

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.1026 of 2003.

Wednesday, this the 27th day of October, 2004.

Hon'ble Mrs. Meera Chhibber, J.M.
Hon'ble Mrs. Roli Srivastava, A.M.

Munnu Ram,
S/o Late Chhotu
working as Booking Clerk,
Northern Central Railway,
Kanpur Central,
r/o 10/407, Khalasi Lines,
Kanpur.

.....Applicant.

(By Advocate : Shri Sudama Ram)

Versus

1. Union of India through the General Manager
North Central Railway Headquarter, Allahabad.
2. Divisional Railway Manager,
North Central Railway,
Allahabad.
3. Senior Divisional Commercial Manager,
North Central Railway, Allahabad.
4. C.C.M. North Central Railway,
Allahabad.

.....Respondents.

(By Advocate : Shri A.K. Roy)

O R D E R

By Hon'ble Mrs. Meera Chhibber, J.M. :

By this O.A., applicant has challenged the order dated 8.9.2002 whereby applicant's representation pursuant to the directions given by this Tribunal was rejected (page 15), the order dated 26.11.2001 whereby his appeal was rejected (page 16), order dated 10.3.1987 whereby penalty was imposed to a lower grade, and order dated 28.1.1992 whereby appeal against the punishment order was rejected.

2. Grievance of the applicant in this case is that vide order dated 10.3.1987 penalty of reduction to a lower

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grade from Rs.1200-2040 to the scale of Rs.975-1540 and his pay was fixed at Rs.1100/- in the grade of Rs.975-1540 with loss of seniority and with recurring effect. It is submitted by applicant's counsel that this penalty was imposed on the applicant in the year 1987, but till date he is being given the salary @ Rs.1100/- p.m. only. He has neither been given any increment, nor any further promotion has been given to him, ~~and~~ He cannot be punished ~~for~~ throughout ~~of~~ his life as that would be un-constitutional, according to him. ^{and} the penalty has to be for specified period only. He, thus, ^{submitted B} ~~prayed~~ that penalty is not being challenged by him, but he wants that some time period should be fixed for the said penalty. In support of his contention, he has relied on the following decisions;

- (i) 2002 (3) (CAT) AISLJ 403
- (ii) 1990 (5) SLR 744 Bombay High Court
- (iii) 2003(1) ATJ 271 Delhi High Court.

3. Counsel for the respondents, on the other hand, have submitted that applicant had approached this Tribunal earlier also by filing O.A. no. 609 of 2001 for challenging the orders dated 10.3.1987 and 28.1.1992, but his O.A. was dismissed as time barred. However, liberty was given to him to give a fresh application so that respondents may consider and decide his representation by a reasoned order within a period of three months from the date of communication of the order. It was, thus, ^{by B} submitted ^{by B} counsel for respondents that applicant cannot be allowed to challenge the same orders by filing a subsequent O.A.

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

5. It is correct that the applicant had challenged penalty order^s dated 10.3.1987 and 28.1.1992 in O.A. no. 609 of 2001 and the said O.A. was dismissed as time barred,

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therefore, those orders cannot be challenged by the applicant in subsequent O.A., but counsel for applicant submitted that he is not challenging the penalty as such in this O.A., and he only wants that some time limit should be fixed for ~~said~~ penalty as penalty cannot be imposed for indefinite period. To that extent, perusal of the earlier judgment dated 22.5.01 shows that this contention raised by applicant's counsel, was not decided by the Tribunal in ^{his} ~~its~~ earlier O.A. as the same was kept open. Since applicant had already given his representation to the authorities to this effect, it was for this reason, the Tribunal ^{had} directed the respondents to consider and decide the representation of the applicant by a speaking and reasoned order (page 31-33). Pursuant to the said directions, respondents rejected the claim of the applicant by a non-speaking order inasmuch as this point was not addressed ^{to, &} whether the penalty can be imposed indefinitely or should be for ^a specified period. At this juncture, it would be relevant to quote para 4 in the note under rule 8 of Railway Servants (Discipline & Appeal) Rules, 1968:

"The Board have now decided that the penalty of reduction to a lower service, grade or post or to a lower time should invariably be imposed for a specified period unless it is considered necessary that the period of reduction should be for an indefinite period. Where the order imposing such penalty does not specify the period of reduction and there is coupled with it an order declaring the Railway Servant permanently unfit for promotion the question of re-promotion will, obviously not arise, in other cases where the period of reduction is not specified, the Railway Servant should be deemed to be reduced for an indefinite period i.e. till such date, as on the basis of his performance subsequent to the order of reduction, he may be considered fit for promotion."

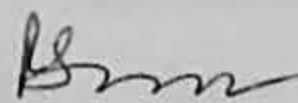
6. Perusal of the above para shows that normally penalty has to be for specified period and in case it has to be for indefinite period, the reasons should be recorded for making it for an indefinite period and in normal course he has to be considered for promotion in due time, unless it is categorically mentioned ^{that he is} ~~regarding~~ permanently unfit for promotion. The language used in the order dated

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10.3.1987 neither shows that applicant is unfit for further promotion, nor it shows that the misconduct committed by applicant was so grave that penalty should have been for an indefinite period. In the representation, applicant had specifically raised all these points, but that has not at all been considered by the authorities concerned. It goes without saying that when the Tribunal directed that a reasoned and speaking order be passed, it meant that all the points raised by the person had to be considered and then dealt with in the order. Since this point has not at all been dealt with by the DRM, the said orders cannot be sustained in law. Accordingly, orders dated 2.9.2002 and 26.11.2002 are quashed and set-aside.

7. We also feel that applicant could not have been made to suffer throughout his life inasmuch from the year 1987 neither he has been paid any increment till date, nor he has been considered for further promotion. We think this point needs to be looked into by the DRM. Therefore, this matter is remitted back to the DRM with the direction to apply his mind to this aspect and see whether some time should be put in the penalty imposed on the applicant or it ^{should be} ~~can~~ be retained as it is. The DRM should also keep in mind various letters issued by the Railway Board as well as the judgment given by Calcutta Bench of the Tribunal reported in 2002(3) AISLJ 403 while deciding this aspect. Final order shall be passed within a period of three months from the date of communication of this order under intimation to the applicant.

8. The O.A. stands disposed off with no order as to costs.



MEMBER (A)



MEMBER (J)

GIRISH/-