when the Appellate Authority affirms the order of the Disciplinary Authority, the Appellate Authority is not bound to say more. The said proposition, which is laid down in the said Authority can be extended to the case of Disciplinary Authority, when it affirms the finding of Enquiry Officer. As such the said ground fails.

5. The applicant submits that he was appointed on Daily wages as Typist. He has not placed on record any letter calling him for interview for the said post, any offer of appointment, letter by which he was sent for medical examination and any appointment order issued by the respondents. There is no evidence on record that in Parel Workshop the applicant has ever worked. Shri Shashikant Nikalje has stated that his name does not find the place in the attendance register, pay sheet and

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staff index Register. He has further stated that there is no such file being ^{av} No. E 1/286IV/S & T maintained at Parel Workshop. The facts remains that ^h applicant has never worked in Parel Workshop.

6. The learned counsel for the applicant argued that charge of giving bribe is not proved; without going into merits of the aragument in this respect it is stated that the charge even if partly proved it is entirely within the jurisdiction of the Disciplinary Authority to award the punishemnt and we see no reason to interfere in the punishment awarded as it does not shock the conscious of the Tribunal.

7. The learned counsel for the applicant relied on AIR 1986 SC 1173 Ram Chander V/s Union of India and others and argued that the applicant was not provided personal hearing in spite of the fact that he asked there for. It is true that the applicant ^h has sought the personal hearing and was not provided. In our considered view such proposition do not apply in the present case for the reason that there was no relationship of the Master and the ^h servant as such provision of Article 311 of Constitution of India, does not apply to the present case. Hence the said order do not help the applicant.

8. The learned counsel for the applicant also raised the point that the Enquiry officer was appointed before the applicant could file the reply to the charge sheet and the said fact he has

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brought it to the notice of the Enquiry officer, Disciplinary Authority and Appellate Authority. He has relied upon (1988) 6 ATC 425 decided on 23.11.1987. After the said decision the Apex Court has held that every procedural error is not fatal to the case and the test laid down is whether prejudice is caused by such a failure. We do not find that by such error any prejudice is caused to the applicant. ^{As such the said proposition of law} law also does not help the applicant.

9. In the result we do not find any merit in the OA, the OA deserves to be dismissed and is dismissed accordingly. No order as to costs.

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

Gopal Singh
(Gopal Singh)
Member (A)

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dt 8/3/2
Credited to the account of
to applicant respondent (S)
on *17/9/2*

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