

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6240 OF 2018

Sunil Digambar Jagtap

... Petitioner

Versus

Union of India

Through the General Manager,

Central Railway and Ors.

... Respondents

Mr.Dattatray N. Karande, Advocate for the Petitioner.

Ms.Leena Patil, Advocate for the Respondents.

**CORAM : NITIN JAMDAR AND
MANJUSHA DESHPANDE, JJ.**

DATE : 06 NOVEMBER 2023.

P.C. :

The Petitioner has challenged the order passed by the Central Administrative Tribunal (CAT) dated 4 October 2017, disposing of the Original Application filed by the Petitioner. The Petitioner was appointed as Commercial Clerk on compassionate basis by order dated 21 November 1984. Thereafter, a Charge Memorandum dated 13 April 2010 was issued against the Petitioner. An Inquiry was initiated and an Inquiry Officer was appointed. Inquiry officer submitted his report on 18 November 2011 and the charges against the Petitioner were stated to be proved. The charges were to the effect that Petitioner was using unparliamentarily language to the commercial and operating staff. He had changed the

duty restored, unauthorized manner, claimed false contingent bills and was not remaining present without permission. Thereafter the disciplinary authority upon the report of the Inquiry Officer imposed penalty of removal on the Petitioner by order dated 6 January 2012. Thereafter the Petitioner challenged the order by way of an Appeal. The Appellate Authority by order dated 19 March 2012 modified the punishment from removal to compulsory retirement. The Petitioner challenged this order by way of Revision Petition and the Revisional Authority by order dated 8 December 2012 modified the same to withholding of increment for the period of three years. Thereafter Original Application was filed and the same was rejected by the impugned order dated 4 October 2017.

2 The learned counsel for the Petitioner advanced sole argument before this Court as was advanced before the Tribunal that the officer who imposed the punishment upon the Petitioner i.e. the Assistant Personal Officer (APO) could not have imposed punishment and it should have been imposed by the Divisional Railway Manager. Reliance was placed on the appointment order appointing the Petitioner on compassionate basis on 21 November 1984. According to the Respondents, the Assistant Personal Officer was duly authorized and he has issued the appointment order which is only approved by the Divisional Railway Manager. The Tribunal has gone by the stand taken by the Respondents and has not accepted the Petitioner's contentions. The Tribunal has also observed that the Petitioner did not raise this ground of challenge before the

Appellate Authority or the Revisional Authority. It is only that the Petitioner had made a representation initially on this aspect.

3 When the Petitioner first challenged the dismissal order in the Appeal, the Petitioner could have asked for setting aside the removal order on this ground. However, the Petitioner did not raise this ground in the Appeal. Yet the Appellate Authority on merits reduced the punishment. Thereafter again the Petitioner had an opportunity to raise this ground in revision application, however, the Petitioner did not raise this ground and, yet, the Revisional Authority further reduced the punishment to stoppage of increments. Throughout the proceedings, the Petitioner could have raised this challenge before the Appellant Authority and Revisional Authority. There is no reason whatsoever given as to why the Petitioner did not do so though it is sought to be contended that the issue is that the order would be void. This protection is given for the benefit of the employee and if it is not agitated before the Appellate and Revisional Authority and the Appellate and the Revisional Authorities have nevertheless reduced the punishment, we find that noninterference by the Tribunal, in these circumstances was justified.

4 Writ Petition is accordingly rejected.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)