

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 646 of 1987
T.A. No.

DATE OF DECISION 24th June, 1987

Shri Gurcharan Singh Petitioner

Shri G.D. Bhandari Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

Shri O.N.Moolri Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. G.Ramanujam, Vice-Chairman

The Hon'ble Mr. Birbal Nath, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?

21/6/87
(Birbal Nath)
A.M.

21/6/87
(G.Ramanujam)
V.C.

3

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

Regn.No. CA 646/87

DATE OF DECISION: 24.6.87

Shri Gurcharan Singh ...Petitioner

Versus

Union of India and others ...Respondents

For Petitioner: Shri G.D. Bhandari, Advocate

For Respondents: Shri O.N.Moolri, Advocate.

CORAM: HON'BLE MR. G.RAMANUJAM, VICE-CHAIRMAN
 HON'BLE MR. BIRBAL NATH, ADMINISTRATIVE MEMBER

JUDGMENT:

The applicant herein joined the Northern Railway as a Station Master Group Student after having been selected by the Railway Service Commission. Later, he was appointed as Assistant Station Master in the Delhi Division of the Northern Railway. The applicant after being promoted to various posts was lastly promoted as Station Superintendent in the grade of Rs.455-700 after passing through the selection held by the Railways and he is presently holding the post of Station Superintendent in Delhi Sub-Division. In or about 7.6.85, a major penalty charge-sheet was issued by the disciplinary authority and the same was served on the applicant on 13.7.85. The said charge memo was issued for certain alleged irregularities and lapses said to have been committed by the applicant while working at Shogi Railway Station at Simla. The applicant on receipt of the charge-memo complained that the documents referred to in the charge-memo

contd....2....

had not been supplied to him so as to enable him to defend himself before the Inquiry Officer. It appears that the Inquiry Officer has returned the charge-memo to the disciplinary authority on the ground that he cannot keep the inquiry indefinitely pending and he has not been supplied the documents referred to in the Annexure to the Charge-memo for the purpose of conducting the inquiry on the charges.

2. At that stage, the applicant has come forward with this application claiming two reliefs. One is to set aside or quash the charge-memo itself on the ground that the disciplinary authority has not made arrangements to supply the copies of the documents referred to in the charge-memo and the second is that he should be deemed to have been promoted on the date when his juniors were promoted as his promotion was withheld only because of the alleged pendency of the inquiry initiated by the charge-memo dated 7.6.85.

3. So far as the first relief is concerned, even assuming that there is a failure on the part of the disciplinary authority to cause production of the necessary documents and that the inquiry could not be persuaded by the inquiry officer in the absence of the documents, that may not be a ground for quashing the charge memo. The validity of the charge-memo has to be determined with reference to the date when it was passed and the charge-memo cannot be held to be invalid based on subsequent events. In this case, the subsequent event complained of is that the

contd.....

disciplinary authority has not made arrangements to supply the documents referred to in the charge-memo. The non-supply of the documents referred to in the charge-memo may result in considerable delay in the conduct of the inquiry but will not make the major penalty charge-memo issued earlier invalid. However, as the applicant claim for promotion has been seriously affected by the continued proceedings of the inquiry, the disciplinary authority cannot keep the disciplinary proceedings pending indefinitely so as to take away the right of the applicant to be considered for promotion. It is seen that the charge-sheet was in fact issued on 7.6.85 nearly two years ago and the inquiry was still to go on. It will seriously affect the right of the petitioner for promotion. We have to therefore direct the third respondent who is the disciplinary authority to complete the disciplinary proceedings within four months from the date of the receipt of this order. Any promotion that is made pending the inquiry will not however affect the right of the applicant for promotion in the event of his being cleared of the charges framed against him. Directions are issued accordingly.

4. So far as the second prayer is concerned, it is seen that the applicant has prayed for a declaration that he should be deemed to have been promoted on the date when his juniors were promoted. According to the learned counsel for the applicant, the post is not a selection post, but it is only filled in on seniority-cum-fitness basis. In view of the fact that the applicant

is senior to those who have been promoted and his promotion has been withheld only because of the charge-memo, during the pendency of the enquiry on the charge-memo, it is open to the department not to promote the applicant, but at the same time, the department should follow the sealed cover procedure so as to safeguard the interests of the applicant against whom the disciplinary inquiry is pending, as otherwise his chance of promotion will be seriously affected. However, we are not in a position to grant the declaration sought for by the applicant that he should be deemed to have been promoted with reference to the date when his juniors have been promoted. Since we have already directed the respondents to complete the disciplinary proceedings within four months, in the meanwhile if any selection and promotion have to be affected, the third respondent is directed to follow the seal cover procedure so that the applicant will be entitled to claim seniority and monetary benefits if he were to be ultimately acquitted of the charges. Subject to these directions the application is dismissed.

5. The applicant is, however, at liberty to approach this Tribunal for suitable directions if the inquiry is not completed within four months from the date of receipt of this order as directed.

24/6/77
(BIRBAL NATH)
ADMINISTRATIVE MEMBER

(G. RAMANUJAM)
VICE-CHAIRMAN