

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

....

Original Application No. 698 of 1992.

this the 22nd day of March 2001.

HON'BLE MR. RAFIQ UDDIN, MEMBER (J)
HON'BLE MR. S. BISWAS, MEMBER (A)

Mohd. Shakil, aged about 31 years, S/o Sh. Mohd. Shakoor, R/o 25/39, Isai Tola, Prem Nagar, Jhansi, working as Helper Khalasi in Central Railway Workshop, Jhansi.

... Applicant.

By Advocate : Sri H.P. Chakerawasti & A.K. Dave.

Versus.

Union of India through the Secretary, Ministry of Railways, Rail Bhawan, New Delhi.

2. Chief Workshop Manager, Central Railway workshop, Jhansi.

3. Mr. Piyush Bahadur Singh, Chief Workshop Manager, Central Railway Workshop, Jhansi.

4. Deputy Chief Mechanical Engineer, Central Railway workshop, Jhansi.

5. V.K. Jain, Deputy Chief Mechanical Engineer, Central Railway Workshop, Jhansi.

6. Senior Inspector Officer, Central Railway Workshop, Jhansi.

7. N.L. Parsadiya, Senior Inspector Officer, Central Railway Workshop, Jhansi.

... Respondents.

By Advocate : Sri G.P. Agrawal.

O R D E R

RAFIQ UDDIN, MEMBER (J)

The applicant has sought quashing of the orders dated 11.10.88, 20.5.90, 9.10.90, 11/12.4.91 & 3.3.1992 (Annexure nos. 1, 2, 3, 4 & 5 respectively to the O.A.) and has also sought

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directions to the respondents to grant all consequential benefits including restoration of post & grade of Skilled Artisan , difference of salary, seniority and promotion at par with junior counterparts. By the order dated 11.10.1988, the disciplinary authority has imposed the punishment of de-motion from the post of Helper Khalasi in the grade of Rs. 210-290/800-1150 to the post of Khalasi in the grade of Rs. 196-232/750-940. By the order dated 20.5.90 (Annexure-2), the disciplinary authority on re-consideration, the applicant was restored the earlier position as Helper Khalasi and also provided that he will also be eligible for seniority as well as annual increments. However, by order dated 9.10.90 (Annexure-3) the disciplinary authority modified the order dated 20.5.90 by depriving the applicant from the benefits of seniority and annual increment, granted earlier. By the order dated 11/12.4.91 (Annexure-4) (wrongly mentioned as 29.5.90 in Annexure-4) again the disciplinary authority cancelled the order dated 9.10.90 and restored the position of the applicant in terms of the earlier order dated 20.5.90. The review petition filed by the applicant against the aforesaid order, has been rejected vide order dated 3.3.1992.

2. The applicant was initially selected as Trade Apprentice in Artisan (Mall Wright Trade) category in the railways. After completion of 4 years Trade Apprentice-ship for the period 1976-80 in batch no. 76-A, the applicant was placed ~~on~~ panel of Skilled Artisan (Mall Wright Trade) in Class III/Group 'C'. It, however, appears that the applicant was not absorbed in class III post and was offered the appointment as Khalasi in Group 'D' post, which was accepted by the applicant under protest on the assurance given by the respondents that he would be provided the original post in Group 'C' as and when the vacancy is available. The applicant accordingly joined as Khalasi on 1.1.1981 in the grade of Rs. 196-232/- in Group 'D' post.

3. The applicant also applied for the post of Assistant Station Master Grade m. 330-560/- under the Departmental quota and was selected as Assistant Station Master. Since the applicant was required to undergo the training for probationer Assistant Station Master course no. 6 at Zonal Training School, Bhusawal, the applicant joined the said training from 20/24.6.1985 and also appeared in the pending examination of the training. The applicant had taken all the papers except one written and one practical paper, which were scheduled for 19.11.1983. The applicant alleges that he was prevented from taking the aforesaid papers because he was falsely implicated in a theft case and was in police custody on 18.11.1983. The applicant was, after this incident, sent back to Jhansi workshop in his parent cadre namely as Khalasi and was not permitted to take examination of Assistant Station Master Course. It is stated that instead of sending back to the applicant to Jhansi, the Principal of the Training School could have ~~been~~ initiated ~~against~~ the disciplinary action, if required and permissible under law. The applicant should have been allowed to take two remaining papers, which were scheduled to be held on 19.11.1983.

4. The applicant also states that the batch no. 76-A to which the applicant also belongs, where junior persons have been assigned the group 'B' posts, but the applicant was denied his absorption in Group 'C' for which he was originally trained. The applicant has also mentioned the names of such junior persons, who were his batch mates in batch no. 76-A and were absorbed in Group 'C' post in the year 1983.

5. It ~~is~~ ^{is alleged} ~~is~~ that the applicant was removed from service vide order dated 30.3.1984 by the respondents in exercise of the powers conferred by Rule 14 (ii) of DAR, 1966 in order to prevent the applicant from getting the post of

Group 'C' as Skilled Artisan over and above his juniors. The applicant had challenged the validity of the removal order dated 30.3.1984 before this Tribunal and was registered as T.A. No. 682 of 1986, which was decided by this Tribunal on 20.8.1987 and set-asideⁱⁿ the removal order of the applicant. It is also stated that during the pendency of T.A. no. 682/86, the applicant was acquitted by the Criminal Court, Bhusawal, which was filed against him on the basis of the alleged theft of wrist watch, vide judgment and order dated 27.9.1985. It also appears that another criminal case was also lodged against the applicant at Jhansi for alleged theft of enquiry file by the applicant on 25.8.84 at about 7.00 p.m. This criminal case also ended in acquittal of the applicant vide judgment and order dated 1.4.1987 passed by the Judicial Magistrate, Jhansi.

6. The applicant claims that when he submitted another application for restoration of his original post of Group 'C' because even the persons belonging to the subsequent batch no. 76-B of Trade Apprentice-ship were absorbed in Group 'C' posts between 1984 and 1987, the applicant was placed under suspension by the respondents and was served with a chargesheet dated 18.1.1988 on the same set of facts on which criminal case regarding alleged theft of enquiry file ended in acquittal on the applicant. The respondents completed the departmental enquiry against the applicant illegally because once the applicant was acquitted by the competent criminal court on the same set of facts, there was no justification nor legality in the departmental enquiry against the applicant. The enquiry officer, despite several objections and representations made by the applicant during the enquiry, completed the same and submitted his report to the disciplinary authority. The disciplinary authority on the basis of the findings of the enquiry officer imposed the punishment of reversion of the applicant to the post of Khalasi from the

post of Khalasi Helper vide impugned order dated 11.10.88 (Annexure-1) stating that the allegation of the applicant for attempting to pilfer the office file from office Almirah, was proved. The Judicial Magistrate, Jhansi vide judgment and order dated 1.4.1987 had already ¹² been acquitted the applicant as the theft of office file was not proved against the applicant. The applicant has also pointed-out several short-comings in the enquiry report including the fact that the copy of the enquiry report was not supplied to the applicant alongwith the order dated 11.10.1988 despite demand being made by the applicant on 24.10.88, as a result of which, the applicant was handicapped in preferring a proper appeal~~xxx~~ against the punishment order.

7. After preferring the appeal against the punishment order, the applicant was restored to the post of Khalasi Helper in which all the consequential benefits of seniority and annual increments, were granted. But, again without giving any show-cause notice, the benefit of increments and seniority, were withdrawn vide impugned order dated 9.10.90 (Annexure-3). The appeal of the applicant was also not decided and, therefore, the applicant had approached this Tribunal by filing O.A. no. 366/90. This Tribunal vide judgment and order dated 6.9.90 directed the disciplinary authority vide his letter dated 11/12.4.91 (Annexure-4) informed the applicant that the appellate authority had considered his appeal sympathetically and modified the order dated 9.10.90 whereby the benefit of seniority was withdrawn, has been cancelled. The action of the appellate authority was not in compliance of the order of this Tribunal as well as the provisions of Rule of DAR 1968. The applicant, thereafter, preferred a representation dated 2.12.1991 against the above order, w

has been rejected without considering the points raised by the applicant vide impugned order dated 3.3.1992 (Annexure-5).

8. Thus, the main grievance of the applicant is that he has been punished for offences for which he was acquitted by the competent criminal court, his juniors who had completed the Trade Apprentice-ship course from his batch ~~allowed~~ ^{allowed} as well as from the subsequent batch, has been in the original grade of Skilled Artisan and allowed promotion as Highly Skilled Grade-II, while the applicant's absorption to Skilled Grade in Group 'C' post and promotion as per seniority and completion of training of A.S.M. has been withheld for more than a decade under the garb of protected disciplinary proceedings knowingly and deliberately.

9. The respondents in their counter reply have merely stated that the applicant was under police custody in connection with the theft case during the period from 17.11.83 to 21.11.83 and as such he could not appear in the examination in the papers scheduled to be held on 18.11.83 and 19.11.83. Since the applicant was released on bail on 21.11.83, he remained absent on 22.11.83. The Principal of the Training School sent him to his parent cadre and ACME was asked to take further disciplinary action at his end. As regards the assignment of job to the applicant as Skilled Artisan Group 'C' post, having been completed the Trade Apprentice-ship course, it has been stated by the respondents that these facts are irrelevant for adjudication of the present case because the applicant did not raise any objection when he was appointed in Group 'D' post. It is also contended that fresh enquiry/DAR was initiated against the applicant as per the directions given by this Tribunal and the allegations framed against the applicant were fully examined under DAR Rules and proper decision was taken on the reply of the enquiry report and findings of the disciplinary authority.

10. We have heard the learned counsel for the parties and have perused the pleadings on record.

11. The main questions for consideration in the present case are (i) whether the punishment order dated 11.10.83 and the orders passed by the appellate as well as disciplinary authority are not valid and liable to be quashed;? (ii) Whether the applicant is entitled for being considered to the post of Skilled Artisan from the date when his junior persons have been assigned the post of Skilled Artisan.?.

12. It is evident from the perusal of Annexure-1 that this punishment order has been passed on the basis of the DAR enquiry conducted against the applicant on the allegation that while he was under going training for the post of ASM at Zonal Training Centre, Bhusawal, he was found committing theft of 3 second class railway passes and also for having committed theft enquiry file from the Almirah in the office of DCME, Jhansi on 25.2.1984 at about 7.00 p.m.

13. It is not disputed that a criminal case was instituted against the applicant and the applicant was acquitted by the competent criminal court in respect of the alleged theft committed by the applicant of wrist watch as well as three railway passes and also that of running away from lock-up from the police custody on 19.11.83. All these three criminal cases bearing no. 2566/83, 2567/83 and 2568/83 were decided by the Judicial Magistrate, Bhusawal and in all these cases the applicant was found not guilty and was acquitted vide judgment and order dated 27.9.1985, a copy of which have been annexed as Annexure nos. 6, 7 & 8 to the O.A. It is also pertinent to mention that the applicant was not only acquitted by the Criminal court, but even in a case of alleged theft of wrist watch of Ashok Wamanrao Deshmukh, the complainant himself was convicted for

perjury having been deposited falsely in Court.

14. Similarly, the applicant had also been acquitted by the Judicial Magistrate, Jhansi in the criminal case, which was instituted with the allegation that the applicant had committed theft of his enquiry file from the office of D.C.M.E., Jhansi, vide judgment and order dated 1.4.1987, a copy of which has been annexed as Annexure-9 to the O.A. It is also relevant to mention here, that in all these criminal cases have been decided by the Criminal Court on merit after considering and taking into account the evidence available on record.

15. Thus, it is obvious that in all four criminal cases instituted against the applicant, the applicant was not found guilty and after 1.4.1987 no criminal case was pending against him.

16. After his removal from service vide order dated 30.3.1984, the applicant had approached this Tribunal by filing T.A. no. 682/86. The said T.A. was decided on 20.8.87 and quashed the removal order dated 30.3.1984. Under these circumstances, we do not find any justification on the part of the respondents to initiate fresh departmental proceedings on the same set of facts in which the applicant had already been acquitted by a competent criminal court. It has been contended on behalf of the respondents that since this Tribunal in its order dated 20.8.87 in T.A. no. 682/86 had given discretion to the respondents to initiate fresh enquiry against the applicant, fresh enquiry was instituted. However, we find that this is a lame argument and also that the fresh D.R. enquiry was not initiated in good faith by the respondents. This Tribunal had not made any mandatory direction to do so, it was the responsibility of the respondents to see whether there was any justification to initiate fresh proceedings in view of the fact that the applicant had already been acquitted by the competent

Criminal court and which were decided during the pendency of the T.A. We have also perused the allegations made against the applicant in all the criminal cases and those made in the departmental enquiry, the allegations were based on the same set of facts. Once the applicant was duly acquitted by the competent criminal court on considering the evidence on record, hence it was unfair and unjust on the part of the respondents to proceed with departmentally on the identical set of facts. The apex court in a recent and leading case of Capt. A. Paul Anthony vs. Bharat Gold Mines Limited (JT 1999 (2) SC 456), under the same facts and circumstances, has held as under :

" that if on the same set of facts and evidence, an employee was acquitted in criminal trial, it would be unfair and unjust to allow the findings of the enquiry proceedings to stand. The dismissal of the employee was set-aside and reinstatement was ordered."

In the present case, we find that the criminal court on consideration of the entire evidence available on record, the applicant was acquitted in all the criminal cases. It is not understood as to how the enquiry officer had reached to the conclusion that the applicant committed theft of ^{are} the articles mentioned in the chargesheet. We, therefore, of the considered opinion that it would be unfair and unjust and rather oppressive to allow the findings recorded to different proceedings to stand.

17. It is also worth ~~to~~ ^Q mention that in the present case the applicant had again approached this Tribunal by filing O.A. no. 366/90, when the appellate authority did not decide his appeal filed against the punishment order even-after lapse of 1 1/2 years and this Tribunal vide order dated 6.9.1990 directed the respondents to dispose of the appeal preferred by the applicant with speaking order. We have, however, noticed that the appellate authority had not taken care of the direction given by this Tribunal and no

formal order appears to have been passed because the applicant was merely informed vide communication dated 11/12.4.1991 by the disciplinary authority that his appeal was sympathetically considered by the appellate authority. In other words, no formal order was passed by the appellate authority and the directions given by this Tribunal ~~was~~ were dis-regarded by the appellate authority.

18. As far as the question of assignment of the post of Skilled Artisan in Group 'C' on the basis of Trade Apprenti-
ce-ship, having been completed by the applicant in batch no. 76-A is concerned, the respondents in their Counter reply have not specifically denied the claim of the applicant. The applicant was placed on panel of Skilled Artisan (millwright Trade) in Class III and he was eligible to be absorbed in Group 'C' post. The respondents have also not denied the claim of the applicant that some junior persons of his batch no. 76-A have already been assigned the Group 'C' post in the year 1983. The names of such junior persons have been mentioned in para 4.9 of the O.A. The respondents ~~exhort~~ in reply to this para have kept ~~silent~~ about this allegation. ~~Since~~ It may be argued that in the year 1983 ~~the~~ criminal cases were pending against the applicant, his case could not be considered for assigning Group 'C' post in the year 1983. But having been acquitted in all the criminal cases and also the punishment order and the departmental proceedings ~~regular~~ have been quashed, ~~there~~ remains no hindrance in granting the relief of assigning in Group 'C' post on the basis of his Trade Apprentice-ship training in batch no. 76-A.

19. In view of the above discussion, we allow this O.A. and ~~quash~~ the orders dated 11.10.88, 20.5.90, 9.10.90, 11/12.4.91 and 3.3.92 contained as Annexure nos. 1,2,3,4 & 5 respectively to the O.A. We direct the respondents to grant all the consequential benefits including seniority from the date his immediate junior was promoted on the ~~next~~

higher post. The respondents are further directed to consider the case of the applicant for absorption as Skilled Artisan (mill Wright Trade) in Class III/Group 'C' in batch no. 76-A from the date his immediate junior was absorbed on that post.

20. The above exercise will be carried-out within a period of three months from the date of communication of this order. No order as to costs.

S. B. S.
MEMBER (A)
GIRISH/-

Ramji Patel
MEMBER (J)