



CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 321/91

T.A.NO.

DATE OF DECISION 01.5.1997

Shri G.A.Padhiar

Petitioner

Mr.P.K.Handa

Advocate for the Petitioner [s]

Versus

Union of India & Ors.

Respondent

Mr.N.S.Shevde

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr.V.Radhakrishnan : Member (A)

The Hon'ble Mr.T.N.Bhat : Member (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ? *Ys*
- 2, To be referred to the Reporter or not ? *Ys*
- 3, Whether their Lordships wish to see the fair copy of the Judgment ? *no*
- 4, Whether it needs to be circulated to other Benches of the Tribunal ? *Ys*

Shri G.A.Padhiar S/o.
Aged
Working as ACC - Vasad
Now as Pointsman under
Station Master
(Advocate: Mr.P.K.Handa)

: Applicant

Versus

1. Union of India,
Secretary,
Ministry of Railways,
Notice to be served through
General Manager,
Western Railway,
Churchgate, Bombay-400 020.
2. Divisional Railway Manager,
Divisional Office,
Western Railway,
Pratapnagar,
Vadodara-390 004.
3. Senior Divisional Commercial
Superintendent,
Divisional Office,
Western Railway, Pratapnagar,
Vadodara-390 004.

: Respondents

(Advocate: Mr.N.S.Shevde)

: J U D G M E N T :

O.A.321/91

Date: 01/5/1997

Per: Hon'ble Mr.V.Radhakrishnan : Member (A)

Heard Mr.P.K.Handa and Mr.N.S.Shevde, the
learned advocates for the applicant and the
respondents respectively.

2. The applicant while he was working as ACC at
Vasad Station with the respondents was charge-sheeted
for misconduct as per Annexure A-1 dated 26.9.1988
which reads as under:-

" ARTICLE '1' While working as ACC at VDA on 16.11.87, you have recovered Rs.244/- from Shri Ravjibhai Dholabhai and issued money receipt No.108807 dated 16.11.87 as freight of 5 Bds empty gunny bags Rs.236/- and wharfage charges Rs.8/- i.e. total Rs.244/- while record portion of said money receipt shows that only Rs.193/- has been recovered, i.e. Rs.185/- as freight and Rs.8/- as wharfage charges. In this case you have misappropriated Rs.51/- (Fifty one) preparing receipt and record portion separately. You are held responsible in this case".

Sd/-
DCS BRC"

3. The respondents subsequently cancelled the charge sheet dated 26.9.1988 and issued fresh charge sheet dated 1.3.89 and after holding an enquiry awarded the penalty of dismissal from service by the disciplinary authority. The applicant submitted an appeal dated 23.7.90 Annexure A-5 to the appellate authority who reduced the penalty by order dated 11.10.90 Annexure-A which reads as under:-

" "Reduction from present grade to class IV grade as a Pointsman of Rs.800-1150 (RP) at Rs.800/- on permanent basis*. His seniority will be fixed at the bottom of

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the class IV cadre. His future promotion will be in the Class IV cadre in the normal turn.

1) His suspension period from 24.12.88 to 16.7.90 may be treated as suspension i.e. not spent on duty.

2) The intervening period from 16.7.90 to the date of reinstatement to be treated as dies-non".

4. The applicant's grievance is that the appellate authority imposed the penalty of down grading him to Class IV grade as Pointsman in the scale of Rs.800-1500 (RP) at a salary of Rs.800/- p.m. on permanent basis. His seniority was also fixed in the bottom of the Class IV cadre. His promotion was also to be limited in that cadre. He states that the penalty of reduction in a lower grade was always subject to review at a latter date and withholding of promotion or withholding of increments cannot be on permanent basis. It can only be for a specific period as laid down by the disciplinary authority and in any case, subject to review by the competent authority who would adjudge the employee's fitness for restoration to the original grade. (Railway Board's letter No.E(D & A) 66 RG 6-20 dated 27.8.1966 (ER 6496).

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(11)

Likewise the seniority of the affected employee, should be fixed at the lower scale by giving him credit for the period of service rendered by him in the higher grade vide Railway Board's letter dated 30.7.1964. Further the Railway Board in its letter dated 10.7.1991 has said the following:-

"The reduction to a lower stage in a time scale for an unspecified period or as a permanent measure is not permissible under the rules. When an employee is reduced to a particular stage his pay will remain constant at that stage for the entire period of reduction. The period to be specified under (C) should not in any case exceed the period specified under (a) above."

5. Hence according to Railway Board's letter dated 22.1.1960 reduction to the lower scale in a time scale for unspecified period or as permanent basis is not permissible under the rules. Hence, the applicant has prayed for the following reliefs:-

- "(i) Since the Appellate Authority i.e. Sr.DCS-BRC's orders issued vide No.EC/161/27/308/6376 dated 11-10-1990 shown at Annexure 'A' is illegal being not covered by provisions of the Railway Servants Discipline & Appeal Rules, 1968, the Hon'ble Tribunal is requested to quash and set aside Appellate Authority's orders dated 11-10-1990 and direct the Respondent to place the applicant at his original position of ACC considering the period of reduction of duty or on leave as per D & A Rules & pay the arrears with all consequential benefits.
- (ii) Any other relief which the Hon'ble Tribunal deems fit.
- (iii) The cost of the suit may also please be awarded."

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6. The respondents have contested the application. They have stated that the applicant was charged for fraudulently misappropriating Rs.51/- from the Railway Cash even though later on he paid the amount. They have denied any ulterior motive on part of the Railway Vigilance Inspector against the applicant. Even though the disciplinary authority had removed the applicant from the service the appellate authority had reduced the applicant's grade from Class III to Class IV and fixed the pay at Rs.800/- on permanent basis and also his promotion to be counted only in the class IV cadre. They have stated that the punishment imposed by the appellate authority is within the frame work of the rules. They have stated that the enquiry against the applicant was conducted as per the rules and charge was proved. Hence, the punishment was awarded by the disciplinary authority of dismissal which was reduced to a reduction granted by the appellate authority. Hence, they have defended the action taken by them.

7. The applicant has filed rejoinder. He has stated that the debit of Rs.51/- was raised by TIA, Baroda and the same was paid by him on 18.3.1988 and taking into account this fact malafide against the applicant could be concluded even by the inquiry officer as the applicant was an illiterate person. The appellate authority in its order had given benefit of doubt to the applicant, the penalty imposed by the appellate authority is

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disproportionate with reference to the charge. The applicant has been deprived of his grade, seniority, increment and promotion which is heavy punishment.

8. Mr. Handa, the learned advocate for the applicant during the arguments stated that the applicant has been fixed the pay at Rs. 800/- since 1989 without any increments and he has suffered financial hardship. He stressed the point that according to the Railway Board's orders, an employee cannot be reduced in rank and pay fixed at a lower grade on a permanent basis. He also argued that the quantum of punishment is not commensurate with the charge. Mr. Shevde on the other hand argued that the enquiries have been conducted against the applicant in a proper way and the appellate authority had scaled down the punishment of dismissal awarded by the disciplinary authority to that of Pointman cadre in rank and this is according to the rules.

9. We have heard both the sides and gone into the documents. First we may deal with the late objection raised by the respondents in filing an M.A. in the written statement as follows:-

"However, it is submitted that the applicant has not exhausted the remedy of revision under Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968 and hence the present O.A. is premature and liable to be dismissed."

We are of the view that there is considerable force in the contention of Mr. Handa, the learned advocate for the applicant that the penalty of reduction in rank cannot be imposed as a permanent measure. In this connection we have gone through the note in Rule 8 of the Railway Servants (Discipline and Appeal) Rules, 1968 which reads as under:-

- "(1) withholding of increments or promotion; and
- (2) reduction to a lower service, grade or post, or to a lower time scale, or to a lower stage in a time-scale.

Points have been raised whether the penalty of withholding of promotion may be imposed as a permanent measure and whether penalty of reduction to a lower post or grade permanently can be subjected to a review at a later date. It is clarified that the 'withholding of promotion' or 'withholding of increments' cannot by its very nature, be permanent. It can only be for a specified period to be laid down by the disciplinary authority while passing suitable orders on the merits of each case. As regards reduction to a lower post or grade, it has been already laid down in paragraph 5 of Railway Board's letter No.E(D & A) 62 RG 6-46 dated 30.7.1964 that if the order of reduction is intended for an indefinite period, the order should be framed on the following lines:-

"A is reduced to the lower post/grade/service of 'X' until he is found fit by the competent authority to be restored in the higher post/grade/service of 'Y'"

By virtue of the above form of the order, his case for re-promotion is to be reviewed if on the basis of his subsequent performance, he is considered fit for promotion.

(Railway Board's letter No.E(D & A) 66 RG 6-20 dated 27.8.1966 (ER 6496)

Re-promotion will be ordered only by the authority competent to re-promotion in higher grade and the Disciplinary authority has nothing to do with it as such.

(E(D & A) 70 RG 6-15 dtd.26.5.70 (ER 7515) ".

10. We have also gone through the rule which prohibits reduction to a lower stage as a permanent measure reads as under:-

"The order of reduction to be specific - Every order passed by a competent authority imposing the penalty of reduction to a lower stage in time scale should indicate:

- (a) The date from which it will take effect and the period for which the penalty shall be operated;
- (b) The stage in the time scale (in terms of rupees) in which the Railway servant is reduced; and
- (c) The extent (in terms of years and months, if any) to which the period referred to in (i) above should operate to postpone future increments.

(R.B.'s No.F(E) 71 FR-1/2 dated 10.7.91 and F(E) 60 FR 1/2 of 22.8.1962)


The reduction to a lower stage in a time scale for an unspecified period or as a permanent measure is not permissible under the rules. When an employee is reduced to a particular stage his pay will remain constant at that stage for the entire period of reduction. The period to be specified under (c) should not in any case exceed the period specified under (a) above."

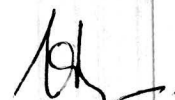
11. We are quite clear in our mind that the punishment imposed by the appellate authority cannot be allowed to stand as it is not in accordance with the rules and instructions on the subject (supra). Accordingly, the Appellate Authority's order dated 11.10.90 at Annexure A-4 and the order of Disciplinary Authority dated 16.7.1990 at Annexure A-4 are quashed and set aside. The case is remanded back to the Appellate Authority to reconsider and pass a fresh order of punishment in accordance with rules



after taking into account the fact that the applicant has already suffered loss of pay for more than five years. This action shall be taken and the applicant be paid arrears of pay, if any, within a period of three months from the date of receipt of a copy of this order.

O.A. is disposed of accordingly. No costs.


(T.N. Bhat)
Member (J)


(V. Radhakrishnan)
Member (A)

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