

12

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

R.A. NO.9/2006
in
O.A. NO.2066/2004

This the 31st day of January, 2006

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE SMT. MEERA CHHIBBER, MEMBER (J)

Union of India & Others

... Applicants

versus

Vipin Kumar

... Respondent

ORDER (BY CIRCULATION)

Hon'ble Shri V.K.Majotra, Vice-Chairman (A):

Through this application has been sought review of Tribunal's orders dated 26.8.2005 in OA No.2066/2004. By these orders the OA was partly allowed as follows:

“4. Accordingly, this OA is also partly allowed quashing the impugned orders (Annexures A-1 dated 22.7.2004 and A-2 dated 19.5.2004), directing the General Manager to pass fresh orders permitting appointment of another enquiry officer only if the same enquiry officer who had earlier held the enquiry is not available for some good reason. It is further directed that in case the documents in terms of Tribunal's orders dated 9.9.1999 and 30.1.2004 in OA No.2302/1995 and OA No.247/2004 respectively are not available, the enquiry shall abate forthwith. However, if they are made available to applicant, then the defence witnesses asked for by applicant shall be examined and the enquiry shall be completed within a period of four months from the date of communication of these orders. It is further held that applicant shall be entitled to all wages and consequential benefits from the date of reinstatement in view of the inordinate delay caused in implementing the directions of this Court contained in orders dated 9.9.1999 and 30.1.2004.”

2. It has been stated in this application that there is an error on the face of record inasmuch as the directions contained in Tribunal's orders dated 26.8.2005 do not flow from Tribunal's orders dated 9.9.1999 and 30.1.2004 in OA

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18

No.2302/1995 and OA No.247/2004. It is further stated in this application that the Tribunal ought not have given a mandatory direction that in case the documents sought are not made available, then the whole enquiry would abate.

3. We have perused the relevant records. In orders dated 9.9.1999 in OA No.2302/1995 there is a clear finding that the enquiry officer had not properly exercised the discretionary power in rejecting applicant's request for production of relevant documents and examination of witnesses. Thus, the enquiry was held to be seriously vitiated in view of the legal defect. Applicant was directed to be reinstated. Administration was given liberty to proceed with the departmental enquiry by giving an opportunity to applicant to examine the relevant and available documents and the defence witnesses. Then the disciplinary authority was given liberty to pass appropriate orders according to law. In those orders, the Tribunal had also observed that verification report and the personal file of applicant ought to have been produced in the enquiry.

4. Taking into consideration the above observations, the earlier direction of the Tribunal to the General Manager to pass fresh orders permitting appointment of another enquiry officer only if the same enquiry officer who had earlier held the enquiry was not available for some good reason, is quite in order and we do not find any error of fact or law in orders dated 26.8.2005.

5. As to the contention of the review applicants/respondents in the OA that a mandatory direction could not have been given in orders dated 26.8.2005 regarding abatement of the enquiry in case the documents sought are not made available, in the Tribunal's orders dated 9.9.1999 it had been made clear that applicant had not been sent any reply in respect of his representations seeking production of certain documents for defence. The enquiry officer in his report had stated that certain documents were not furnished on the ground that they were not relevant. The Tribunal had held that this stand of the administration was not

19


acceptable. Applicant's demand for examination of certain witnesses as defence witnesses was also rejected giving a "reason" which was not accepted by the Tribunal. It was observed that the enquiry officer could not summarily reject applicant's request for examination of defence witnesses on grounds stated by respondents. It was also found that the enquiry officer had not properly exercised the discretionary power in rejecting applicant's request for production of relevant documents and examination of witnesses. The enquiry was, therefore, held as seriously vitiated. This enquiry was initiated vide a chargesheet dated 30.5.1991. Respondents had taken an inordinately long time in following the directions of this Court in order dated 9.9.1999 in OA No.2302/1995. Charges against applicant were dropped vide order dated 27.3.2002 but the consequential benefits like fixation of pay, backwages, seniority and promotion were not allowed. Then applicant filed OA No.247/2004 which was disposed of vide order dated 30.1.2004 directing the General Manager, Northern Railway to consider applicant's representation by passing a speaking order regarding the aforesaid consequential benefits. Instead, the General Manager had directed holding of allegedly a fresh enquiry. In the above backdrop, orders dated 26.8.2005 in OA No.2066/2004 were passed. Following order dated 30.4.2001 passed by the Hon'ble High Court of Allahabad in C.M. Application No.9786/2001 in WP No.584/2001, decision of the Hon'ble Supreme Court in the case of *Whirlpool Corporation v Registrar of Trade Marks* [1999 (17) LCD 219], and the decision of the Hon'ble Apex Court in *M.L. Sachdeva v Union of India* [(1991) 1 SCC 605], it was held in *K. B. Bhardwaj v Union of India* [2002 (2) ATJ 477] (CAT Lucknow Bench) that where the Court's directions are to finalize the disciplinary proceedings within a stipulated period and the orders in compliance thereof are passed after expiry of the said period, such orders have to be quashed being without jurisdiction. In the instant case also the direction of the Court contained in orders dated 9.9.1999 in OA No.2302/1995 having not been implemented at the hands of the respondents in letter and spirit would make the enquiry liable for

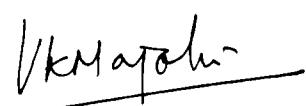
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abatement. Applicant has been subjected to disciplinary proceedings for the last about fifteen years and respondents are still resorting to one pretext or the other in proceeding against applicant. We do not find any infirmity in our orders having been passed on merit and following the principles of natural justice.

6. The present application, in our view, is an attempt to re-argue the case, which is not within the scope and ambit of a review petition. Accordingly, this RA is dismissed in circulation.


(Meera Chhibber)
Member (J)


(V. K. Majotra)
Vice-Chairman (A)
31.1.06

/as/