

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 109/1998

Date of Decision: 31.7.2002

Shri B.S. Rath.

Applicant(s)

Applicant in person

Versus

Union of India & Ors.

Respondents

Shri V.S. Masurkar.

Advocate for Respondents

CORAM: HON'BLE SHRI S.L. JAIN. ... MEMBER (J)
HON'BLE SMT. SHANTA SHASTRY. MEMBER (A)

1. To be referred to the reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal? *p*
3. Library. ✓

Shanta
(SMT. SHANTA SHASTRY)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO.109/1998

THIS THE 31st TH DAY OF JULY, 2002

CORAM: HON'BLE SHRI S.L. JAIN. .. MEMBER (J)
HON'BLE SMT. SHANTA SHASTRY. .. MEMBER (A)

B.S. Rath,
residing at 4-B Ganesh Bhuvan,
Senapati Bapat Marg, Mahim,
Bombay-400 016. .. Applicant

Applicant in person

Versus

1. Union of India
through the General Manager,
Western Railway, Churchgate,
Bombay-400 020.
2. The Divisional Railway Manager,
Bombay Division, Western Railway,
Bombay Central, Bombay-400 008.
3. Shri Sunil Mittal,
Additional Divl. Railway Manager,
Bombay Division, Western Railway,
Bombay Central, Bombay-400 008.
4. Shri B.K. Sonawane,
Sr. Division Elect. Engr. (Op)
Mumbai Central, Divisional
Railway Manager's Office. .. Respondents

By Advocate Shri V.S. Masurkar.

ORDER

Hon'ble Smt. Shanta Shastry. Member (A)

The applicant has approached this Tribunal to quash and set aside the impugned order dated 22.9.97 and order dated 28.01.1997 whereby penalty has been imposed upon the applicant of withholding of one set of pass, by Appellate Authority.

2. At the relevant time, the applicant was working

as motorman of Train No.8 Up from Virar at about 03.25 Hrs. on 21.7.1996. Due to normal maintenance work on the upline, the train was not to run on its proper Up main line track but on the wrong line i.e. on Down main line track in Up direction. According to the applicant, it was raining heavily, after starting from Virar the wiper of the train failed, the head light was also dim. While approaching Vasai Road, the applicant was signaled to stop by showing hand signal lamp. The applicant submits that a person claiming himself as DEE (TRD) sought to travel in Motorman's cabin. Believing that he was staff working on line at night time, the Applicant allowed him to travel with him. Thereafter, he requested the Station Master at Vasai Road to arrange for train examiner at Borivali i.e. first available Depot. Therefore, the applicant had to disturb the sleep of the person who had been allowed by him to travel with him to open the door to allow the train examiner. The applicant submits that the sleep of the person claiming himself as DEE (TRD) was disturbed and so he shouted at the applicant. Therefore, the applicant demanded the authority, but he refused to show any authority saying that he was authorised to travel in the driving cab. Then the train reached Grant Road station, the person claiming himself to be DEE (TRD) wanted to get down. At this stage, the applicant insisted on inspection of the authority under which the DEE (TRD) was travelling in the driving cab. The DEE

handed over the driving cab pass to the applicant while getting down. On seeing the pass the applicant noted that it was not valid as it had already expired. Thereafter, the so called DEE ran away towards the west side. The applicant reported the matter and submitted the cab pass to his office on 22.7.1996 as 21.7.1996 was Sunday. Instead of taking any action, the applicant submits that the respondents have issued him a charge memo on 06.8.1996 received on 24.8.1996. The charge was "on 21.7.96 while foot plating 8 UP Ex. BSR by DEE (TRD) Shri B.S. Rath, motor man, misbehaved with him and used abusive language against administration which is a serious misconducted as per Railway Service Conduct Rules. Further more, he took away the cab pass of DEE (TRD) in an unauthorised manner." The applicant denied the charge as according to him, the entire statement of allegation was false. The applicant also demanded for supply of documents vide his letter dated 27.8.1996. The same was rejected by the Disciplinary Authority on 22.11.1996 without giving any reason. The applicant submitted his defence on 24.12.1996 pointing out that there was no foot plating inspection as alleged and the said officer had no valid authority to travel with him in the cab. he had also pointed out that the charges were not substantiated by any document. However, the Disciplinary Authority vide letter dated 28.01.1997 imposed the penalty of withholding of privilege of one set of passes whenever due. The appeal preferred

against the same was rejected by the Appellate Authority without replying to any of the grounds raised by the applicant in his letter dated 09.4.1997 wherein he had pointed out 12 grounds for withdrawal of the punishment.

3. The applicant submits that the applicant is the Divisional President of All India Railway Employees Federation, therefore in his official capacity, as well as, in personal capacity, from time to time, he had raised several issues involving breach of safety regulations by the railway administration as well as about maladministration, malpractices and corruption and therefore, the authorities were determined to victimize him and therefore, the charge sheet was given to him and penalty imposed upon on baseless allegation. In the past also, the respondents had converted his complaint against him and had victimized and the applicant had to file OAs No.13/94, 1093/94, 1253/95 and 07/96. the contention of the applicant is that the statement of allegation is completely vague. it has not been stated as to how the applicant misbehaved or what language he has used against the administration or which specific rules were disregarded by the applicant. Rule 3 (1) (iii) does not amount to misconduct because, it does not specify omission or commission on the part of any employee of the Railway to be misconduct. It only prescribes factually certain norms. According to the applicant, the entire proceedings have been carried out

in a very high handed fashion without following rules of natural justice. since the documents relied upon by the Disciplinary Authority were not provided to the applicant, he could not specifically deal with the allegation. The allegations were very vague. The applicant contends that there was no complaint whatsoever from any person, leave alone the purported DEE (TRD), it is the applicant, who had complained. The Appellate Authority, according to the applicant, rejected his appeal mechanically without any application of mind. The applicant has also stated that the Disciplinary Authority imposed three punishments on the same day, which goes to show that it was premeditated action. The applicant contends that in the episode, the important aspect that the cabin pass of DEE (TRD) had expired long before the purported incident has ^{been} overlooked.

4. The respondents, in their written statement, have taken the preliminary objection that the applicant could have approached the higher authorities by way of revision petition, if he was aggrieved by the order of the Appellate Authority. Since he has not exhausted the statutory remedy available to him under the Railway Servants (Discipline & Appeal) Rules, 1967, the application is premature and should be dismissed on that ground alone. The respondents state that the applicant was supposed to check the authority of the person

travelling in the drivers compartment before allowing. An unknown person cannot be allowed to travel in the driving cab. Had the applicant followed the right procedure, he could have refused entry to the unauthorised person, but he allowed him to travel in the driving compartment. This conduct of his⁴ amounts to negligence on his part. Otherwise, it has to be held that the DEE (TRD) had correct authority to travel in the drivers cabin⁴. The respondents state that the DEE (TRD) had no reason to use any bad language as he is well conversant with the railway working, a senior officer, whereas the applicant is only a motor man i.e. Class III post. According to the respondents, the action of the applicant was mannerless and after the journey was over, there was no point in asking authority to produce the cabin pass. It is a clear incident of rude behaviour and due to the nature of the applicant, he himself was responsible for violation of the rule. According to the respondents, the charge sheet was based on ~~known~~^{no known} facts. The applicant's report was full of suppression of material fact and he was levelling baseless charges.

5. The respondents submit that though the applicant is a Union leader, the relation of the railway administration and recognised and unrecognised Unions are harmonious. The fact that the applicant has filed several OAs is the proof of the attitude of the

applicant and further the applicant had been removed from railway service in a vigilance case separately.

6. The applicant has once again denied that he had misbehaved or used abusive language and harped on the fact that he was not provided with the documents relied upon, nor he was provided any copy of any complaint made by the concerned officer. The applicant reiterated his earlier arguments and he has struck to his stand. There being no material on record to substantiate the charges, the order of penalty needs to be quashed and set aside. The Appellate Authority has not passed any speaking order and that the principles of natural justice has not been followed. Also he states that his appeal against order of removal is yet to be finalised.

7. We have heard the applicant in person and the learned counsel for the respondents. We find that the respondents have merely acted on the report given by the applicant himself. It is seen from the charge memo that the charge is not specific except to say that the applicant misbehaved with the DEE/TRD and used abusive language and that he took the cab pass of DEE in an unauthorised manner. On going through the papers, we find that the respondents have not produced any documents whatsoever or any record which would go to show that the charge has been established. It is seen from the order of the Disciplinary Authority, which

gives reasons for imposing the penalty that the applicant had not replied to the charges satisfactorily. Using abusive language with a duty officer speaks of misconduct on the part of the employee. The employee was at liberty to report the matter to the Disciplinary Authority. Instead of that he resorted to taking away the cab pass of the officer which is unbecoming of a railway servant and therefore, since the employee resorted to law in his hand when other remedies were available, the punishment was imposed. The Disciplinary Authority have also rejected the demand of the applicant for furnishing of relevant document. The reason given is that he does not feel any need to supply the document as the charges are self explanatory. A perusal of the charge shows that it is not a specific charge. No details of the abusive language used by the applicant or his misbehaviour with the DEE/TRD have been spelt out in the statement of imputations. Also we do not find that there has been any evidence that the applicant had misbehaved. It has also not been established how the applicant had unauthorisedly snatched the cab pass from the DEE/TRD. In our considered view, the respondents have not proved the charge either through documents or through examination of witness. This is the case of no evidence. The order of the Appellate Authority is also a non-speaking order as already pointed out by the applicant. None of the points raised in his appeal has been considered by the Appellate Authority. We,

therefore, hold that the action of the Disciplinary Authority in imposing the penalty on the applicant deserves to be quashed and set aside. Accordingly, we quash and set aside the impugned order dated 28.01.1997 and the Appellate Authority order dated 22.9.1997 with all consequential benefits i.e. restoration of one set of pass to the applicant.

8. In the result, the OA is allowed. No costs.

Shanta f-
(SMT. SHANTA SHASTRY)
MEMBER (A)

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

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