

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 110/98

Date of Decision : 16th October 2002

B.S.Rath

Applicant

Applicant in person

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri V.S.Masurkar

Advocate for the
Respondents

CORAM :

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

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

- (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

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

mrj..

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.No.110/98

Dated this the 16th day of October 2002.

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

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

B.S.Rath,
R/at 4-B Ganesh Bhuvan,
Senapati Bapat Marg,
Mahim, Mumbai.

...Applicant

Applicant in person

V/S.

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

...Respondents

By Advocate Shri V.S.Masurkar

Don't

..2/-

O R D E R

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

This is an application under Section 19 of the Administrative Tribunals Act, 1985 to quash and set aside order dated 23.9.1997 (Ex.A).

2. The applicant while working as Motorman on the Suburban Section of Western Railway between Churchgate and Virar, in respect of incident dated 13.6.1996, was served with the chargesheet dated 5.7.1996 on 26.7.1996. The applicant vide letter dated 31.7.1996 (Ex.D) requested for furnishing copies of the documents vide letter dated 21.8.1996 received by the applicant on 31.8.1996, the applicant's request for documents was rejected. Rule 3(1) is totally general in nature without specifying any particular act or omission expected of the Railway servant hence assuming that there is any breach thereof, it does not amount to misconduct. The applicant appealed to ADRM/BCT on 3.9.1996 (Ex.F) which is rejected vide letter dated 21.11.1996 (Ex.F-2). The said order of the Appellate Authority is not signed by the Appellate Authority but by Disciplinary Authority for Appellate Authority. The applicant vide his letter dated 24.12.1996 (Ex-C) further represented the matter to the Disciplinary Authority vide order dated 10.4.1997 (Ex-H). The Respondent No.4 imposed the penalty extracted below :-

"Reduction by one stage of Pay Rs.2,600/-p.m. in the time scale of Rs.1,600/- - Rs.2,660/- (RP) for period of one year without the effect of postponing future increments. The penalty will effect from the date you receive the NIP."

P.L.J. / ..3/-

3. The applicant claims that the order of the Disciplinary Authority is without application of mind and vindictive in nature. The proceedings were started under Rule 11 for imposition of minor penalty but penalty imposed is being specified under Rule 6(v) meant for Major penalty chargesheet. The applicant submitted an appeal dated 6.5.1997 (Ex.I) which is rejected by ADRM(O) BCT by order dated 25.9.1997 (Ex.A). The order passed by the Appellate Authority is alleged to be passed mechanically without any application of mind. It is alleged that chargesheet issued and penalty imposed is by the Authority who is not competent to issue the chargesheet and impose the penalty, as he is not the appointing authority of the applicant. Hence, this OA. for the above said relief.

4. The claim of the applicant is resisted by the respondents stating that the applicant has not filed the Revision Petition, as such has not exhausted the statutory remedy available to him. The penalty awarded is minor penalty.

5. The applicant filed the Rejoinder reiterating the facts stated in OA. and dealing the question in further detail.

6. Rule 6(iii-b) of the Railway Servants (Discipline & Appeals) Rules, 1968 which specifies Minor Penalties is worth mentioning which is extracted below :-

"6(iii)(b) Reduction to a lower stage in the time scale of pay for a period not exceeding three years, without cumulative effect and not adversely affecting his pension."

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..4/-

7. The perusal of the same makes it clear that the penalty imposed on the applicant is Minor Penalty and not a Major penalty.

8. Revision in view of Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968 is a discretionary remedy available to the applicant. As such, it cannot be said that the applicant failed to exhaust the departmental remedies available to him or OA. is premature.

9. Order of the Disciplinary Authority merges in the order of the Appellate Authority, as such, it is not necessary to seek relief in respect of the order of the Disciplinary Authority.

10. The documents asked for by the applicant is claimed by the applicant to be relied on documents by the respondents, in fact, it is a referred document in the charge-sheet. The applicant has right to claim the said document and failure to supply the said document amounts to denial of an opportunity of being heard which offends principle of natural justice. The applicant timely asked for the said document, agitated the matter before higher authorities but could not get favour for the same, further agitated before the Disciplinary and also Appellate Authority but in vain. As such, it is hereby held that the enquiry proceeded in violation of principle of natural justice.

P. V. M. / -

..5/-

11. In the result, OA. is allowed. Order of the Appellate Authority dated 23.9.1997 (Ex.A) along with order of the Disciplinary Authority dated 10.4.1997 deserves to be quashed and set aside and is quashed and set aside. The matter is remitted to the Disciplinary Authority to proceed with further enquiry after supply of the document asked for and conclude the same within the period of four months from the date of receipt of copy of order. No order as to costs.

Shanta S

(SMT. SHANTA SHASTRY)

MEMBER (A)

S.L. Jain

(S.L. JAIN)

MEMBER (J)

mrj.