

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH: :CALCUTTA

ORIGINAL APPLICATION NO. 1035/96

FRIDAY, THE NINETEENTH DAY OF MAY, 2000

SHRI S.K. GHOSAL.
SHRI P.C. KANNAN.

... MEMBER (A)
... MEMBER (J)

Pranab Kumar Sarkar,
S/o late Ramesh Ch. Sarkar,
residing at C/o N.G. Das,
P.O. Bolaramdas Swapan,
Khardah, 24 Prgs, (North).

... Applicant

By Advocate Mr. B.C. Sinha.

Vs.

1. Union of India, service through the
General Manager, Metro Railway,
33/1, J.L. Nehru Road, Calcutta-700 071.
2. General Manager, Metro Railway,
33/1 J.L. Nehru Road, Calcutta-700 071.
3. Chief Personnel Officer, Metro Railway,
33/1 J.L. Nehru Road, Calcutta-700 071.
4. Chief Electrical Engineer
Metro Railway,
33/1 J.L. Nehru Road, Calcutta-700 071.
5. Dy. Chief Electrical Enginner/AV,
Metro Railway,
33/1 J.L. Nehru Road, Calcutta-700 071.
6. Dy. Chief Electrical Engineer/TR,
Metro Railway,
33/1 J.L. Nehru Road, Calcutta-700 071.
7. Sr. personnel Officer,
Metro Railway,
33/1 J.L. Nehru Road, Calcutta-700 071.

... Respondents.

Counsel Mr. M.S. Banerjee.

49

O R D E R

Shri S.K. Ghosal.

... Member (A)

The applicant while working as an Assistant Electrical Foreman/Dy. Shop Supdt. in the grade of Rs.1600-2600 i.e. at the level of Chargeman-A, was issued with a punishment order dated 8.4.93 passed by the Dy. Chief Electrical Engineer (G) (Metro Railways) Calcutta. According to that order seen at Annexure A2 the pay of the applicant was reduced to the lower grade in the scale of Rs.1400-2300 at pay Rs. 2300/till he was found fit by the competent authority to be restored to the post of Chargeman-A in the scale of Rs.1600-2600. Finally, in terms of the order passed by this bench in OA 367/94 dated 9.1.95, seen at Annexure A5, the Appellate Authority i.e. the Chief Electrical Engineer, Metro Railway, Calcutta who is the 4th respondent, passed an order dated 18.5.95 at Annexure A6 to the effect that the punishment order dated 8.4.93 at Annexure A2 was set aside. This was done on the ground that the procedure laid down in Discipline and Appeal Rules had not been fully complied with by the Enquiry officer and the Disciplinary Authority while deciding the case. The applicant in the meanwhile had faced another disciplinary enquiry. At the end of the latter proceedings, he was imposed the punishment of reduction to one stage lower at Rs.2250/- in his the then time scale of Rs.1400-2300 for a period of 2 years with the effect of postponing his future increments of pay. That latter order of the Disciplinary Authority i.e. the

SG

Deputy Chief Electrical Engineer, (G) Metro Railway, Calcutta was passed on 23.9.93 and is seen at Annexure A4. On behalf of the applicant, at the arguments heard today, a copy of the order passed by the General Manager, Metro Railway, Calcutta, who is the 2nd respondent has been produced which is dated 23/24.4.99. The General Manager in that order, in his capacity as the Revisional Authority, has directed that the punishment of reduction by one stage in time scale for a period of 3 (three) years with immediate effect under Annexure A4 would be modified to reduction by one stage in the time scale for a period of three years but without cumulative effect.

2. The applicant is aggrieved by the order dated 9.5.96 passed by the Disciplinary Authority i.e. the Deputy Chief Electrical Engineer (TR) the 6th respondent here, seen at Annexure A9 of the OA. That order states that the benefit of full pay and allowances for the period the applicant was under suspension in connection with the departmental proceedings would not be available to the applicant, since the suspension was considered justified and further that since the applicant has already been paid the subsistence allowance, no further payment for that period is to be made. The applicant is similarly aggrieved by the order dated 15.7.96 passed by the Appellate Authority and communicated to him by the Deputy Chief Electrical Engineer/AV, the 5th respondent here, which is seen at Annexure A13. The said order clearly

29

states that since the applicant was undergoing penalty of reduction to a lower time scale, he could not be restored back till the punishment was over. It has been held there that ~~in~~ ⁱⁿ ~~in~~ ⁱⁿ situation his designation as ELC in the attendance register is, therefore, in order.

3. The applicant has sought the following reliefs:-

- a) "To direct the respondents to cancel, withdraw and/or rescind the impugned orders dated 9.5.96 & 15.7.96;
- b) To direct the respondents to fix the pay of the applicant in the pay scale of Rs.2000-3200 (Rp0, attached to the post of Elec. Foreman/Dy. Shop Supdt. from the date of the order of the said promotion; ion the Open Line.
- c) To direct the respondents to reimburse the arrears of salary attached to the post in the scale of Rs.2000-3200 (RP) including the daily allowance and other allowances and interest thereon;
- d) To direct the respondents to give full pay and allowances for the period of suspension;

SG

- e) To direct the respondents to give formal posting as Elec. Foreman/Dy. Shop Supdt. in the scale of Rs.2000-3200 (RP) with retrospective effect;
- f) To direct the respondents to deal with and/or dispose of the representations;
- g) To direct the respondents to produce the entire records of the case before this Hon'ble Tribunal for adjudication of the points at issue;
- h) Costs;
- i) And to pass such further order or orders and/or direction or directions as to this Hon'ble Tribunal may deem fit and proper."

4. We have already discussed the undisputed facts of this case in the preceding paragraphs. It is evident that when the Appellate Authority passed the order dated 18th May, 95 at Annexure A6, setting aside the earlier punishment order under Annexure A2 reducing the applicant to the lower post of Chargeman-B in the scale of Rs.1400-2300 at pay of Rs.2300/-, the effect of that order had to be reckoned from the time, i.e. 8.4.93, when the original penalty order was passed under Annexure A2. The result thereof would be ¹⁶ ¹⁰ restored ~~to~~ the applicant to his previous post/cadre of Chargeman-A in the scale of

29

Rs.1600-2300 and to the pay that he was drawing at that point of time. It is not disputed that the applicant was drawing Rs.2250/in that scale of pay of Rs.1600-2600 before the original punishment order was passed dated 8.4.93. Therefore, when the punishment order was passed in the context of the second disciplinary proceedings, held against the applicant, reducing his pay to one stage lower in the time scale of pay for three years on 23.9.93 seen at Annexure A4, its effect could only be the reduction to one stage lower from what he could draw legally and validly on his retrospective restoration to the scale of pay of Rs.1600-2600 at the pay of Rs.2250/-: That restoration would, in any case, be prior to the latter order dated 23.9.93. In the final order passed by the Revisional Authority i.e. the General Manager dated 23.4.99, the pay of the applicant in the scale of pay to which he was legally entitled at that point of time i.e. 23.9.93 was reduced by one stage in the time scale of Rs.1600-2600 for a period of three years without cumulative effect. That order dated 23.4.99 would entail clubbing and granting of normal increments after the expiry of the period of three years in the scale of pay of Rs.1600 - 2600, from the stage , he was reduced to ¹⁹ from Rs.2250/-.

5. Having held that the fixation of pay with retrospective effect has to be done for the applicant in the manner discussed by us above, we do not propose to

AS

undertake the detailed calculation involved based on that finding. We trust that the competent authorities in the respondent organisation will work out the details based on these findings under intimation to the applicant.

6. The applicant had impugned the order rejecting his representation for full pay and other benefits during the period under suspension from 8.10.92 to 20.5.93 when the disciplinary proceedings were yet to be completed. We have noted already that the first disciplinary proceeding ended effectively without any punishment being imposed on him and the subsequent disciplinary proceeding ended with a minor penalty of reduction by one stage in the scale of pay without cumulative effect for a period of 3 years. As per the instruction of the Railway Board dated 21.3.86, found in the Railway Servants (Discipline and Appeal) Rules, 1966, 4th edition, 1991, published by Behri Brothers, at page 42 thereof, issued under Rule 5 of the Rules, the suspension in this case is required to be treated as having been wholly unjustified on the lines of the provisions of FR 54B. We find that under FR 54B in such a situation the Government servant is also required to be paid the full pay and allowances to which he would be entitled had he not been suspended. This particular provision is found under sub-rule 3 of FR 54B.

7. In the light of the discussions made above, we direct that the period of suspension aforementioned shall

SD

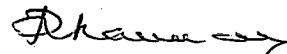
be treated as on duty and the applicant eligible for the benefits of full pay and other allowances therefor. The respondents shall carry out the calculations regarding the amount payable to the applicant based on this finding expeditiously under intimation to the applicant and make payment accordingly.

8. As regards the relief sought by the applicant at item No. (e) of the reliefs quoted by us above i.e. for direction to the respondents to give him a formal posting as Electrical Foreman/Dy. Shop Supdt. in the scale of Rs.2000 - 3200 with retrospective effect, in the absence of any material placed before us regarding the eligibility criteria for the said promotion on a regular basis and in the absence of any averment made on behalf of the applicant that he fulfils such eligibility criteria or that a candidate who is his relative junior had been promoted earlier to that post ignoring his claim, we do not consider it necessary or appropriate to discuss the merits or otherwise for the same. That relief, therefore, cannot be allowed by us. However, if the applicant, in the light of the findings given by us above, feels that under the rules he is eligible for consideration for promotion to that post, it shall be open for him to make a representation to the respondents and the respondents shall consider such a representation within a reasonable time. If the applicant feels aggrieved by the decision

AS

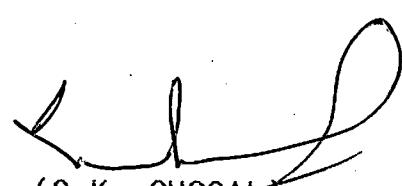
finally in that behalf the applicant will have the liberty to approach the appropriate forum as per law.

9. For the reasons stated by us above, we allow the OA in part. The directions recorded by us in the preceding paragraphs shall be carried out by the respondents within a period of 4 months from the date of receipt of copy of this order. No costs.



(P.C. KANNAN)

MEMBER (J)



(S.K. GHOSAL)

MEMBER (A)

Gaja