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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 499/89

New Delhi this the 24th day of March, 1994

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

Raghubar Dayal S/O Sriram,
Assistant Engineer,
Junagarh.

... Applicant

By Advocate Shri B. L. Madhok for Shri B. S. Mainee

Versus

1. Union of India through
The Secretary,
Railway Board, Rail Bhawan,
Rafi Marg, New Delhi.

2. The General Manager,
Western Railway,
Church Gate, Bombay.

... Respondents

By Advocate Shri K. K. Patel

O R D E R (CRAL)

Hon'ble Mr. Justice V. S. Malimath -

At this length of time, neither Shri Madhok, learned counsel appearing for the petitioner nor Shri Patel who took notice for the respondents on our instructions is in a position to state as to what has happened to the disciplinary proceedings initiated against the petitioner. Sealed cover procedure was followed on the ground that there was some vigilance case pending against the petitioner. His merit has been assessed and kept in a sealed cover. The petitioner's grievance is that this action of the respondents has deprived him of the right to promotion. The respondents' stand in the reply is that as a vigilance case was pending against the petitioner sealed cover procedure was followed. The petitioner


has stated in his rejoinder that the chargesheet was issued against him much later on 24.5.1989 which submission receives support from the copy of the chargesheet which was shown to us during the course of arguments. He has replied to the same in June, 1989. Obviously the DPC held its proceedings after these dates. When we asked the learned counsel appearing on both sides as to what happened to the disciplinary proceedings, none is in a position to tell us the correct position, as neither counsel has been able to receive any further instructions from their respective clients. Prima facie, Shri Madhok appears to be right in pointing out that the memo of charges served on the petitioner in the case indicates what is contemplated is proceedings for imposing a minor penalty. The language of the notice makes it clear that the petitioner was asked to show cause and make a representation failing which the authorities would proceed to pass appropriate orders. If it was a case for major penalty, it would have been stated that if the petitioner fails to respond, the authorities would proceed to hold a regular inquiry. Hence, the learned counsel for the applicant appears to be right in saying that the inquiry initiated appears to be for imposition of a minor penalty. The imputations which accompany the chargesheet also show that they are not so serious as to merit disciplinary proceedings for imposition of a major penalty. Learned counsel for the applicant submitted that under the relevant orders of the Railway administration, the sealed cover procedure is required to be followed only in cases of disciplinary proceedings for imposition of major penalty. In other words,

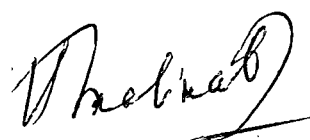
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sealed cover procedure is not required to be followed when the proceedings are for imposition of a minor penalty. But, we cannot fail to take note of the fact that one of the minor penalties that can be imposed is of withholding promotion. At this length of time, we can reasonably expect the disciplinary proceedings to have been terminated one way or the other. Hence, it is quite possible that further action has been taken to open the sealed cover and to consider the case of the petitioner in accordance with the same. Nothing positive is possible to be stated as both the counsel do not have any instructions in this behalf.

2. As this matter has been pending for the last five years, assuming that the sealed cover has not been opened and further steps have not been taken, all that we need say is that if that has not already been done, the respondents shall open the sealed cover and take further steps to consider the case of the petitioner for promotion. If that has already been done, the question of opening the sealed cover does not arise.

3. With these directions, this application is disposed of. No costs.


(S. R. Adige)
Member (A)


(V. S. Malimath)
Chairman

/as/