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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.1263 OF 2003
Cuttack this the 7th day of Oct. 2004

B.B. Bharosa Applicant(s)

- VERSUS -

Union of India & Ors. Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? Yes

M.R. Mohanty
07/10/04
(M.R. MOHANTY)
MEMBER (JUDICIAL)

B.N. SGM
(B.N. SGM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 1263 OF 2003
Cuttack this the 7th day of Oct. 2004

CORAM:

THE HON'BLE SHRI B.N. SONI, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)

Bijoli Bikash Bharosa, aged about 59 years
S/o. late Sushil Chandra Bharosa,
Vill-Gopalpur, P.S. Sutahata, PO - Jajpur,
Dist-East Midnapur (West Bengal) -
at present Jr.Electrical Engineer-II,
Electric Locoshed, S.E.Railway,
At/PO-Bandamunda, Dist-Sundargarh

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Applicant

By the Advocates

M/s.D. Lenka
S.Mahuntha
D.S.Ray

- VERSUS -

1. Union of India represented through G.M.,
S.E.Railway, Garden Reach, Kolkata
2. General Manager, South Eastern Railway,
Garden Reach, Kolkata
3. Divisional Railway Manager, South Eastern
Railway, Chakradharpur Division,
At/PO-Chakradharpur, Dist-Singhbhum(VIHAR)
4. Senior Divisional Electrical Engineer(TRS)
South-Eastern Railway, At/PO-Bandamunda
Dist-Sundargarh
5. Subodh Mandal, Senior Section Engineer,
Office of the Senior District Electrical
Engineer (TRS) Tikipada E.M.U. Carshed
South-Eastern Railways, PO-Tikipada,
Dist-Howrah
6. Parimal Das, Section Engineer, Office of the
District Electrical Engineer(TRS), Santaragachhi,
South-Eastern Railway Electric Locoshed,
PO-Santaragachhi, Dist-Howrah
7. Kisto Sharma, Section Engineer, Office of the
Senior District Electrical Engineer(TRS)
Electric Locoshed, South Eastern Railways,
PO-Bandamunda, Dist-Sundargarh
8. R.C.M.Rao, Section Engineer, Office of the
District Electrical Engineer(TRS) Electric
Locoshed, Bandamunda, Dist-Sundargarh

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Respondents

By the Advocates

Mr.R.C.Rath
Mr.Ashok Mohanty

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MR.B.N.SOM, VICE-CHAIRMAN: Shri Bijoli Bikash Bharosa (applicant) has filed this Original Application being aggrieved by the order dated 10/11.7.2003 passed by the Senior Divisional Electrical Engineer(TRS)(Respondent No.4) vide Annexure-6 rejecting his claim for promotion to the grade of J.E. I (Electrical-A). He has, therefore, prayed for quashing the said impugned order under Annexure-6 with direction to Respondents-Railways to promote him from the date his juniors (Respondent Nos. 5 to 8) had been promoted, with all consequential financial and service benefits.

2. The facts of the case in brief are that the applicant while working as SF III (Fitterman) in Chakradharpur Division was called for a suitability test for promotion to J.E. I. He was declared successful in the suitability test and as is evidenced, his name finds place at Sl. No.10 of the panel for promotion published on 17.4.1995 vide Annexure-A/2. However, he was not given actual promotion on the ground that a disciplinary proceeding was initiated against him for alleged absence without leave and by the order of the disciplinary authority dated 15.2.1993 ; punishment of stoppage of promotion for 10 years was inflicted on him. The appeal preferred by him against the punishment order did not yield any fruitful results, whereupon, he had approached this Tribunal in Original Application No.404/95 seeking justice. The Tribunal, while disposing of the said O.A. vide its order dated 7.8.2002 set aside the orders of the disciplinary authority as well as the appellate authority

and remitted the matter to the disciplinary authority to institute fresh inquiry in accordance with the rules. Since then, it is the allegation of the applicant, that the matter is pending with the disciplinary authority, although further inquiry has been completed, but no final order has been passed by the disciplinary authority. It has been submitted by the applicant that during pendency of O.A.No.404/95, the Respondents-Railways had published a list of 34 candidates for promotion to the next higher grade of Junior Foreman whereby some of his junior colleagues were promoted. He, therefore, challenged this order in Misc.Application No.822/96 (arising out of O.A.No.404/95). After hearing both the sides, this Tribunal, while disposing of the said M.A. was pleased to direct that in case the applicant succeeded in the O.A.404/95 and the impugned order of punishment stopping his promotion for 10 years was quashed, he would then get all the service benefits from the date his juniors had been promoted. Although the Tribunal had set aside the order of punishment imposed on him vide its order dated 7.8.2002, the applicant was not promoted and although fresh inquiry in pursuance of the direction of this Tribunal in O.A.No.404/95 has since been completed, no final decision has been taken thereon by the disciplinary authority. It is in this background when the applicant approached Respondent No.4 for consider his case for promotion. The latter vide its letter dated 10/11.7.2003 informed that as the panel for promotion to J.E. I (ELC-'A') got invalidated after two years and the currency of the punishment imposed on the

having ended only on 14.2.2003, he could not be promoted from out of the list/panel published on 17.4.1995. It is in this background, the applicant, finding no other alternative, has approached this Tribunal with prayer as referred to above.

3. The facts of the case are not denied by the Respondents-Railways. In their counter filed on 28.6.2004, the Respondents have admitted that the fresh inquiry into the matter in pursuance of the direction of this Tribunal dated 7.8.2002 has been completed, a copy of that inquiry report had also been supplied to the charged official (applicant) on 5.2.2004 and that final decision could be taken on receipt of the representation/reply from him.

validity of
They have reiterated that the panel dated 17.4.1995 having expired on 7.8.2002 when the Tribunal delivered the judgment disposing of the O.A.No.404/95, there was no scope of giving promotion to the applicant and therefore, the allegation that the Respondents have violated the order of the Tribunal is baseless and unfounded. They have also submitted that the applicant was called for fresh suitability test for the post of J.E.-I on 27.7.2003 but he failed to appear in that selection. He also did not appear in the supplementary suitability test which was conducted later on 12.9.2003. He also refused to appear in the next supplementary selection test which was held on 11.10.2003. They have, therefore, submitted that the O.A. being devoid of merit is liable to be dismissed.

4. We have heard the learned counsel of both the sides and perused the materials placed before us.



5. By filing Misc.Application No.654/03, the applicant has brought to our notice the fact that he is due to retire from service on superannuation with effect from 31.10.2004 and therefore, he has prayed for early hearing and disposal of the matter to secure the ends of justice. Accordingly, we have heard this matter on priority basis.

6. From a perusal of the records, it reveals that this Tribunal, while disposing of O.A.No.404/95 had held that the order dated 15.2.1993 imposing punishment of stepping promotion of the applicant for 10 years was vitiated by failure of the Respondents in giving him the benefit of natural justice. The Tribunal also held that the appellate authority had failed to pass a reasoned order, because no reasons were assigned by that authority while rejecting the appeal filed by the applicant. Having regard to the legal infirmities in disposal of the disciplinary case against the applicant, the punishment order as well as the appellate orders were set aside and the Tribunal directed the disciplinary authority to institute inquiry afresh in accordance with Railway Servants(Discipline & Appeal) Rules,1969 giving the applicant an opportunity in the light of the observation made therein. From the records placed before us, it appears that although the inquiry officer submitted his report on 11.8.2003 to the disciplinary authority, i.e., Sr.Divisional Electrical Engineer(TRS), the same was forwarded to the applicant for his written statement;

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but no tentative decision of the disciplinary authority based on the inquiry report was communicated. The applicant was asked to submit his representation within 15 days period failing which it would be assumed that he had no representation against the findings of the inquiry officer and the decision would be taken accordingly by the disciplinary authority. The inquiry officer in his report did not come to a firm and definite conclusion as to whether the charges framed against the applicant were proved. On the other hand, he opined in his report by stating that "the case of Shri B.B.Bharosa may be considered sympathetically as he has already suffered".

7. During hearing it was submitted by the learned counsel for the applicant that although he had submitted his written statement within the specified time, no order has been passed by the disciplinary authority so far, and thereby the applicant is put to serious prejudice and untold harrassment. The learned senior counsel, Shri Ashok Mohanty (assisted by Shri R.C.Rath) confirmed that as yet no final order has been passed by the disciplinary authority in this matter.

8. The facts of the case make a painful reading. The applicant was charge-sheeted on the allegation that he had overstayed his leave by four months and on that ground his promotion was held up for a period of 10 years, as a measure of punishment. Undoubtedly, such a punishment is absolutely disproportionate to the gravity of the alleged offence. Further it was pointed out by

us in the earlier round of litigation in O.A.No.404/95 that the Respondents had remained in oblivion about the procedure to be adopted and followed while inflicting statutory punishment under the R.S.(D&A) Rules, 1969. Inspite of our pointing out these lacunae in processing disciplinary proceeding, the performance of the Respondents has been no better in handling the matter thereafter. What we mean to say is that although the fresh inquiry report was submitted by the inquiry officer to the disciplinary authority on 11.8.2003, a copy of the said report was made available to the applicant after a period of six months, i.e., on 3.2.2004. Thereafter the applicant submitted his written statement on 24.2.2004, but till the date of final hearing of this case on 25.9.2004, the disciplinary authority had found no time to pass appropriate order in the matter. By delaying finalization of the disciplinary proceeding without any valid reason the disciplinary authority has caused mental agony and harrassment to the applicant. This callous attitude of the disciplinary authority appears to be without any valid reason and aimed at victimising the applicant. By delaying the matter in the way that they have and keeping the ball rolling all these years, they have inflicted untold sufferings to the applicant. If instilling a sense of discipline, obedience and subordination are the mottos of the administration, it should have acted with good intent to demonstrate its determination to enforce discipline. The purpose of taking action

against the applicant on the ground of alleged extension of leave without following the procedure as prescribed has failed miserably, because, the way in which the Respondents have conducted themselves in pursuing the disciplinary proceeding, is full of legal infirmities and laches. Having regard to all these facts and circumstances of the case, we have no hesitation to hold that the disciplinary authority having failed to finalize the disciplinary proceeding till date after submission of report by the inquiry officer on 11.8.2003 without any good and reasonable ground, at this juncture, is precluded from passing any order on the inquiry report, which we have found to be inconclusive and vague and hence the same is set aside.

7. We are surprised to note that even after quashing the orders dated 15.2.1993 of the disciplinary authority as well as the order of the appellate authority by this Tribunal vide order dated 7.8.2002 in O.A.404/95, the Respondents had not implemented the order by holding a review D.P.C. to consider the case of the applicant for promotion. On the other hand, they have, by their order dated 10/11.7.2003 (Annexure-A/6) admitted that the punishment of stoppage of further promotion for 10 years ended only on 14.10.2003. This action of the Respondents not only amounts to lack of application of mind, but also is contumacious since by their own admission and conduct, they have flouted the order of this Tribunal in O.A.404/95

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and thereby the applicant was made to suffer at the whims and caprice of the Respondents-Department.

8. For the reasons discussed above, we have no alternative but to quash the disciplinary proceeding initiated against the applicant by the Respondents vide their Memorandum dated 8.8.1991, and accordingly, the same is quashed. As a consequence, the applicant will be entitled to promotion to the grade of JE-I(ELC-'A') for which he was empanelled vide their order dated 17.4.1995 and his date of promotion will reckon with effect from the date his immediate junior was so promoted. He will also be entitled to further promotion to the next higher grade from the date his junior was promoted to the grade of Jr.Foreman/Section Engineer dispensing with the suitability test, if any, prescribed for the higher posts; and resultantly, he will also be entitled to all financial benefits of promotions, as directed above.

10. With the observations and directions as made above, this O.A. succeeds. No costs.

M.R. Mohanty
(M.R.MOHANTY)
MEMBER (JUDICIAL)

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(B.N. SOM)
VICE-CHAIRMAN