

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 2622/93

New Delhi this the 7th day of November, 1994.

Shri N.V. Krishnan, Vice Chairman(A).

Smt. Lakshmi Swaminathan, Member(J).

Dr. J.P. Agarwal,
Asstt. Divisional Medical Officer,
Northern Railway, Health Unit,
Tuglakabad,
New Delhi.

..Petitioner.

By Advocate Shri B.S. Mainee.

Versus

1. The Secretary,
Ministry of Railways,
Railway Board,
Rail Bhawan,
New Delhi.

2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

3. The Chief Medical Officer,
Northern Railway,
Baroda House,
New Delhi.

..Respondents.

By Advocate Shri R.L. Dhawan.

ORDER (ORAL)

Shri N.V. Krishnan.

The applicant is an Assistant Divisional Medical Officer in the Railway under the third respondent, the Chief Medical Officer, Northern Railway, New Delhi. He was suspended on 7.6.1986 in connection with a criminal case for offences U/s 161 IPC and Sec. 5(I) B read with Sec. 5(2) of the Prevention of Corruption Act, 1947. He was tried in the court of Addl. District Judge/Special Judge (Anti Corruption), Dehradun who by his judgement dated 2.2.1993 (Annexure A-3) found the applicant not guilty of the

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offences and he was, therefore, acquitted. Consequently, the Railway Board revoked the order of suspension by the order dated 18.2.1993 (Annexure A-4) with immediate effect.

2. It is stated that, therefore, orders were issued posting the applicant at Jagadhari Workshop, Ambala Division. The applicant represented on 23.2.1993 (Annexure A-6) for posting him in Delhi Area. Accordingly, by the order dated 17.6.1993 (Annexure A-8), the applicant was posted as A.D.M.O., Tuglakabad, Delhi where he joined on 18.6.1993.

3. Therefore, the applicant states that a memo of charges dated 23.6.1993 has been issued to the applicant relating to four articles of charges which allege misconduct on the part of the applicant during the period while he was under suspension. The misconduct relates to allegedly getting railway passes and claim TA/DA to which he was not entitled and proceeding to Switzerland without proper sanction. Though the applicant has been reinstated, the respondents have not passed any order in respect of the period during which the applicant was under suspension till reinstatement. In addition, he states that during the period of his suspension, several DPCs were held for promotion and recommendations of the DPC in his case have been placed in a sealed cover which have not been opened. Being aggrieved by these acts of the respondents, the applicant has claimed a number of reliefs in this O.A. which, shortly stated, can be reduced to two major reliefs.

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The first is that an order should be passed in respect of his period of suspension in accordance with law. The second is that the sealed covers should be opened and he should be granted all consequential benefits including promotion, if recommended by the DPC, in view of his acquittal.

4. The respondents have filed a reply in which it is stated that as a fresh disciplinary proceeding has been initiated, the applicant would not be entitled to any relief.

5. We have heard the learned counsel for the parties. The learned counsel for the applicant draws our attention to a judgement delivered by one of us (Shri N.V. Krishnan) sitting as a Single Member in R.K. Mehta Vs. Union of India, ATJ 1994(1) 119, on the basis of which he claims that in the circumstances of the case, the applicant is entitled to an order that the entire period of suspension should be treated as duty for all purposes and that he should be paid full pay and allowances for that period.

6. In so far as opening of sealed cover is concerned, the learned counsel for the applicant states that the recommendations were placed in a sealed cover only because of the criminal case and not for any other reasons. Therefore, the sealed cover ought to have been opened when the order of suspension was revoked.

7. The learned counsel for the respondents relies on a circular dated 22.1.1993 issued by the Railway Board (which has been produced by the applicant along with his rejoinder as Annexure-I) which relates to the procedure to be followed in regard to



"Promotion from Group 'B' to Group 'A' and within Group 'A' of Railway Officers against whom disciplinary/court proceedings are pending". The learned counsel draws our attention to para 6 of that circular which reads as follows:

"A Government servant who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the Departmental Promotion Committee. He shall not be promoted until the conclusion of disciplinary case/criminal proceedings and the provisions contained in this letter will be applicable in his case also".

He, therefore, submits that the applicant is not entitled to any relief in respect of his promotion. He also relies on para 29 of Jankiraman's case (ATJ 1992(12)371 SC) which states:

"...To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests".

8. In reply to this, the learned counsel for the applicant also draws our attention to the ratio of the judgement of the Supreme Court in Jankiraman's case, namely, that the sealed cover procedure should be resorted to only after charge sheet is issued. As in the present case, the memo of charges has been issued only on 23.6.1993 after the recommendations of the DPC in the sealed covers cannot be opened until the disciplinary proceedings is over.

9. However, the learned counsel for the applicant submitted that, at present, he would be satisfied if a suitable direction is issued to the respondents in respect of the period of suspension leaving the applicant full liberty to agitate the matter regarding promotion separately.

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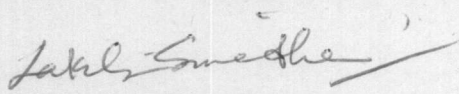
10. We are of the view that when the respondents revoked the suspension of the applicant on 10.2.1993, after he was acquitted by the trial court and did not indicate therein that, on the same charges it was intended to proceed against the applicant in disciplinary proceedings, they were bound to pass an order, in accordance with law, in respect of the period of suspension, immediately thereafter. In this connection, we recall our judgement in O.A. No 1546/89 Surendra Charote Vs. Union of India delivered on 24.10.94 wherein we have held that, if, after acquittal in a criminal case, the competent authority indicates at the time of revoking the suspension that, nevertheless, a disciplinary proceeding would be initiated on the same facts on which the criminal case was launched, that authority could defer passing an appropriate order regarding the period of suspension until the contemplated disciplinary proceeding was completed. That is not the situation in the present case. The disciplinary proceeding has been initiated on entirely different grounds, namely, some alleged misconduct during the period of suspension. We are, therefore, of the view that as soon as the Annexure A-4 order dated 10.2.1993 was passed by the Railway Board revoking the suspension with immediate effect, they were bound to pass an order in accordance with law as to how the period of suspension should be treated and as to what emoluments should be given to the applicant during that period.

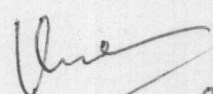
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11. In this view of the matter, we direct the respondents to pass such an order within two months from the date of receipt of this order and grant to the applicant all benefits within a period of one month thereafter. We make it clear that if the applicant is aggrieved by any such order, it is open to him to seek such remedy as may be advised. In so far as the second prayer relating to promotion is concerned, in view of the submissions made by the learned counsel for the applicant, no order is being passed on merits and this order will not stand in the way of the applicant from pursuing this matter separately in accordance with law.

12. O.A. is disposed of as above.


(SMT. LAKSHMI SWAMINATHAN)
MEMBER(J)


9.11.84
(N.V. KRISHNAN)
VICE CHAIRMAN(A)

'SRD'