
(2009) 07 BOM CK 0010
In the Bombay High Court
Case No : Writ Petition No. 2350 of 2001

Union of India (UOI)

APPELLANT

Vs

B.G. Sane

RESPONDENT

Date of Decision : 16-07-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Railway Services (Conduct) Rules, 1966 — Rule 3

Citation : (2010) 126 FLR 75 : (2010) 2 LLJ 544

Hon'ble Judges : R.M. Savant, J;P.B. Majmudar, J

Bench : Division Bench

Advocate : Suresh Kumar, for the Appellant; Rahul Walia, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Savant, J.—This petition filed under Article 226 of the Constitution of India, takes exception to the order dated June 4,2001 passed by the Central Administrative Tribunal, Mumbai Bench. By the said order, the Application filed by the respondent herein being Original Application No. 1247 of 1996 came to be allowed and the order dismissing the Respondent came to be set aside and the matter came to be remanded back to the Disciplinary Authority for commencement of de novo proceedings from that stage.

2. Such of the facts which are necessary to be cited are stated thus:

The respondent herein at the relevant time was working as a Head Ticket Collector with the Central Railway. The respondent herein was charge sheeted vide Memorandum of Chargesheet dated March 9, 1993. The gravamen of the allegations against the respondent were misappropriation of various amounts which had been recovered by the respondent from the passenger. It is pointed out that there were 35 instances reported against the respondent which have been mentioned in Annexure-I to the said Memorandum of Chargesheet.

3. The respondent herein responded to the said chargesheet and it appears that

the: respondent accepted the charges levelled against him. The CCI (L/R) Solapur, who was the Enquiry Officer, on the basis of the admission of the respondent herein and the documentary evidence on record held that the - charges levelled against the respondent herein have been proved and thereby came to a conclusion that the respondent has conducted himself in violation of Rule No. 3-1(i)(ii)(iii) of the Railway Service Conduct Rule.

4. The respondent herein was furnished with the enquiry officer's report by the petitioner pursuant to which the respondent had submitted his representation in respect of the findings recorded in the said report by his letter dated April 8, 1993. It is pertinent to note that the respondent expressed remorse and regrets for whatever he had done, for which he was issued chargesheet. The Disciplinary Authority, on consideration of the enquiry officer's report as well as the representation made by the respondent, passed an order imposing punishment of removal from service. The said punishment is dated May 11, 1994.

5. Aggrieved by the said punishment order, the respondent herein filed an Appeal before the Appellate Authority i.e. The Additional Divisional Railway Manager. Before the Appellate Authority also the respondent herein accepted the charges. The Appellate Authority by its order dated September 15, 1994 rejected the said Appeal filed by the respondent. Thereafter, the respondent filed a Revision against the order dated September 15, 1994 again praying for a lenient view being taken against him and requesting that he may be compulsorily retired in stead of being dismissed from service. The Revisional Authority by its order dated February 15, 1995 remanded the matter back to the proper Disciplinary Authority i.e. the Divisional Railway Manager for proceeding de novo from the stage from which the lacuna had crept in. After reconsidering the respondents representation, the Disciplinary Authority on remand again passed an order of dismissal against the respondent herein. On the Appeal being filed by the respondent against the said dismissal order dated May 12, 1995, the Appellate Authority by its order dated July 3 1996 dismissed the said Appeal filed by the respondent.

6. Aggrieved by the orders passed by the Disciplinary Authority dismissing the respondent from service and the Appellate Authority confirming the said Dismissal Order, the respondent filed Original Application No. 1247 of 1996 impugning the order of his dismissal from service. The said Original Application came to be allowed on the twin grounds viz that since on remand the matter was dealt with by different Disciplinary Authority, the respondent ought to have again been given a copy of the enquiry officer's report and, second ground was that though the Appeal was heard by the predecessor of Shri R.K. Toopal who was the Appellate Authority, Shri R.K. Thoopal on assuming charge of the post of Appellate Authority had passed the order, therefore, a person who had actually heard the appeal had not passed the order and, therefore, on both the grounds, the Tribunal set aside the orders passed by the Disciplinary Authority as well as the Appellate Authority and remanded the matter back to the Disciplinary

Authority for de novo consideration after furnishing a copy of the enquiry officer's report to the respondent.

7. We have heard the learned counsel for the parties viz Mr. Suresh Kumar for the petitioner and Mr. Rahul Walia for the respondent.

8. Mr. Suresh Kumar, the learned counsel appearing for the petitioner, submitted that in view of the fact that the respondent had admitted his guilt, there was no question of the Tribunal remanding the matter back to the Disciplinary Authority. It is further submitted by Mr. Suresh Kumar that the respondent having been furnished with a copy of the enquiry officer's report during the first stage of the proceedings, the view taken by the Tribunal that on remand the Respondent should again be furnished a copy of the enquiry officer's report as the Disciplinary Authority had changed, was a highly technical view. Mr. Suresh Kumar therefore submitted that the order of the Tribunal remanding the matter back was not warranted in the facts and circumstances of the case.

9. On the other hand, Mr. Rahul Walia, the learned counsel appearing for the respondent, submitted that though the respondent had admitted to the charges levelled against him, the amount which was allegedly misappropriated by the respondent had already been recovered from the respondent. The learned counsel for the respondent submitted that faced with the situation that he was, the respondent had no other alternative but to admit to the charges. The learned counsel for the respondent further submitted that there is a serious infirmity in the conduct of the disciplinary proceedings inasmuch as the person who had heard the appeal was not the person who had passed the ultimate order as an Appellate Authority.

10. We have considered the rival contentions of the parties. Insofar as first ground on which the Tribunal has found fault with the enquiry proceedings, it is an undisputed position that the respondent was furnished with a copy of the enquiry officer's report during the first stage of the proceedings" i.e. prior to the matter being remanded back by the Revisional Authority. Therefore, in the facts of the instant case, we are not impressed by the finding of the Tribunal that the proceedings were vitiated on account of the fact that the < petitioner was required to furnish the respondent a copy of the enquiry officer's report again when the matter was remanded back and was heard by a different Disciplinary Authority. In our view, since in the instant case the respondent had already been furnished with the copy of the enquiry officer's report, no prejudice as such was caused to the respondent, though the Disciplinary Authority had changed on remand. In our view, the Tribunal in the facts of the instant case has taken a hyper technical view.

Insofar as the second ground of challenge is concerned, namely that the Appellate Authority, who had heard the matter, had not passed the order. We find considerable merit in the said submission of the learned counsel for the respondent. There is no dispute that the person who had passed the order as an

Appellate Authority was not the person who had heard the matter as an Appellate Authority. In our view, therefore, the appeal proceedings were vitiated on the said ground. We are aghast that the order came to be passed by the person who in fact had not heard the appeal. In our view, therefore, the impugned order of the Tribunal requires interference only to a limited extent viz though the Tribunal had remanded the matter back to the Disciplinary Authority, in our view in the facts and circumstances of the case the remand should have been to the Appellate Authority for the reasons stated herein above. In that view of the matter, the above petition is partly allowed modifying the order of the Tribunal to the extent of remanding the matter back to the Appellate Authority instead of Disciplinary Authority.

11. We make it clear that we have not dealt with the contentions of the parties on merits in so far as order of dismissal is concerned. The Appellate Authority would therefore decide the appeal on its own merits and in accordance with law. The Appellate Authority may also take into consideration the fact that in the interregnum the respondent has retired from service and he is at present about 70 years old. The Appellate Authority is also directed to grant personal hearing to the respondent herein.

12. Rule is accordingly made partly absolute to the aforesaid extent with the parties to bear their own costs.