CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.:413/98

Dated this Friday the 14th day of January 2000.

Shri R.P. Shukla — Applicant

Shri P.C. Madkholkar — Advocate for the Applicant.

VERSUS

General Manager, C.Rly. & 2 Others — Respondents.

Shri R.S. Sundaram — Advocate for the 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 Benches of the Tribunal ? No

(iii) Library. Yes.

B Bahadur

(B. N. BAHADUR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
CAMP AT NAGPUR

Original Application No.413/98

This Friday the 14th day of January, 2000.

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

Shri R.P. Shukla,
resident C/o. Aglawe's House,
Parwati Nagar,
Nagpur. .. Applicant.

Applicant by Shri P.C. Madkholkar, Advocate.

Vs.

1. General Manager,
Central Raiway, Mumbai CST.

2. Chairman,
Railway Board,
New Delhi.

3. Ministry of Railways (Union of
India) through its Secretary,
Rail Bhavan,
New Delhi. .. Respondents.

Respondents by Shri R.S. Sundaram, Counsel.

ORDER
[Per : Shri B.N. Bahadur, Member (A)]

This is an application made by Shri R.P. Shukla seeking the relief from this Tribunal for quashing of the order dated 6.1.1980, through which the applicant was removed from service by the Respondents, after Departmental Enquiry. The order of Appellate Authority confirming the punishment is also challenged and the relief of reinstatement with full back wages upto date of retirement are claimed, alongwith allied relief.

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2. The brief facts put forth before us by the Learned Counsel for applicant are that he was removed from service when he was working as Diesel Locomotive Driver Gr.'C'. The charge in the departmental enquiry and the details of the incidents of the collision of the train are described. It is stated that after completion of enquiry the penalty order was issued without issue of a show cause notice. Reference is made to the application No.3/91 filed by him in this Tribunal. Applicant also points out that the delay in filing of this application has occured because he was bed-ridden since 2 years, and has had to take the assistance of his daughter.

3. The applicant also avers that the entire departmental proceedings are vitiated since the departmental enquiry was instituted by an authority which was not competent in this regard. Details are given in para 6.9 of the O.A. The O.A. goes on the give great details as to how evidence was not properly appreciated, and also describes the technical details leading to the accident and his own defence in this regard. Applicant claims further that this, in fact, is a case of no evidence.

4. Applicant also points out the long history of his case of 18 years, during which period he has reached the age of superannuation. He also contends that he was discriminated against in being singled out for punishment whereas others were let off. This he asserts is an act of discrimination.

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5. The applicant has also filed M.P.(NO.92/98) for condonation of delay for the reasons given in detail in the M.P.

6. The respondents have filed a reply to the O.A. as also a reply to the M.P. seeking condonation of delay. While the request for condonation is opposed, the Respondents have denied that the applicant is not guilty of the charges framed against him. They also state that the enquiry report has been rightly accepted by the General Manager, and deny violation of rules in the proceedings, the order of appellate authority is also defended.

7. The respondents in this reply also deny the contentions made by the applicant in regard to the enquiry being vitiated on any technical ground. They state that a competent authority had instituted the enquiry, and it is the competent authority which has passed the order of removal. It is specifically denied that no show cause notice was given to the applicant before inflicting the punishment, or that the enquiry officer has not come to a fair conclusion. They aver that there is no violation of the principles of natural justice and that with ample evidence being available, the penalty of removal aptly imposed has been considering the nature of the charges.

8. The respondents referred to the challenge of the enquiry proceedings made by applicant before this Tribunal in T.A.No.3/91. They aver that in the judgment of this Tribunal in

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this application, it has held that enquiry was conducted in accordance with rules and has also held that the penalty of Removal imposed on the applicant was valid and legal. They further aver that the only direction given by this Tribunal was that the appellate authority should pass a speaking order. Thus, it was only the appeal order which was quashed. Pursuant to the order passed by this Tribunal, the appellate authority had reconsidered the appeal and passed a detailed order on 19.12.1996. The respondent aver that this order is legal and correct and prays for the dismissal of the appeal.

9. We have heard Learned Counsels on both sides. Learned Counsel for the applicant argued his case in detail starting, quite fairly, with the plea that a view beyond the technical may be taken in this case. He took us over the various documents in the case, and stated that the decision was perverse, considering the evidence that had been brought forth. He detailed out the points that have been made in the written statements, specially at page 15 and evidence at page 51. Learned Counsel argued that the decision taken in the enquiry and by disciplinary authority were perverse with reference to the evidence. He specially cited at pages 91 and 94 of the paper book to expound his points in detail.

10. Learned counsel for the applicant asserted that all decisions were made on the basis of " he should have known".

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In conclusion, learned Counsel took us over the decision of this Bench on TA No.3/91 taken on 23.8.1996. He referred to para 13 of the Order and to the operative paragraphs no.15 and stated that the finding of guilt was based on no evidence and was perverse. The applicant had merely been made a scapegoat.

11. Finally the Counsel for the applicant stated that even if the applicant was to have been punished, the quantum of punishment was unduly and grossly harsh, considering the fact that barring this one incident, the applicant had a career without blemish.

12. Learned Counsel for Respondents argued that this was the third round of litigation, and contended that the order of the Tribunal in TA No.3/91 dated 23.8.1996 considered, the points now being raised, and that their reopening would not be correct in law. It was averred that the limitations of the Tribunal in matters relating to departmental enquiries have been well settled through various judgments of the Apex Court.

13. Counsel for Respondents asserted that there was no truth in the point made to the effect that this is a case of no evidence The evidence adduced has been discussed in a detailed speaking order presently before us, and there was no force in the allegation being made that the decision was perverse. He also asserted that the punishment was not unduly harsh and that this point has also been considered.

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14. We have carefully gone through the points made in this application and find that in the first place we will need to focus our attention to the orders made by a Bench of this Tribunal in TA No.3/91 dated 23.8.1996. We find this necessary to decide as to which specific grievances have already been gone into and decided. It will be obvious that these issues cannot be again gone into by us in the present application, even though raised, being barred by res-judicata.

15. It is seen that the point raised regarding the legal competence of the officer issuing the charge-sheet and that of the General Manager have been dealt with and decided against the applicant in the aforesaid Order in para 2. Similarly the point raised on the question of discrimination has also been gone into and decided at para 3 of the aforesaid judgment. Para 4 of the judgment deals with the argument that this is a case of no evidence. This point is decided by the Bench in para 8 of its judgment.

16..... It is obvious as explained above that the above issues that have been raised, considered and decided in the order dated 23.8.1996 cannot be gone into now. We will therefore not consider these even though they have been raised in the present application during arugments. This is clearly barred by res-judicata.

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17. We note that para 13 and 14 of the order dated 23.8.1996 read as under:-

> "13. We have considered the payment submitted by both the counsels on the appellate order and we are of the view that reference to both the provisions of subsidiary rules in the order of appellate authority is with reference to the charges against the applicant and not being held guilty of the charges. In fact, the appellate order does not mention anything about the violation of subsidiary rules for which the applicant has been held guilty.
> 14. Reading of the appellate order would, however, show that the appellate authority has not dealt with all the issues raised by the applicant in his appeal and the appellate order cannot be considered as having dealt with all the points raised by the applicant in his appeal and to that extent it is a non-speaking order and the appellate authority has not applied its mind to all the points raised by the applicant".

Now, in pursuance of Order in TA 3/91 the Competent Authority in the Railway Board has given its decision dated 19.12.1996 through a detailed speaking order. We have gone through this order and find that it is made with full application of mind. It lists out the points raised by applicant and deals with them ad seriatum. The points raised and dealt with relate mainly to the assessment of evidence vis-a-vis charges made. Thus a detailed appreciation of the evidence has been made. The charges are found proved, and it is stated that he also deserves the punishment imposed on him.

18. We did carefully consider the points made by Learned Counsel for applicant when he took over the evidence. However, on careful consideration we cannot say that the case is one of no evidence. This is obvious from the papers in the case. We are also not able to conclude that there is any perversity or

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arbitrariness in the decision taken. Beyond this it would not be possible for this Tribunal to go. The law settled in this regard is very clear, and a judicial assessment cannot be made by us in the same manner as if we were an Appellate Authority.

19. We have also cosnidered the concluding argument on applicant's Counsel made to the effect that the punishment is unduly harsh considering that this was the only incident against the applicant in his career. Our assessment in this regard must also be limited to examining whether the punishment can be termed as grossly disproportionate. On the facts and circumstances of the case, it is difficult to come to such a conclusion.

20. Before parting with this case we must note one point here (which comes up in several other cases relating to removal from service). There is a provision in the Railway Services Pension Rules, 1993 at para 65 through which Railway Servants who are dismissed or removed from service can be sanctioned a compassionate allowance not exceeding the limits describe in this rule. We have not been able to see in the papers before us, as to whether this possibility was considered. Since the rules specifically provides for this and considering the facts brought out, we call upon the Respondents to consider the case of the applicant, if not already considered. A decision may be taken on this by the Competent Authority in Respondent's organisation on merits and according to rules.

21. In view of the detailed discussions made above, we hereby dismiss this application, subject to the directions contained in para 20 above. There will be no order as to costs.

(S.L. Jain)
Member (J)

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

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H.